



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 424 OF 2004

Manohar Prakash Badgujar,
Age : 24 years, Occu. : Agri.,
R/o. Pimparkhed,
Tal. Bhadgaon, Dist. Jalgaon.

... Appellant.

Versus

The State of Maharashtra

... Respondent.

...

Mr. Satej S. Jadhav, Advocate for Appellant
Mrs. Ashlesha S. Deshmukh, APP for Respondent – State

...

WITH

CRIMINAL APPEAL NO.660 OF 2004

The State of Maharashtra,
Through Vishwanath Pundlik Badgujar,
of Shirsode, Tq. Bhadgaon in
Cri. No.45 of 2003 of Bhadgaon P.S.

... Appellant
(Orig. Complainant)

Versus

Manohar Prakash Badgujar,
Age : 24 years, Occu. : R/o. Pimparkheda,
Tq. Bhadgaon, Dist. Jalgaon

... Respondent
(Orig. Accused)

...

Mrs. Ashlesha S. Deshmukh, APP for Appellant - State
Mr. Satej S. Jadhav, Advocate for Respondent

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 10th SEPTEMBER, 2024

PRONOUNCED ON : 24th SEPTEMBER, 2024

JUDGMENT :

1. This is an appeal at the instance of appellant convict Manohar, who is held guilty by learned 3rd Additional Sessions Judge, Jalgaon in Sessions Case No. 149 of 2003 for offence punishable under sections 498A and 306 of Indian Penal Code (IPC) and section 4 of Dowry Prohibition Act, 1961.

PROSECUTION CASE IN NUTSHELL IS AS UNDER

2. Deceased Vrushali was married to appellant on 21.05.2003. According to prosecution, before marriage it was decided amongst parties to pay dowry of Rs.35,000/- in the form of gold ornaments. After 15 days, Vrushali was brought home by her parents for customary function namely "Mul". At that time, Vrushali informed that accused husband and in-laws subjected her to cruelty for paying less dowry than decided. She was beaten and taunted. Husband used to lift her and throw her on the floor. Getting fed up of the ill treatment and cruelty, on 12.07.2003 Vrushali incinerated herself and succumbed to the burns.

Report to that extent being lodged by PW1 father Vishwanath, crime was registered by Bhadgaon Police Station and after gathering sufficient evidence, accused persons came to be charge-sheeted and ultimately tried by learned 3rd Additional Sessions Judge, Jalgaon vide Sessions Case No. 149 of 2003.

Trial culminated into conviction of only husband Manohar i.e. appellant herein, whereas accused nos.2 to 5 were acquitted from all the charges. Hence, the instant appeal by convict husband.

State has also preferred Criminal Appeal bearing No.660 of 2004 for enhancement of sentence awarded by learned trial Judge.

SUM AND SUBSTANCE OF EVIDENCE IN TRIAL COURT

3. **PW1** Vishwanath father deposed about marriage of his daughter Vrushali with appellant on 21.05.2003. That, his daughter being subjected to cruelty by husband and in-laws due to which she immolated herself on 12.07.2003. He lodged report at Exh.34.

PW2 Dr. Vijaya Wani, Autopsy Surgeon, who conducted post mortem and opined death of Vrushali to be due to cardio respiratory arrest due to shock on account of 98% burns.

PW3 Mangalbai mother also deposed about daughter's marriage with appellant. Dowry in the form of gold ornaments was decided to be given. After marriage, when she was brought home, she reported about cruelty, taunting and husband lifting and throwing her on the floor. On 12.07.2003 news of burns suffered by Vrushali was received. According to her, it was suicide.

PW4 Ishwar, neighbour, did not support the prosecution.

PW5 Pravin, another neighbour, stated that, on 12.07.2003, he heard shouts from the house of accused and so he went there and saw Vrushali in flames and Manohar tried to extinguish the fire. Finding him not supporting, he was also subjected to cross examination by learned APP.

PW6 Uday Kulkarni, Police Head Constable, who acted as a carrier of *Muddemal*.

PW7 Pushpabai, neighbour, stated that she met Vrushali when she visited house after marriage and she reported her ill treatment and taunting at the hands of husband and in-laws. Later on, she received news of her suicide.

PW8 Husenkha, Police Head Constable is the another carrier.

PW9 P.I. Patil, Police Officer, who conducted AD inquiry, carried out investigation and then charge-sheeted accused.

SUBMISSIONS

On behalf of Appellant :

4. Pleading innocence and false implication, learned counsel for appellant would point out that, informant and accused are relatives.

Deceased Vrushali was his maternal uncle's daughter. Therefore marriage was performed in relation. He submitted that, there was no settlement of dowry and even there is no iota of evidence in that regard. He took this court through the testimony of informant father and mother and would submit that their evidence is, firstly, not consistent and, secondly, it is full of material omissions and contradictions. According to him, none of the independent neighbours, who had seen the incident, had supported the prosecution. He pointed out that, on the contrary, they speak of seeing husband appellant doused the fire. That, husband had also suffered burns while attempting to extinguish the fire and he was admitted and treated. That, both, Medical Officer as well as Investigating Officer, admitted to that extent. He submitted that, burns were purely accidental. That, there is no evidence suggesting abetment to commit suicide. He pointed out that, already learned trial court has acquitted accused nos.2 to 5 from all charges. That, husband alone is singled out. According to him, necessary ingredients for attracting neither sections 498-A and 306 of IPC nor provisions of Dowry Prohibition Act are available in the prosecution evidence. Consequently, he questions the maintainability of conviction rendered by trial court and while concluding, submitted that there is improper appreciation of both, evidence as well as law, and hence prays to allow the appeal.

On behalf of Prosecution :

5. Refuting the above submissions and resisting the appeal, learned APP also took this court through the evidence of PW1 Vishwanath, PW3 Mangalbai and PW7 Pushpabai and would submit that, case has been proved beyond reasonable doubt by the testimonies of such witnesses. That, within a short span of marriage, getting dissatisfied by less dowry than decided, husband and in-laws subjected Vrushali to ill treatment and cruelty. That, parents are consistent on that count. That, husband used to lift and dash Vrushali on the floor. That, there was taunting about her weight and complexion. She also invited attention of this court to inquest panchanama at Exh.25 and would point out that, apparently there are beating marks. That, doctor has noted said injuries in the post mortem report and has further noted the same to be ante mortem in nature. Therefore, according to her, there was both, physical and mental cruelty. That, ill treatment and cruelty was the only reason for Vrushali to commit suicide and there was no other reason. That, such evidence has been correctly appreciated by learned trial Judge and as such, according to her, judgment of learned trial Judge is infallible.

LEGAL POSITION

6. Here, husband is convicted under sections 498A and 306 of IPC. Before re-appreciating the prosecution evidence, it would be

desirable to spell out settled legal position regarding applicability of 498A of IPC. Law is fairly settled that, for attracting the charge under section 498-A of IPC, prosecution is duty bound to prove following essential ingredients :-

- “(1) *A woman was married;*
- (2) *She was subjected to cruelty;*
- (3) *Such cruelty consisted in -*
 - (i) *any lawful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life, limb or health whether mental or physical;*
 - (ii) *harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on account of failure of such woman or any of her relations to meet the lawful demand ;*
 - (iii) *the woman was subjected to such cruelty by her husband or any relation of her husband.”*

JUDICIAL PRECEDENT :

7. As to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark cases of ***Giridhar Shankar Tawade v. State of Maharashtra*** (2002) 5 SCC 177, ***Gurnaib Singh v. State of Punjab*** (2013) 7 SCC 108, ***State of Andhra Pradesh v. M. Madhusudhan Rao*** (2008) 15 SCC 582, ***Bhaskar Lal Sharma v. Monica*** (2009) 10 SCC 604 and ***K. Subba Rao v. The State of Telangana*** (2018) 14 SCC 452.

8. Keeping above legal position in mind, evidence of prosecution is to be scrutinized.

9. PW1 Vishwanath father, in his evidence at Exh.33, testified that, marriage of his daughter Vrushali was performed with appellant on 21.05.2003. According to him, before marriage, his cousin sister i.e. mother-in-law of Vrushali had demanded Rs.35,000/- towards dowry in the form of gold ornaments. He accordingly purchased ornaments as well as clothes and performed marriage. He testified that at the time of marriage itself, accused husband said that he got less dowry and marriage was not performed as per his wish. Vrushali went to reside with husband for 4 to 5 days and thereafter was brought home and she stayed for two days. Cousin father-in-law of Vrushali namely, Santosh Badgujar took her back to her matrimonial house and she stayed for 8 to 9 days. Thereafter, informant himself went and brought Vrushali for customary ceremony "Mul". He deposed that, *"at that time, my daughter Vrushali told me that accused persons subjected her to cruelty on account of giving less dowry in the marriage. She told me that, accused were beating her and were using the taunting language against her. She further told that accused no.1 used to lift her from the cot and throw her on the floor saying that, her weight is too less. The other accused were taunting her on account of providing less dowry."* He further deposed that on 12.07.2003, phone call was received that Vrushali suffered burns. So he visited civil hospital Jalgaon, but by the time he reached, she expired. Accused persons did not inform cause of burns. Accused no.1

was not present in the hospital. After last rituals, he lodged report Exh.34.

While facing cross, he answered that, before marriage, in a sitting, it was settled between them the articles which are to be given to the accused, but it was not settled what articles would be given by accused to them. He answered that, he prepared Yadi (list) of articles settled to be given. He admitted that, he did not hand it over to police. He admitted that, as per custom, father of a girl is required to give ornaments and clothes in marriage. He answered that, he has given articles as per demand of accused. He answered that he did not possess receipt of purchase of the articles. According to him, he incurred Rs.30,000/- expenses. He admitted that, everything was smooth and happy after the marriage till the first customary ceremony of 'Mul' i.e. till he brought Vrushali for the second time after marriage. He admitted that Vrushali expired within one and half month after marriage and also admitted that she visited his house on three occasions during such period.

In further cross he answered that, he does not know whether both hands of husband were burnt and he was being treated at civil hospital. He answered that, he had not seen the incident of burns, but according to him, he **feels** that, "she had committed suicide by self

immolation.” He admitted that nobody from the village informed how Vrushali caught fire.

Omission is brought to the extent that, he had stated before police at Jalgaon before taking dead body of Vrushali that she had committed suicide. He admitted that during the entire matrimonial life, Vrushali resided with the accused only for 15 days in all. He answered that he does not know if his daughter caught fire due to sparking of stove flame while heating the water. Rest is all denial.

10. PW3 Mangalbai mother testified that, it was settled between them to give dowry of Rs.35,000/- in the form of ornaments. They gave 25 grams gold Mangalpot, 5 grams gold Tongal, 3 grams golden Mani-mangalsutra, silver chain and clothes. After marriage, her husband brought Vrushali home for ceremony and was taken back by cousin father-in-law. Again after 15 days, she was brought home, that time, she narrated that, *“the accused persons subjected her to cruelty by taunting her on account of less dowry, not knowing the household work and on her black complexion. Accused no.1 used to lift her from the cot and throw her on the floor by saying that she is less in weight. Accused persons demanded Rs.20,000/- from her.”* On 12.07.2003 they got the news of burns. According to her, Vrushali committed suicide due to ill treatment of accused for not meeting their demand of dowry.

While under cross, even she stated that, Yadi of articles to be given to the accused was not prepared. She admitted that, she learnt from husband PW1 Vishwanath that, at the time of marriage, accused no.1 said that less dowry was given and his desire was not fulfilled. She answered that she learnt from her daughter during second visit regarding demand of Rs.20,000/-. Even she denied knowing about husband being admitted in civil hospital due to burns to his hands. Rest is all denial.

11. Apart from parents, prosecution has adduced evidence of neighbours i.e. PW4 Ishwar, PW5 Pravin and PW7 Pushpabai.

PW4 Ishwar did not support the prosecution as he stated that he heard nothing about wife of Manohar and denied about she being subjected to cruelty on account of dowry demand.

PW5 Pravin another neighbour deposed that around 4:30 a.m. on 12.07.2003, he heard shouts from the house of Manohar. He went to the house of accused and found Vrushali had caught fire and Manohar trying to extinguish the fire. Therefore, he was also subjected to cross examination by learned APP, but nothing adverse has been brought.

12. PW7 Pushpabai claims that she resided in front of house of complainant. She deposed that, after marriage within 8 days, Vrushali came to her parent's house and was again taken back. She again returned

after 15 days and at that time, Vrushali met her and told about ill treatment at the hands of accused persons to meet less dowry. She claimed that, Vrushali told her that accused no.1 used to say to her that she was of dark complexion and slim figure and used to lift her and throw her. That, accused persons demanded Rs.20,000/-. While going back with her husband, she saw Vrushali weeping and that accused husband was telling her that he would beat her. After 15 days, news of Vrushali committing suicide was received.

Her entire initial cross is denial. She admitted that she did not have any knowledge regarding the talks between parents of bride and bride groom before the marriage. She admitted that, Vrushali did not tell her anything during first visit. She answered that, police visited the house of complainant after cremation, but she did not give any statement to the police suo-motu. She admitted that, her statement was recorded by police after 10 days of the incident.

Following omissions are brought in her cross examination :

That, deceased Vrushali told that accused were subjecting her to cruelty to meet their demand of dowry; accused no.1 said to her that she had black complexion and had slim figure and that he lifted and threw her; she admitted that she had stated portion mark "A".

ANALYSIS

13. On complete appreciation of available evidence, it is emerging that, evidence of father PW1 Vishwanath, mother PW3 Mangalbai and neighbour PW7 Pushpabai is of significance. Father PW1 Vishwanath is attributing cruelty for less dowry, beating and using taunting language. He claims to have heard from daughter that accused used to lift her from the cot and throw her on the floor. Even mother PW3 Mangalbai deposed that, there was cruelty by taunting for less dowry. However, her version about not knowing household work and taunting on complexion is not testified by her husband PW1 Vishwanath. But, she lent support to testimony of her husband as she has also stated that accused used to lift deceased from the cot and throw her on the floor. PW7 Pushpabai, neighbour, also claims to have heard from deceased about ill treatment for less dowry, taunting on her dark complexion and she too stated that she heard that accused husband used to lift her and throw her on the floor. Therefore, as regards to lifting and throwing on the floor is consistently stated by not only parents, but even PW7 Pushpabai – neighbour, an independent witness.

14. Learned APP has specifically invited attention of the court to the P.M. report, more particularly column no.17 and would submit that there is ante mortem injuries. That, even inquest panchanama reflects

injury to the forehead. On visiting inquest panchanama (Exh.25), column no.17 of P.M. report (Exh.36) and evidence of autopsy surgeon, paragraph 1, it is clearly emerging that, apart from burns, there are ante mortem injuries. Taking evidence of parents PW1 Vishwnath and PW3 Mangalbai and neighbour PW7 Pushpabai coupled with above medical evidence, there is no hesitation to hold that husband subjected deceased to physical cruelty.

15. However, as regards to offence of 306 of IPC is concerned, there is no convincing evidence that, husband was responsible for any inducement, abetment or incitement or he subjected her to such cruelty and maltreatment that she was left with no other alternative, but to end up her life. There being evidence of husband also suffering burns and he being admitted, coupled with evidence of PW5 -another neighbour seeing husband dousing fire, in the considered opinion of this court, charge of abetment to commit suicide would not be automatically attracted in absence of legally acceptable evidence and on this count, there being little or weak evidence, it is a fit case to extend benefit of doubt as regards to this charge is concerned.

16. Therefore, on complete re-appreciation, there is evidence of commission of offence under section 498-A of IPC, but there being no credible and trustworthy evidence for charge under section 306 of IPC,

said charge fails. Consequently, interference only to that extent is called for.

There is also charge of commission of offence under section 4 of Dowry Prohibition Act. Father PW1 Vishwanath deposed at Exh.33 that, before marriage, mother-in-law of Vrushali demanded Rs.35,000/- towards dowry in the form of gold ornaments, whereas his wife PW3 Mangalbai deposed that, it was settled between them to give dowry of Rs.35,000/- in the form of ornaments. But, PW1 Vishwanath in cross-examination answered that, it was settled between them to give articles, but what articles were to be given was not settled. His wife PW3 Mangalbai in examination-in-chief gave description of ornaments, but while under cross she admitted *yadi (list)* of the articles was not drawn. Husband PW1 Vishwanath admitted that, he did not hand over any *yadi* of articles settled to be given. Consequently, except bare allegations of dowry demand, which apparently was attributable to only mother-in-law alone and she being already acquitted by learned trial Judge, appellant husband cannot be held responsible for said charge and further held guilty.

17. It seems that even State has preferred Criminal Appeal No. 660 of 2004, praying for enhancement of sentence awarded by learned trial Judge. However, in view discussion in foregoing paragraphs, the appeal by State deserves to be dismissed.

18. Hence, I proceed to pass the following order :-

ORDER

- I. The Criminal Appeal No. 424 of 2004 is partly allowed.
- II. The conviction awarded to the appellant Manohar Prakash Badgujar for offence punishable under section 498-A of Indian Penal Code by learned 3rd Additional Sessions Judge, Jalgaon in Sessions Case No.149 of 2003 dated 14.05.2004 is hereby maintained and kept intact.
- III. The conviction awarded to the appellant Manohar Prakash Badgujar for offence punishable under section 306 of Indian Penal Code and under section 4 of Dowry Prohibition Act, 1961 by learned 3rd Additional Sessions Judge, Jalgaon in Sessions Case No. 149 of 2003 dated 14.05.2004, stands quashed and set aside.
- IV. The appellant stands acquitted of the offence punishable under section 306 of Indian Penal Code and under section 4 of Dowry Prohibition Act, 1961.
- V. It is clarified that rest of the operative order passed by the trial court is maintained.
- VI. The Criminal Appeal No.660 of 2004 filed by State is hereby dismissed.

(ABHAY S. WAGHWASE, J.)

19. On pronouncement of this judgment, learned counsel for the appellant prays for four weeks time to surrender so as to enable him to approach the Hon'ble Apex Court.

20. Learned APP strongly opposes the same.

21. Considering the above request made by learned counsel for the appellant, four weeks time is granted for the appellant to surrender.

(ABHAY S. WAGHWASE, J.)