



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 681 OF 2004

Rashid Mohammadsab Momin,
Age : 40 years, Occu. : Business,
R/o. Bhoom, Tal. : Bhoom,
Dist. Osmanabad.

... Appellant.

Versus

State of Maharashtra,
Through P.S.I. Bhoom

... Respondent

...

Mr. S. S. Shinde, Advocate for Appellant
Mr. K. K. Naik, APP for Respondent – State

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 10th SEPTEMBER, 2024

PRONOUNCED ON : 24th SEPTEMBER, 2024

JUDGMENT :

1. Judgment and order dated 01.10.2004 passed by IInd Ad-hoc Additional Sessions Judge, Osmanabad in Sessions Case No. 32 of 2000, rendering conviction of appellant for offence punishable under section 498-A IPC is hereby assailed by filing instant appeal.

2. Appellant Rashid was married to informant Fatemabee and out of their wedlock they had three daughters. Rashid started beating Fatemabee since one and half year prior to the incident in question. He used to get drunk, beat Fatemabee and drive her out

of the house. She reported it to her father and family members. On 30.03.1993, he again subjected her to physical cruelty by beating her and causing her injury. She gave report to that extent while undergoing treatment. On the basis of which, police registered crime bearing No.24 of 1993.

After investigation, accused came to be charge-sheeted. At trial, prosecution examined in all 08 witnesses. Accused also adduced evidence of 03 witnesses. After appreciating the above evidence, learned trial Judge accepted the case of prosecution as proved, but only for offence under section 498-A IPC and acquitted accused of the rest of the charges. Hence, instant appeal.

EVIDENCE IN THE TRIAL COURT

3. The prosecution has examined following nine witnesses in support of its case. Their role and status is as under :

PW1 Fatemabee informant is the wife of appellant;

PW2 Nafizbegam is the sister of complainant;

PW3 Mohammad Abdul is the father of complainant;

PW4 Sarjerao, **PW5** Sahdev and **PW6** Janumiya are the panchas, did not support the prosecution;

PW7 Dr. Sudhir Yermalkar is the Medical Officer;

PW8 Dy.S.P. Nana Patil and **PW9** P. I. Ashok Patil - Investigating Officers, respectively.

SUBMISSIONS

On behalf of Appellant : -

4. Learned counsel for appellant submitted that, charge under section 498-A IPC has not been proved by prosecution in trial court beyond reasonable doubt. He pointed out that, there are general and vague allegations and instances are not quoted. He would submit that, complainant herself was held guilty for committing murder of two daughters and there is admission to that extent. That, injury suffered by her was when she attempted to commit suicide and no role whatsoever has been played by husband. In fact, cruelty as contemplated has not been established. That, there was no demand or maltreatment. That, learned trial Court has completely ignored the legal requirements and according to learned counsel, there is improper appreciation of both, evidence as well as law, and hence he prays to allow the appeal.

On behalf of Respondent - State :-

5. In answer to above, learned APP submitted that, since one and half year prior to the incident, appellant was beating informant mercilessly. That, she had quoted the period of continuous beating from 28.03.1993 to 30.03.1993, and therefore, according to him, it is incorrectly submitted that no instances are quoted. Learned APP submitted that, beating was of such extent

that she was hospitalized and unconscious. That, complainant has lodged report while taking treatment. That, apart from her evidence, there is supportive evidence of sister and father. That, they are all consistent and therefore, according to learned APP, there is no infirmity or error on the part of learned trial Judge in returning guilt only for offence under section 498-A IPC as there is legally acceptable evidence and hence he prays to dismiss the appeal.

ANALYSIS

6. **PW1** Fatemabee deposed that she had three daughters, namely Asma, Reshma and Guddi out of her wedlock with appellant husband. Sum and substance of her evidence is that, since one and half years, husband used to beat her on various counts like not giving watermelon to his brother Yunus. He used to get drunk and beat her and even drive her out of the house. Once, he hit her causing bleeding injury to the head. He also beat her by kicks and fist blows for not preparing meat properly. Since 28.03.1993 till 30.03.1993, he used to beat her under influence of liquor. On 30.03.1993 he bolted the house door and beat her. Therefore, she lodged report while undergoing treatment.

In cross, she has answered that, her relations with in-laws were sometime good and sometime strained. Again in cross

she answered that, accused beat her from 28.03.1993 to 30.03.1993, but no neighbour came to her rescue. She admitted that, Bhoom Police registered criminal case against her for committing murder of daughters, Reshma and Guddi and also for attempting to commit suicide and she was arrested and charge-sheeted and she was on bail. She admitted that, she had filed maintenance proceedings against husband. Rest is all denial.

In paragraph 3 of cross, omission is brought that husband beat her continuously from 28.03.1993. to 30.03.1993. Rest is all denial.

7. **PW2** Nafizbegam sister stated that, prior to one and half year of the incident, her sister had come to her. When she asked how she became so weak, her sister reported that her husband beat her by consuming liquor. Witness stated that, when she learnt about admission of her sister in civil hospital, she went there and she found her sister to be unconscious and on being shifted to Civil Hospital, Solapur, she accompanying her. She stated that, after reaching Solapur, she learnt that two daughters of her sister died. On 5th day, her sister regained consciousness and she narrated her about the incident.

Sister in cross denied every suggestion except admitting that after recording her statement by police, statement of her sister was recorded.

8. **PW3** Mohammad father stated that, he learnt about admission of his daughter in Civil Hospital, Osmanabad and he went there. His elder daughter was with complainant. He came to know that two daughters of complainant died. After 5 to 6 days, complainant narrated the entire incident. According to him, prior to incident, accused was habitual of drinking liquor and beating complainant and many times she came to his house and told him about ill treatment. Even prior to one and half month of the incident, husband beat complainant due to which she suffered head injury.

While under cross, there is complete denial.

9. **PW4** Srajerao, **PW5** Sahdev and **PW6** Janumiya, panchas have not supported prosecution.

10. **PW7** Dr. Sudhir Yermalkar, Medical Expert posted at civil dispensary Bhoom, stated that, he examined two girls i.e. Reshma and Guddi as well as informant Fatemabee.

11. The girls had suffered stabs wound on abdomen and even Fatemabee informant had suffered stab injury. He had examined appellant also, but did not notice any injury on his person. He identified injury certificates Exhs.48, 49 and 50 as well as Article 4.

In cross he answered that, Fatemabee was not willing to take treatment and was repeatedly saying to let her die. He admitted that, injury suffered by Fatemabee could be suicidal.

12. PW8 Dy.S.P. Nana Patil and PW9 P. I. Ashok Patil are the Investigating Officers.

DEFENCE WITNESSES

13. DW1 Asma, another daughter of informant stated that, 11 years back, her mother killed her sisters, namely Reshma and Guddi and also attempted to commit suicide. She stated that, her mother called her inside and asked her to tell her father to come to reside at Aurangabad. She refused and went out of the house. She was again called by mother and dragged, but she managed to run out of the house. Her mother forcibly closed the door. Then she claims that she saw through the door that her mother first assaulted Reshma and then Guddi and then herself. Her grandfather, grandmother and the wife of uncle came there and her mother was taken to the hospital.

In cross she answered that, her father was prosecuted. That, at the time of incident, she was studying in 4th standard. That, she came along with her uncle. Rest is all denial.

14. DW2 Limbraj stated that, the incident took place while he was standing in Gandhi Chowk. One Gafar Quoreshi came and informed that wife of accused killed her two daughters and also inflicted injury on herself. That time, accused Rashid proceeded to his house. He also accompanied them to the hospital.

In cross, he gave description of the clothes on the person of accused and injured girls.

15. DW3 A.P.I. Rathod, Police Officer stated that, he charge-sheeted present complainant. He stated that complaint was filed against Fatemabee.

16. Here, though there was charge for offence under section 498-A, 307 and 302 IPC, guilt is recorded by learned Trial Judge for offence under section 498-A IPC only.

17. As regards charge under Section 498-A IPC is concerned, as to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark cases of *State of West Bengal*

v. Orilal Jaiswal [(1994) 1 SCC 73], *Giridhar Shankar Tawade v. State of Maharashtra* (2002) 5 SCC 177; *State of Andhra Pradesh v. M. Madhusudhan Rao* (2008) 15 SCC 582; *Bhaskar Lal Sharma v. Monica* (2009) 10 SCC 604 *G. V. Siddaramesh v. State of Karnataka* (2010) 3 SCC 152 and *Gurnaib Singh v. State of Punjab* (2013) 7 SCC 108; *K. Subba Rao v. The State of Telangana* (2018) 14 SCC 452.

18. Here, evidence of informant and her sister is crucial and requires appreciation.

The sum and substance of evidence of PW1 Fatemabee is that, her marriage with appellant is seven years old. She has alleged beating at his hands on the count of not giving watermelon to his brother Yunus, i.e. resulting into bleeding head injury. She alleges beating on 28.03.1993 for not cooking meat properly and third allegation is of beating on 30.03.1993 by fist blows and kick blows. Consequently, out of seven years cohabitation, she has quoted above three instances. She has lodged complaint at police station which is at Exh.31.

19. The sum total of above discussed evidence is that, her version that husband appellant beat her from 28.03.1993 to 30.03.1993 is shown as a material omission. Therefore, except

levelling bare allegations that husband beat her after getting drunk i.e. during seven years married life, there is no independent supportive evidence. Apparently, sister and father both have hearsay information. What law contemplates for attracting 498-A IPC is continuous, incessant harassment and cruelty i.e. both, physical and mental. Evidence of such requirement is patently missing in the case in hand. Though she suffered stab injury, it is emerging that, it is self inflicted one. Her own daughter DW1 Asma throws light on the alleged episode of assault with knife. Therefore, said injury cannot be attributed to husband, who admittedly was not present in the house on the day of incident. With such quality of evidence, conviction for offence under section 498-A IPC cannot be recorded.

20. Perused the impugned judgment. Learned trial Judge has in paragraph no. 35 observed that, there is clear evidence that appellant subjected PW1 Fatemabee to cruelty i.e. willful conduct which was of such nature as was likely to drive her to commit suicide or to cause grave injury or dangerous to the life, limb and health. However, when appellant is not present at the house at the time of incident, the above findings are apparently incorrect. Evidence of DW1 Asma has not been appreciated by learned trial Judge and has completely ignored the same even when settled

position is that defence witness also needs equal treatment as like that of a prosecution witness. Hence, interference is called for. Accordingly following order is passed :-

ORDER

- I) The criminal appeal stands allowed.
- II) The conviction awarded to appellant - Rashid Mohammadsab Momin in Sessions Case No. 32 of 2000 by the IInd Ad-hoc Additional Sessions Judge, Osmanabad on 01.10.2004 for the offence punishable under section 498-A of Indian Penal Code, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under section 498-A of Indian Penal Code.
- IV) The bail bonds of the appellant stands cancelled.
- V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI) It is clarified that there is no change as regards the order in respect of disposal of *muddemal*.

(ABHAY S. WAGHWASE, J.)