



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 84 OF 2003

1. Santosh s/o Ramrao Hake
Age : 25 yrs, Occ : Agril.,
2. Ramrao s/o Marotrao Hake
Age : 60 years, Occ : Agril.,
3. Prabhakar s/o Ramrao Hake
Age : 29 yrs, Occ : Agril.,
4. Anusayabai w/o Ramrao Hake
Age : 60 years, occ : Agril. &
Household work.

All R/o Pangara Hake,
Taluka Aunde, Districe Hingoli.

... Appellants
[Orig. Accused Nos.

Santosh s/o Ramrao Hake
1 to 3 & 5]
Versus

State of Maharashtra

... Respondent

.....

Mr. Rajendra Deshmukh, Senior Advocate i/by Mr. B. S. Kudale,
Advocate for the Appellants.

Mrs. Ashlesha S. Deshmukh, APP for Respondent State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 02.04.2024

Pronounced on : 08.04.2024

JUDGMENT :

1. The judgment and order of conviction dated 16.01.2003 passed by learned 2nd Adhoc Additional Sessions Judge, Hingoli in Sessions Trial No. 83 of 2001, convicting appellants for offences punishable under Sections 498-A, 306 r/w 34 of the Indian Penal Code [IPC], is hereby assailed by convict appellants by filing instant appeal.

IN BRIEF, PROSECUTION CASE IN TRIAL COURT IS AS UNDER

2. Deceased Rukhminibai was married to accused Santosh. For initial period of 3 to 4 months, everything was smooth, but thereafter husband and in-laws put up demand of cot, TV and money for bore well and subjected her to both, mental and physical cruelty. It is specific case of prosecution that on account of non-fulfillment of demand, accused refused to allow Rukhminibai to cohabit. When finally brother and maternal uncle of deceased were informed by accused that they will not allow Rukhminibai to come and reside, deceased learnt about it and therefore she ended her life by consuming poison.

3. Hence, brother PW1 Yeshwantrao set law into motion by filing FIR which was investigated by PW8 API Warade and on gathering

evidence, husband and in-laws were chargesheeted and tried before learned Adhoc Additional Sessions Judge, who, on appreciation of oral and documentary evidence, held case of prosecution as well as charge to be proved and convicted and sentenced accused appellants as spelt out in the operative part of the judgment.

SUBMISSIONS

On behalf of the appellants :

4. Criticizing the judgment, learned senior counsel would point out that here, prosecution has miserably failed to establish the charges beyond reasonable doubt. According to him, there are general and omnibus allegations about ill-treatment without specifying when said ill-treatment was meted out to deceased and in what form, and therefore, according to him, there are general, omnibus and bald allegations as regards ill-treatment is concerned.

5. He further pointed out that though witnesses are near and dear ones, they are not consistent both, about period since when ill-treatment began as well as about nature of ill-treatment. Therefore, when none of the prosecution witnesses are lending support to each other, it is his submission that, learned trial court ought not to have

held charge under Section 498-A IPC as proved, more particularly when essential ingredients for attracting said charge were patently missing.

6. It is next submission that not only witnesses are inconsistent and failing to lend support to each other, but even their testimonies are full of material omissions, contradictions and improvements. There is desperate attempt to implicate appellants out of sheer annoyance of losing Rukhminibai. He further pointed out that apparently and admittedly case of prosecution is that deceased consumed poison while she was at her brother's place. According to him, said consumption is on 19th November 2000 but there is no evidence to show that on said date or even immediately prior to it, there was any contact between accused and deceased, so as to instigate alleged consumption. According to him, deceased consumed poison while at her brother's place and accused, who were far away at their village, and as such had no nexus with the alleged incident. Consequently, he forcefully submitted that with such admitted facts, learned trial court ought not to have held offence of abetment also proved. He criticized the findings submitting that learned trial court has apparently lost sight of the factual aspects, circumstances in which death took place, the place where alleged consumption had

taken place and moreover, when there was nothing suggesting involvement of accused in alleged consumption, he found fault in the conclusion drawn by learned trial court regarding offence under Section 306 IPC.

7. Lastly, he submitted that learned trial court has improperly appreciated the evidence. Apparently, only examination-in-chief has been appreciated and answers given by witnesses in cross-examination are patently overlooked. Therefore, according to him, the findings and reasons assigned by learned trial court cannot be allowed to be sustained and hence he prays to allow the appeal by setting aside the impugned judgment.

8. Learned senior counsel seeks reliance on the following rulings :

- i. ***Dr. Balwant Daulat Patil v. The State of Maharashtra*** 2014 ALL MR (Cri) 1818.
- ii. ***Rukhmaji s/o. Devrao Galande v. The State of Maharashtra*** 2017 ALL MR (Cri) 3036.
- iii. ***Dagadu s/o Waluba Jadhav v. State of Maharashtra*** 2017 (5) Mh.L.J. (Cri) 496.

On behalf of the State :

9. In answer to above, learned APP supported the judgment pointing out that barely after few months of marriage, accused put up demand of cot, TV and amount for digging bore well. Because of poor financial condition, said demands were not met and therefore accused persons aggravated ill-treatment. According to her, informant, maternal uncle and wife of informant are consistent about nature of ill-treatment like abusing, quarreling on petty counts, making her do over work, keeping her starved and instigating husband, who used to beat her by means of stick and belt. That, her life was made miserable and she was also driven out of the house and therefore, she was put up with her brother. Learned APP read the evidence of prosecution witnesses and submitted that when deceased learnt that attempts of her brother and maternal uncle to give understanding to the accused went futile and when accused flatly refused to allow her to come back and cohabit, she suffered mental shock and therefore, only because of the mental torture at the hands of accused, she consumed poison. That, there was no other reason. Therefore, finding evidence of prosecution witnesses cogent and reliable, learned trial Judge has correctly held accused guilty for both offences i.e. under Sections 498-A and 306 of IPC. They had created such circumstances that deceased

was forced to consume poison and end up her life. They being solely responsible, it is her submission that learned trial court has not committed any error whatsoever in holding them guilty and convicting them. Lastly she submits that there is no merit in the appeal and consequently, she prays to dismiss the same.

EVIDENCE BEFORE THE TRIAL COURT

10. After hearing submissions of both sides, it would be desirable to study the evidence adduced by prosecution in the trial court and reproduce the gist of their testimonies. It seems that, to establish its case prosecution has examined following 8 witnesses:

PW1 Yeshwantrao is the informant and brother of deceased. He is examined at Exhibit 19. He stated that after marriage, when his sister went to cohabit, accused gave her good treatment for 3 to 4 months. Thereafter, they started harassing her on trifling matters and his sister used to disclose them whenever she used to come. They used to pacify her and sent her back and according to him, accused persons demanded Rs.25,000/- and also demanded TV, cot and bed. That, her sister disclosed that she was not given food properly and made to work more.

According to him, accused husband beat her by stick and belt. After 2 to 3 months, his maternal uncle Dhulbarao came to their house and thereafter, he and said uncle went to given understanding to accused. After returning, when he narrated the conversation to his brother, deceased overheard the same. Thereafter, he and uncle went to Aundha. When he came back to the village, he learnt from his brother that his sister has consumed poison. So he lodged report Exhibit 20.

PW2 Dhulbarao is the maternal uncle. According to him, he had been to the house of complainant and finding Rukhminibai there, he asked why she was there, upon which complainant informed that because of ill-treatment at the hands of accused, she is here. He stated that when he questioned deceased, she disclosed that she was having frequent ill-treatment. She further disclosed that accused no.1 was demanding Rs.25,000/- for purchasing television set, cot and bed and that relatives of her husband used to torture her. They did not provide her food. Therefore complainant told him that they should go and have word with accused. Accordingly, they went to the house of accused. Witness claims that he asked accused no.1 to cohabit well with his niece, but accused said

that they should pay amount or Rs.25,000/-, TV, cot and bed and only then they will allow her to cohabit, otherwise not. Thereafter, they came back to the village. Informant's brother Santosh was present in the field and after seeing them, he asked about the visit and they disclosed the whole incident to him. Thereafter, he and PW1 went to Aundha.

PW3 Santosh, another brother of deceased, deposed at Exhibit 22 that for 3 to 4 months there were cordial relations, but when his sister Rukhminibai was brought for Akhadhi festival, at that time, she disclosed that she was not given good treatment. That, accused persons beat her, demanded TV, cot and bed. When she was again brought for Diwali festival, she disclosed about torture at the hands of husband and in-laws and that she was beaten by accused husband by means of stick and leather belt. That, accused husband was demanding Rs.25,000/- for bore well. Thereafter, Rukhminibai last came to there house for festival of Pahchami. Thereafter, his maternal uncle had visited the house of complainant and at that time, his sister disclosed about ill-treatment. So, his maternal uncle and brother went to accused and they returned back and disclosed that accused are not ready to allow her to

cohabit. Thereafter, his brother and maternal uncle went to Aundha. Thereafter, after ploughing field, while he was taking meal and sister-in-law had been to collect firewood, deceased Rukhminibai was alone in the farmhouse. He heard her shouts and therefore he rushed near her. According to him, she disclosed that due to torture at the hands of accused, she had consumed medicine. Thereafter, he raised hue and cry and others rushed and she was taken to hospital. But, while they were at village Hatta, she breathed her last.

PW4 Uttamrao, an acquaintance, stated that he knew complainant and deceased. According to him, when he himself, Rukhminibai, Santosh and one Prabhu sat in a private jeep, he asked her why she drank poison, upon which she disclosed that she was suffering severe torture from father-in-law, sister-in-law, brother-in-law and mother-in-law. She further disclosed that due to torture by them all, she has consumed poison.

PW5 Prabhakar, a neighbour, who did not support prosecution.

PW6 Shakuntala, sister-in-law of deceased, stated that Rukhminibai was given good treatment for 2 to 4 months. According to her, accused husband was beating her for not bringing bed, cot and TV and asking her to bring Rs.25,000/- for bore well. She deposed that 2 to 3 months prior to death, Rukhminibai was brought for festival of Panchami and she resided with them for about 2 to 3 months. According to this witness, at the time of Diwali, when maternal uncle came, deceased told him about torture and so maternal uncle and husband of this witness went to give understanding to accused. They returned and on being asked by brother-in-law Santosh, they disclosed that accused are not ready to allow Rukhminibai to cohabit. While she had been to bring grass, she heard shouts of Rukhminibai and when they rushed, deceased Rukhminibai told that she consumed poison due to torture of "*Gharche lok*" and she was taken in a jeep, but she died on the way. According to this witness, Rukhminibai said that she consumed poison only due to torture of father-in-law, mother-in-law, brother-in-law, sister-in-law and husband.

PW7 Parvati, a neighbour, stated that deceased frequently disclosed about torture to her by her father-in-law, mother-in-law,

brother-in-law, husband and sister-in-law. Hearing hue and cry that day, she rushed to the spot and Rukhminibai was taken to Aundha in a bullock cart. There was consumption of medicine by Rukhminibai and she disclosed to her that she committed suicide due to torture.

PW8 API Warade was the Investigating Officer.

LEGAL POSITION

11. Here, conviction is for offence punishable under Sections 498-A and 306 of IPC. Law is fairly settled that, for attracting the charge under section 498A 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 :

12. As to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark case of ***Giridhar Shankar Tawade v. State of Maharashtra*** (2002) 5 SCC 177, where the Court dwelling upon the scope and purport of Section 498-A IPC has held as under:

“The basic purport of the statutory provision is to avoid ‘cruelty’ which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word ‘cruelty’ as is expressed by the legislatures : Whereas explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed in equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the

same would also embrace the attributes of ‘cruelty’ in terms of Section 498-A.” [emphasis added]

Similar views are echoed in ***Gurnaib Singh v. State of Punjab*** (2013) 7 SCC 108, wherein it is held as under:

“Clause (a) of the Explanation to the aforesaid provision defines “cruelty” to mean “any willful conduct which is of such a nature as is likely to drive the woman to commit suicide”. Clause (b) of the Explanation pertains to unlawful demand. Clause (a) can take in its ambit mental cruelty.”

In State of Andhra Pradesh v. M. Madhusudhan Rao (2008) 15 SCC 582, the Hon’ble Apex Court has observed that, *“Harassment simplicitor is not cruelty. Only when such harassment is committed for the purpose of coercing a woman or any other person to meet an unlawful demand or property etc. alone would amount to cruelty punishable under Section 498-A IPC”.*

In ***Bhaskar Lal Sharma v. Monica*** (2009) 10 SCC 604, the Hon’ble Apex court reiterated the essential ingredients for the said offence and pleadings which are necessary in that regard.

Very recently in the case of ***K. Subba Rao v. The State of Telangana*** (2018) 14 SCC 452, following observations are made:

“6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.”

13. Accused are also convicted for offence under Section 306 of IPC i.e. abetment to commit suicide. Before advertng to the merits of the evidence, it would also be fruitful to spell out essentials for attracting charge of abetment to suicide and the settled legal position. For bringing home the said charge, it is duty of prosecution to prove that there was abetment to commit suicide. As to what amounts to abetment is also fairly settled. Section 107 of the IPC deals with abetment. It reads thus:

“107. Abetment of a thing- A person abets the doing of a thing, who -

First. - Instigates any person to do that thing; or

Secondly. - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing.

Section 306 of the IPC deals with abetment of suicide.

Ingredients of this section are as under :

- (1) There was suicide of a person;
- (2) It was committed in consequence of abetment of the accused.

JUDICIAL PRECEDENT :

14. In order to attract the charge of section 306 of IPC, it is incumbent upon prosecution to establish **incitement, instigation, aiding or abetment to commit suicide**. Law to this extent has been fairly settled in series of cases. Scope of Sections 107 and 306 IPC has been time and again decided by the Hon'ble Apex Court in the cases viz; *State of West Bengal v. Orilal Jaiswal* (1994) 1 SCC 73; *Ramesh Kumar v. State of Chhatisgarh* reported in (2001) 9 SCC 618; *Sanju @ Sanjay Singh Sengar v. State of M.P.* reported in (2002) 5 SCC 371; *Chitresh Kumar Chopra v. State* (2009) 16 SCC 605; *Amalendu Pal alias Jhantu v. State of West Bengal* (2010) 1 SCC 707; *State of West Bengal v. Indrajit Kundu and others* (2019) 10 SCC 188; *Rajesh v. State of Haryana* (2020) 15 SCC 359; *V.P.Singh etc. v. State of Punjab and others* 2022 SCC Online SC 1999 and very recently in the case of *Kumar @ Shiva Kumar v. State of Karnataka* [Criminal Appeal No. 1427 of 2011 decided on 01.03.2024],

In above series of cases, it has been held and reiterated that court should be extremely careful in assessing the facts and circumstances of each case as well as the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. Principle that is culled out is that accused persons should specifically intend that deceased should end up her life. With that sole object in mind, they must have deliberately created circumstances, which are of such nature, that deceased is left with no other alternative but to end up her life. Only in such circumstances charge of abetment to commit suicide can be said to be successfully brought home.

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

ANALYSIS

15. On re-appreciating and re-analyzing the evidence of PW1 informant brother, PW2 maternal uncle, another brother Santosh (PW3), sister-in-law (PW6) and neighbour (PW7), it is pertinent to note that none of them have stated when exactly deceased Rukhminibai was married to accused no.1 husband. They all are

found to be deposing that for initial period, everything was smooth, but after 2 to 4 months, which is also an omnibus assertion, they claim that Rukhminibai was ill-treated.

What informant deposed is that accused nos.1 to 6 harassed deceased on trifle counts. Then he states that accused persons demanded Rs.25,000/- for bore well and they also demanded TV set, cot and bed and that they did not provide her proper food and made her work more. Husband beat her with stick and belt.

Maternal uncle PW2 claims to have heard from deceased that accused no.1 alone demanded Rs.25,000/- for purchasing TV, cot and bed. He stated that when he asked accused husband, he allegedly told this witness that they should first pay Rs.25,000/- for TV, cot, bed and only then they will allow Rukhminibai to cohabit. Testimony of maternal uncle is patently silent about demand for bore well.

According to another brother PW3 Santosh, his sister told that accused were beating her and demanding TV, cot and bed. Husband alone demanded Rs.25,000/- for bore well and as such, she was ill-treated. According to him, when she came for Diwali and Panchami festival, she made above disclosures.

Another family member PW6 sister-in-law stated that after 2 to 4 months, there was harassment to deceased. Accused husband beat her for not bringing bed, cot and TV. According to her at the time of Diwali, when maternal uncle came, at that time they all disclosed him that there was torture to deceased for last two to three months.

16. Therefore, family members are found to be merely speaking about ill-treatment and harassment on account of Rs.25,000/-, TV set and cot, but none of them is specifying as to when exactly such demand was made. Some of them are attributing allegations of demand to all family members and some only to husband. Omnibus allegations are made that all accused harassed her. When she was beaten by accused husband, when she was abused, has not been clarified by any of them.

17. Admittedly, deceased had come to reside with brother since 2 to 3 months prior to her consumption. Therefore, whatever allegations of maltreatment are, they are three months prior to the FIR. As stated above, some are talking about keeping her starved and making her do more work. According to the complainant, there used to be ill-treatment on trifling counts. Even when deceased came back, no FIR was lodged.

18. In the considered opinion of this Court, such accusations would not constitute ill-treatment as contemplated under Section 498-A IPC. What 498-A IPC contemplates is subjecting to cruelty which is continuous in nature. Here, precisely this aspect is not emerging from the testimony of brothers, uncle and sister-in-law. Therefore, on the count of Section 498-A IPC, there is apparently weak evidence.

ABATEMENT :

19. Now, so far as allegations of abetment to commit suicide are concerned, in the considered opinion of this Court, on carefully going through the testimony of all witnesses, it is emerging that deceased was in the house of brother for last three months. Alleged meeting between maternal uncle, complainant and accused had taken place at the house of accused, i.e. at village Pangra Hake. These two witnesses claim that they returned back to their village and disclosed to another brother Santosh that accused were not ready to allow deceased to cohabit. Therefore, accused were at their own place. Deceased was at her brother's place. There was no contact between accused and deceased. Hence, the moot question that arises is, what triggered or what prompted deceased to end up her life by consuming poison, is unclear.

20. Learned APP strongly submitted that only on hearing uncle and brother disclosing that accused were not ready to allow her to come back for cohabitation, she consumed poison. However, there is no supporting evidence to that extent because, according to brothers, at the time of alleged consumption, deceased was alone in the house. Alleged consumption had taken place at around 4.00 p.m. When brother and uncle returned after meeting accused persons from their village, has not come on record. Therefore, what exactly made deceased consume poison is not established.

Very recently the Hon'ble Apex Court, in the case of ***Mariano Anto Bruno v. State*** 2022 SCC OnLine SC 1387, has observed that, *"Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life"*.

21. For attracting abetment, it was incumbent upon prosecution to establish that there is direct relation between inducement, enticement or harassment which was of such nature that, deceased was left with no other alternative but to end up her life. None of these

contingencies are coming on record. Therefore, in the considered opinion of this Court, having studied entire evidence of prosecution and on careful appreciation, even offence of abetment has not been made out by prosecution. It is also pertinent to note that testimonies of brother and maternal uncle, which are heavily relied upon, are found to be full of material omissions. Apparently, uncle and brother have improvised their version and therefore unsafe to rely to record guilt.

22. Perused the impugned Judgment. Apparently, there is improper appreciation of prosecution evidence. Learned trial court has merely considered examination-in-chief and has lost sight of the answers given by witnesses in cross. The requirement of essential ingredients for attracting offence under Section 498-A and 306 of IPC as well as settled law on this point has unfortunately not been taken into consideration by learned trial court before recording guilt. Hence, such judgment cannot be allowed to be sustained and is therefore required to be interfered with. Accordingly, I proceed to pass the following order:

ORDER

I. The appeal is allowed.

- II. The conviction awarded to the appellants i.e. 1) Santosh s/o Ramrao Hake, 2) Ramrao s/o Marotrao Hake, 3) Prabhakar s/o Ramrao Hake and 4) Anusayabai w/o Ramrao Hake, by learned 2nd Adhoc Additional Sessions Judge, Hingoli in Sessions Trial No. 83 of 2001 under Sections 498-A and 306 r/w 34 of IPC on 16.01.2003 stands quashed and set aside.
- III. All the appellants stand acquitted of the offence punishable under Sections 498-A and 306 r/w 34 of IPC.
- IV. The bail bonds of the appellants stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellants after the statutory period.
- VI. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]