



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 97 OF 2003

Umakant Ramchandra Kalwale
Age: 30 years, Occu.: Labour,
R/o. Atola, Tq.Chakur, Dist.Latur.

....Appellant
(Original Accused No.1)

Versus

The State of Maharashtra

.....Respondent

.....
Advocate for Appellant : Mr.V.G.Kodale h/f. Mr.V.D.Gunale
APP for Respondent : Mr.K.K.Naik

.....

CORAM : ABHAY S. WAGHWASE, J.

DATE : 11 MARCH, 2024

JUDGMENT :-

1. Judgment and order passed by the IInd Adhoc Additional Sessions Judge, Latur in Sessions Case No.42 of 2002 dated 24-12-2002 convicting appellant for offence under Section 498-A of the Indian Penal Code (IPC) and sentencing him to suffer rigorous imprisonment for two years and to pay fine of Rs.3,000/- is hereby questioned by filing instant appeal.

FACTS IN BRIEF LEADING TO TRIAL

2. Husband and in-laws of deceased Mudrika were chargesheeted

by Chakur Police Station on the premises that they subjected deceased Mudrika to physical and mental cruelty in the backdrop of demand of bedding and cot. They used to consistently ask her to arrange the amount, beat her and ill-treat her. Once husband beat her with iron rod. Other in-laws also joined husband in mal-treating her and therefore, getting fed up of such ill-treatment, Mudrika committed suicide. After necessary rituals, report was lodged on the basis of which Chakur Police Station registered crime bearing no.56 of 1997 for offence under Section 498-A, 306 r/w 34 of the IPC. Investigation culminated into filing of chargesheet and trial at the hands of learned IInd Adhoc Additional Sessions Judge, Latur, who appreciated both oral and documentary evidence and reached to a finding that accused no.1 Umakant, husband alone is guilty for offence under Section 498-A of the IPC. All accused were acquitted from charge under Section 306 of the IPC and accused nos.2 to 4 were acquitted from offence under Section 498-A of the IPC.

Husband Umakant is now questioning the legality and maintainability of the judgment by filing instant appeal.

SUBMISSIONS

On behalf of appellant :

3. Learned Counsel for the appellant would submit that there is

false implication. There was no demand, ill-treatment as alleged. That except evidence of interested witnesses, there is no evidence of independent witness. It is pointed out that on same set of evidence, other accused are acquitted but appellant husband alone is held guilty for offence under Section 498-A of the IPC. It is pointed out that marriage is over two decades old. First time allegation of ill-treatment was levelled in the backdrop of demand after almost 15-16 years. That witnesses are also inconsistent and not lending support to each other. Moreover, according to him, none of the prosecution witnesses could elaborate what was harassment and ill-treatment. There are material omissions rendering their very testimony doubtful. That learned trial Court has failed to consider and appreciate the absence of cogent and reliable evidence or ingredients for attracting offence under Section 498-A of the IPC. Therefore, conclusion reached at being not supported with sound reasons, he questions the very legality, maintainability and sustainability of the impugned judgment.

On behalf of State :

4. Per contra, learned APP pointed out that considering the nature of offence, obviously testimony of family members is crucial. They are all consistent. That deceased promptly reported mal-

treatment meted out to her to her family members. They have also given understanding to accused but he did not mend his ways. That harassment was to such an extent that she was forced to consume poison. That husband beat her with iron rod and she was required to be admitted and treated. Therefore, learned trial Court has taken such evidence into account and has committed no error for holding accused husband guilty. Therefore, there being no merits, he submits that appeal be dismissed.

5. This Court, being first appellate Court and last fact finding Court is expected to re-appreciate, re-analyze and re-examine the entire oral and documentary evidence adduced by prosecution.

6. On re-examining the evidence, it seems that case of prosecution is rested on oral evidence of in all nine witnesses. Sum and substance of their evidence is as under :

EVIDENCE ON BEHALF OF PROSECUTION

PW1 Bapurao Sharnappa Gangapure is pancha to scene of occurrence panchanama. He has not supported prosecution.

PW2 Sopan Sakharam Kalwale is a relative, who brought Tractor to shift Mudrika to the hospital.

PW3 Gangadhar Baliram Kalwale is pancha to inquest panchanama.

PW4 Janardhan Haribhau Narwade is the Police Officer, who enquired A.D. which was registered initially.

PW5 Nandkumar Shivaji Shrungare is another pancha to inquest panchanama.

PW6 Uttam is Driver of Tractor in which deceased was shifted to the hospital.

PW7 Tulshiram Sonba Kamble is father of deceased. He deposed that his daughter Mudrika was married 22-23 years back to accused Umakant. For initial 5-6 years everything was well but thereafter accused started mal-treating deceased for not bringing for not bringing bed and cot in the marriage. According to him, whenever his daughter came for festival, she used to disclose about it. He claims that he gave understanding to Umakant to treat his daughter properly. During Dipawali festival, Umakant beat his daughter with iron rod. That time his daughter informed about demand of Rs.10,000/- and 10-15 days later on they got news of death of Mudrika and therefore, they suspected that daughter was killed and thereafter poison was administered to her. He identified complaint exh.37 lodged by him.

PW8 Rajkumar Tulsiram Kamble is brother of deceased. He deposed that his sister was married to accused 15-16 years back. That everything was smooth for 5-6 years and then ill-treatment begun on demand of cot and bedding. Whenever his sister come for festival, she used to inform about ill-treatment and demand. That understanding was given to accused to not to ill-treat but he did not listen. Fifteen days prior to the death of his sister, accused had brought his sister for medical treatment and at that time also she told about ill-treatment being continued for not bringing Rs.10,000/- for repayment of loan.

PW9 is the Investigating Officer who narrated all the steps taken by him since registration of crime till filing of chargesheet.

ANALYSIS

7. After going through the papers and chargesheet as well as above discussed evidence, it is emerging that initially appellant and other in-laws were booked for offence under Section 498-A, 306 r/w 34 of the IPC. However, learned trial Court, after appreciating the evidence, acquitted in-laws from all the charges. Appellant husband is also acquitted from charge under Section 306 of the IPC for want

of evidence and conviction is thereby only recorded for offence under Section 498-A of the IPC.

8. Out of nine witnesses, only crucial evidence seems to be of complainant PW7 Tulshiram, father of deceased and PW8 Rajkumar, brother of deceased.

9. Law is fairly settled that, for attracting the charges 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.”*

10. Keeping above legal requirements in mind, if the evidence of PW7 Tulshiram, father of deceased and PW8 Rajkumar, brother of

deceased is put to scrutiny, it is emerging that marriage of deceased with appellant is admittedly almost two decades old. PW7 Tulshiram and PW8 Rajkumar, who are witnesses, are both in unison deposing about demand of bedding and cot made after 6-7 years of marriage. Death of Mudrika has admittedly taken place after 16-17 years after marriage. On minute scrutiny, it appears that PW7 Tulshiram, father of deceased is merely speaking about demand of bedding and cot. According to him, accused was raising grievance that it was not given in marriage, however, apparently such grievance is made after 6 years of marriage and till that time there was no allegation of demand or ill-treatment.

PW8 Rajkumar, brother of deceased is deposing what is not stated by his father about appellant i.e. asking deceased to bring Rs.10,000/- for repayment of loan. Which loan was taken is not clarified. Another peculiar feature, which is emerging from the evidence of PW7 Tulshiram and PW8 Rajkumar is that except alleged demand of bedding and cot, when exactly such demand was made has not been stated by them. Neither of them are also very categorical about nature of ill-treatment. Solitary episode of beating by husband and deceased being treated in the hospital is deposed, but there is no supporting material in that regard.

Therefore, *ex facie* allegation seems to be general, omnibus in nature. There is no allegation of consistent mal-treatment either physical or mental for meeting the demand, which is apparently raised first time after over 6 years of marriage life.

11. As pointed out by learned Counsel for the appellant, it is pertinent to note that on same set of evidence in-laws are acquitted but appellant husband seems to be held guilty. Therefore, this Court is of the considered opinion that there is no convincing evidence to even uphold charge under Section 498-A of the IPC against appellant.

12. After going through judgment under challenge, it appears that learned trial Judge has unfortunately taken solitary episode of beating and hospitalization into consideration without there being solid foundation in that regard. It could have been established by adducing medical evidence about she being admitted and treated. Independent witnesses and neighbours are also not examined to strengthen accusation. Therefore, evidence being weak in nature, conviction ought not to have been recorded. Therefore, indulgence at the hands of this Court becomes necessary. Accordingly, I proceed to pass following order :

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to appellant Umakant s/o Ramchandra Kalwale in Sessions Case No. 42 of 2002 by the learned II Adhoc Additional Sessions Judge, Latur on 24-12-2002 for offence punishable under Section 498-A of the Indian Penal Code (IPC), stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under Section 498-A of the Indian Penal Code (IPC).
- IV) Bail bonds furnished by the appellant stand 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)
JUDGE