



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 721 of 2003

Kamlakar Harischandra Yerkal,
Age : 30 years, Occu. : Service,
M.S.E.B. Helper, R/o. Ramwadi,
At present R/o. Javalga [K],
Tq. Omerga, Dist. Osmanabad.

... Appellant

Versus

State of Maharashtra,
Through Mira w/o. Kamlakar Yerkal,
Age : 23 years, Occu. : Household,
R/o. Ramwadi, Tq. & Dist. Osmanabad.
At Present R/o. Yelori, Tq. Ausa,
Dist. Latur.

... Respondent

.....
Mr. Amit A. Mukhedkar, Advocate for the Appellant.
Mr. N. D. Batule, APP for the Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

DATED : 2nd FEBRUARY, 2024

JUDGMENT :

1. Conviction recorded for offence under section 498A of Indian Penal Code (IPC) by learned Ad-hoc Additional Sessions Judge, Osmanabad dated 26.09.2003 is taken exception to by convict by filing instant appeal.

2. Prosecution was launched on complaint filed by wife (PW1 Mira) alleging that, after marriage in February 1998, she went to

cohabit with her husband and in-laws. That, her husband Kamlakar was working in MSEB. She was treated well for 2-3 months, but thereafter accused raised demand of Rs.1,00,000/- for drilling bore, purchasing motorcycle and cupboard etc. Because of weak financial condition, demand was not met and therefore, on 30.01.1999 accused husband raised quarrel at around 8:30 p.m. sprinkled kerosene and set her on fire and ran away. After recovery from burns, she lodged complaint with Lohara police station, on the strength of which, crime was registered and accused was charge-sheeted for offence under section 498A, 307 and 109 read with 34 of IPC and tried by learned IInd Ad-hoc Additional Sessions Judge, who accepted the case of prosecution and recorded guilt as stated above and hence the appeal.

SUBMISSIONS

On behalf of appellant :-

3. Questioning the findings reached by the learned trial Judge, it is pointed out by learned counsel for appellant that prosecution has miserably failed to establish the case beyond reasonable doubt. He pointed out that, apparently it is a false implication as according to him deceased herself gave two dying declarations voluntarily and unanimously declaring that, she had suffered accidental burns while cooking. That, scene of occurrence panchanama clearly shows

occurrence to be while cooking. However, after long gap of almost 47 days, false and afterthought complaint accusing false allegations was lodged. It is pointed out that, none of examined witnesses are consistent or corroborating each other on material counts. Their evidence is full of material contradictions and omissions. However, in spite of such evidence, it is submitted that, learned trial Judge has recorded guilt. Findings are not supported by sound reasons and moreover are contrary of evidence and he prays to allow the appeal by setting aside the judgment under challenge.

On behalf of State :-

4. Supporting the judgment, learned APP pointed out that, in all 06 witnesses have deposed in favour of prosecution case. Their testimonies have remained unshaken. Victim herself has deposed about maltreatment, bad vices of husband accused, about he pouring kerosene and igniting her. There is correct appreciation of available evidence and so learned APP prays to dismiss the appeal.

5. On re-appreciating and re-analyzing the evidence, it seems that case of prosecution is rested on evidence of in all 06 witnesses and status and sum of substance of their evidence is as under :-

PW1 Mira, complainant herself gave date of marriage with accused as 02.02.1998 and she clarified the relations of

accused no.2 as brother-in-law, accused nos.3 and 4 as parents-in-law. According to her, after marriage she went to cohabit with husband at Kanegaon, whereas her in-laws stayed at Ramwadi. According to her, they used to come intermittently and ill-treat her by raising demand of motorcycle, cupboard and Rs.1,00,000/- for drilling bore. She reported about demand to her parents as well as Sarpanch of their village. She alleges that, she told her father about accused not providing her food and beating her. Both parents to give understanding to the accused. On 28.01.1999 her in-laws and brother-in-law came to the village Kanegaon, raised quarrel in the backdrop of demand, stayed for two days and went back to their village on 30.01.1999. On same day, in the afternoon, accused husband quarreled on account of her quarreling with his parents and brother. Around 8:30 p.m., she alleged that, while she was sleeping, accused poured kerosene oil of the chimney, ignited match-stick, threw it on her, close the door and went out. She was taken to hospital in unconscious condition. She further deposed that when she became conscious, accused told her not to inform about he setting on fire by threatening to kill her and her parents, if she tells the fact and so gave statement to that extent. Later on, she told her father about role of accused and thereafter gave statement to police (Exh.20).

PW2 Dr. Satish Pawar is the Medical Officer, who issued injury certificate (Exh.23).

PW3 Mahadeo is the father, who testified that, complainant daughter came to his house for Diwali and narrated about ill-treatment and demand. According to him, when he went to give understanding to the accused, he was driven out. On 31.01.1999, he got message about burns and so visited hospital. After one to one and half month, when he asked about the incident, his daughter told about ill-treatment, unlawful demand and quarrel on 30.01.1999 and husband pouring kerosene and setting her to fire, and therefore, he lodged complaint at Lohara Police Station.

PW4 Pandurang did not support the prosecution as he is deposed that he did not know for what purpose complaint was ill-treated.

PW5 Balwant, panch to spot panchanama, narrated to that extent and identified at Exh.30.

PW6 Revansidha Bansode is the Investigating Officer.

ANALYSIS

6. After appreciating the above discussed evidence and considering the submissions advanced before this court, apart from

oral evidence of complainant herself, her father and doctor, there are two dying declarations, and therefore, the same are first required to be visited and appreciated.

7. Both dying declarations are admitted by victim to be her versions. Both are recorded on 31.01.2019. Apparently, in both dying declarations deceased had attributed burns to sudden burst of stove while boiling milk. In chief as well as cross there is categorical admission to that extent. Admittedly, AD is also registered, therefore, so called dying declarations are about accidental burns.

8. On appreciating the evidence of victim complainant, it is clearly emerging that, she and husband resided at Kanegaon after marriage, whereas her in-laws, who were also accused in the trial court are resident of Ramwadi and they used to visit intermittently. Her evidence is about all accused demanding Rs.1,00,000/- for drilling bore and also making demand of motorcycle and cupboard. When exactly such demand was made, has not been stated by her as she merely speaks that she was treated properly for 2 to 3 months. Marriage has admittedly taken place in February 1998. Apparently, what was the nature and mode of ill-treatment has not been specified by her. However, she has given date of visit of in-laws as 28.01.1999 and has alleged demand and ill-treatment. Resultantly,

Therefore, almost after ten months, first time of allegations of demand of ill-treatment are raised. Be it so. As stated above, till arrival of in-laws dated 28.01.1999, till Diwali and till occurrence, there is no complaint about demand or ill-treatment. No details are provided as to where proposed bore-well was to be drilled and for whom demand of cupboard was allegedly raised. General allegations seems to have been made by her regarding demand and ill-treatment.

9. It is also pertinent to note that, at the time of alleged incident of burns, in-laws are apparently not with complainant or accused. Only husband is shown to be present. According to her, he quarreled with her in the afternoon and after 8:30 p.m., she claims that, he poured kerosene from chimney and ignited her while she was sleeping. But, she herself has given two dying declarations reporting occurrence as suffering due to stove explosion while boiling milk. After recovery i.e. almost after one and half months, she seems to have reported her father and then law seems to have been set into motion. Apparently, delay in reporting is immense. It has not been shown that till complaint dated 18.03.1999 she was not in a position to give complaint nor her father at any point of time prior to that lodged any complaint.

Omissions in the testimony of father is brought about complainant informing during visit at the time of Diwali and repeating unlawful demand raised by accused. He admitted that, she told him in hospital about suffering burns due to burst of stove.

10. PW4 Pandurang as stated above merely spoke about ill-treatment at the hands of in-laws and husband, but he is unable to assign reason of ill-treatment or nature of demand.

11. Prosecution's own witness PW5 Balwant in cross has admitted that, on that day, he and accused were doing electricity work and accused was with him upto 9:30 p.m. and after hearing noise, he and accused rushed to the house. Therefore, with such material, presence of accused at the scene of occurrence at 8:30 p.m. comes under shadow of doubt.

12. Material omissions by father and victim are got proved through cross of Investigating Officer.

To sum up, offence for which accused was charge-sheeted are not brought home.

13. After going through the impugned judgment, apparently, there is improper appreciation of the evidence. Findings are

incorrectly recorded and same are contrary to the evidence on record. Consequently, interference at the hands of this appellate Court becomes necessary and resultantly, appellant succeeds and so I proceed to pass following order :

ORDER

- I) The criminal appeal stands allowed.
- II) The conviction awarded to the appellant - Kamlakar Harischandra Yerkal in Sessions Case No.86 of 2000 by learned IInd Ad-hoc Additional Sessions Judge, Osmanabad on 26.09.2003 for the offence punishable under section 498A of Indian Penal Code stands quashed and set aside.
- III) The appellant - Kamlakar Harischandra Yerkal stands acquitted of the offence punishable under Section 498A of Indian Penal Code.
- IV) He be set at liberty, if not required in any other case.
- 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.]