



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 204 OF 2003

01. Bhaiyya @ Subhan Shah s/o Bashir Shah
Age: 27 years, Occu.: Driver,
R/o. Sultanabad, Tq.Gangapur,
Dist.Aurangabad.

02. Bashir Shah s/o Gulab shah
Age: 6 years, Occu.: Agri.,
R/o. As above.
(Appeal abated against appellant no.2
as per Court order dated 12-01-2023)

03. Kurshidbee w/o Bashir Shah
Age: 56 years, Occu.: Household,
R/o. As above.

....Appellants
(Orig. Accused)

Versus

. The State of Maharashtra

.....Respondent

.....

Advocate for Appellants : Mr.A.S.Barlota h/f. Mr.S.K.Barlota
APP for Respondent : Mrs.Usha S.Bhosale

.....

CORAM : ABHAY S. WAGHWASE, J.

DATE : 10 JUNE, 2024

JUDGMENT :-

1. Appellants, who are convicted by learned III Ad-hoc Additional Sessions Judge, Aurangabad, in Sessions Case No.290 of 2001 for offence under Sections 498-A and 306 read with Section 34 of the

Indian Penal Code (IPC), have herein taken exception to judgment dated 28-02-2023.

FACTS IN BRIEF LEADING TO TRIAL

2. Appellants were chargesheeted by Sillegaon Police Station, Dist.Aurangabad, on premise that deceased Ruksana was married to appellant no.1 – Bhaiyaa @ Subhan Shah s/o Bashir Shah in 1999. She was treated well for a period of 2-4 months. Demand of a Godrej cupboard and Rs.10,000/- cash for construction of house was raised by accused and thereafter, accused husband and in-laws mal-treated Ruksana. She was subjected to both mental as well as physical cruelty. Deceased Ruksana informed her family members about the mal-treatment meted out to her. Only because of ill-treatment, Ruksana consumed poison on 06-02-2001 and therefore, on complaint of PW1 Ameen Shah, brother of deceased, law was set into motion and on investigation, husband and in-laws were chargesheeted for commission of offence under Sections 498-A, 306 read with Section 34 of the IPC.

Accused faced trial before learned III Ad-hoc Additional Sessions Judge, Aurangabad, who recorded and appreciated evidence adduced by prosecution. Accused did not lead evidence except

taking defence of false implication. After recording statement of accused under Section 313 of the Code of Criminal Procedure, learned trial Judge evaluated the evidence and reached to a conclusion that prosecution has established the case against present appellants for commission of offence under Section 498-A and 306 read with Section 34 of the IPC and finally held them guilty and sentenced them to suffer imprisonment for three months and six months and to pay fine respectively by its judgment and order dated 28-02-2003.

It is the above judgment of conviction, which is assailed before this Court by filing instant appeal.

SUBMISSIONS

On behalf of appellants :

3. Learned Counsel for the appellants criticized the judgment for want of proper appreciation of evidence. He would submit that there are mere omnibus allegations of ill-treatment. He pointed out that none of the interested witnesses have specified the nature or mode of ill-treatment. He pointed out that testimonies of witnesses are not consistent or corroborating each other. That bald allegations of harassment by family members are made and the same are

unfortunately accepted by the learned trial Court. He pointed out that judgment passed by the learned trial Judge is based on assumptions, presumptions, conjunctures and surmises. Emphasizing such submissions, learned Counsel pointed out to the Judgment of learned trial Court wherein learned trial Judge himself has held that there is no ill-treatment over demand of money, but at the same time, conviction has been recorded for commission of offence under Section 498-A of the IPC.

4. He also criticized the findings of learned trial Judge as regards to offence under Section 306 of the IPC by pointing out that for proving charge of such nature, it was incumbent upon prosecution, at the threshold, to prove that there was abetment. He pointed out that evidence of prosecution was patently weak and insufficient as none of the witnesses has whispered about which of the accused abetted even when there are allegations of demand by three family members including husband. He pointed out that though it has come in the evidence of prosecution witnesses that there was previous attempt to throw Ruksana in the well, there is no distinct evidence to that extent nor there was any complaint of such episode, which was apparently serious in nature. Consequently, he submits that even essential

ingredients for attracting offence under Section 306 of the IPC were not available in the prosecution evidence, but still learned trial Court has held accused guilty and hence, according to him, there is improper appreciation of evidence as well as law.

Lastly, he submitted that there is no independent evidence and material witnesses are not examined but conviction has been recorded. Therefore, it is his submission that such judgment cannot be allowed to be sustained in the eyes of law and he prays to acquit the accused by setting aside the impugned judgment. He seeks reliance on the decision in *Velladurai v. State Represented by the Inspector of Police*, [2021] 6 S.C.R. 187.

On behalf of State :

5. In answer to above, learned APP would support impugned judgment by pointing out that barely after few months of marriage, accused put up demand of cupboard and also demand of money for construction of house. That whenever deceased Ruksana visited her family members, she promptly reported ill-treatment meted out to her to them. Brothers, mother and other relatives of deceased have attempted to give understanding to accused. That special meeting including villagers was held in that regard. That witnesses are

deposing to that extent. Learned APP pointed out that in cases of such nature, there is rarely independent witness as offences of such nature were committed within four walls of house and therefore, there may not be independent witness, however, according to her, here in this case, there is ample evidence of family members, who are all consistent regarding demand and ill-treatment i.e. both mental and physical in nature, so it is submitted that learned trial Court has correctly appreciated and accepted testimonies of witnesses, which have remained unshaken inspite of lengthy cross-examination.

Learned APP further pointed out that for inability to meet the demand, ill-treatment was aggravated to such extent that Ruksana was forced to end up her life. That only because of mal-treatment, she consumed pesticide. That there was no other reason. That complaint was promptly lodged, it was investigated and only on gathering sufficient evidence, accused have been chargesheeted. That they are solely responsible for death of Ruksana. It was a suicide, which was abetted by accused and therefore, learned trial Court finding cogent and reliable evidence, committed no error in recording guilt. According to her, there is no need to interfere in such reasoned and sound judgment and resultantly, she prays to dismiss the appeal.

6. After hearing both the sides and after perusing the record, it appears that in support of its case, prosecution has adduced evidence of in all five witnesses.

SUM AND SUBSTANCE OF PROSECUTION EVIDENCE

PW1 Ameen Shah s/o Noorshah is brother of deceased. He deposed at exh.14 regarding marriage of his sister with accused no.1 at Jalkeghat. According to him, initially for a period of 3-4 months, everything was smooth. That thereafter, whenever his sister came to parents house, she reported about accused demanding Rs.10,000/- and a Godrej cupboard. That she also told that she was harassed. According to him, 2-3 months prior to the incident of suicide, his sister told that, once she was thrown in the well for not bringing Rs.10,000/-. That a meeting was arranged in presence of villagers to give understanding to accused. That on occasion of festival, accused were reluctant to send his sister at maternal house. That when she was brought to maternal house, she informed about harassment. That he and his brother took her back to the accused and fifteen days thereafter, they got news of the incident. According to him, they learnt that their sister was murdered by administering poison. After funeral, he lodged complaint exh.15.

PW2 Qurban Ali s/o Taj Ali Shah, maternal uncle of deceased, also deposed about marriage of his niece with accused no.1 in 1999. According to him, for 3-4 months, everything was smooth. That when deceased Ruksana came for festivals, she informed about harassment and demand of cupboard and Rs.10,000/- for construction of house. That when father-in-law of Ruksana came to take her back, a meeting was arranged at Sultanabad and understanding was given to the accused. According to him, however, ill-treatment continued. That once Ruksana was beaten and at that time she fell in the well and came out of well on her own by holding the pipe. That for four months, she was not sent thereafter. That attempts were made to persuade accused not to harass Ruksana. That on 06-02-2001 Ruksana consumed poison. That his statement was recorded by Police.

PW3 Yusuf Shah s/o Noorshaha, another brother of Ruksana has deposed at exh.18 that after marriage, his sister was treated well for 3-4 months. That whenever she came for festival, Ruksana informed that she was harassed for demand of Godrej cupboard and Rs.10,000/- for construction of house. That his sister told him that she was thrown in the well after beating. That a meeting was held in

the village and accused assured to treat Ruksana well, but harassment continued. On 06-02-2001 they received message about death of his sister Ruksana.

PW4 is the Police personnel, who gathered CA report and post mortem notes.

PW5 Sahebabee w/o Noorshah, mother of deceased, deposed at exh.25 that her daughter being treated well for three months. That whenever she came for festivals, she informed about demand of Godrej cupboard and Rs.10,000/- for constructing house. That she and her brother went to give understanding to accused to not to harass her. When Ruksana was came in the maternal house, she told that she was beaten and thrown in the well. That a meeting was arranged in the village and it was assured that payment would be made and not to harass her. They got message about the incident and so they went to matrimonial house of deceased.

LEGAL POSITION

7. Here, conviction is for offence punishable under Sections 498-A and 306 of the IPC.

FIRST CHARGE – SECTION 498-A :

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 :

8. 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."

9. Informant is found to be merely deposing that there was harassment. In above referred case of ***M. Madhusudhan Rao*** (Supra), it is already clarified by the Hon'ble Apex Court that harassment simplicitor is not cruelty and only when there is evidence

regarding repeated demand and instances of cruelty coming on record, offence can be said to be brought home. Here it is not so.

It appears from the evidence that witnesses are found to be deposing that deceased was beaten and thrown in the well. When such episode took place is not specified by any of them. If at all it so happened, then such serious episode ought to have been promptly reported to Police, but the same has not happened. Further, though PW1 Ameen Shah, PW3 Yusufshah and PW5 Sahebabee speak about Ruksana being beaten and thrown in the well, PW2 Qurban Ali deposed that she fell in the well and she came out of well on her own by holding the pipe. Therefore, witnesses are not consistent on such episode.

Therefore, in the considered opinion of this Court, here evidence of informant, mother of victim and maternal uncle of victim, who are residents of different places, when viewed with legal lens and requirement, is falling short for attracting offence under Section 498-A of the IPC.

SECOND CHARGE – SECTION 306 :

10. Second charge for which appellants are held guilty by trial Court is Section 306 of the IPC.

Before adverting to the merits of the evidence, it would also be fruitful to spell out essential ingredients 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 :

11. 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; *VP 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.

12. On carefully visiting and analyzing the evidence of all witnesses i.e. family members of deceased, they are all found to be speaking about deceased consuming Organophosphorous insecticide. The said consumption is of 06-02-2001. What preceded the said consumption and how and which of the accused abetted the same, has not been demonstrated by the prosecution. Which of the accused were present in the house at the time of alleged episode of consumption is also not getting clear. Admittedly, no neighbour has been examined. Resultantly, what triggered the consumption is a mystery. There has to be material indicating that accused persons were present in the house at that point of time and it is they who abetted, instigated or induced her to consume insecticide. Therefore, what prompted Ruksana to consume insecticide is not getting clear from the testimony of family members.

13. It is also pertinent to note that PW1 Ameen Shah / informant reported in the complaint that because of ill-treatment at the hands

of accused, Ruksana consumed poison. But while deposing in the witness box, he testified that his sister was murdered by administering poison. Therefore, he is contradicting his own version.

Recently, the Hon'ble Apex Court in the case of *Naresh Kumar v. State of Haryana (2024) 3 SCC 573* held that “*basic ingredients to constitute an offence under S. 306 are suicidal death and abetment thereof. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Thus, without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. Thus, in order to convict a person under S. 306 there has to be a clear mens rea to commit the offence and mere harassment, cannot be sufficient to hold an accused guilty of abetting the commission of suicide. Prosecution has to prove an active act or direct act which led the deceased to commit suicide. Ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.*”

Resultantly, required ingredients for attracting charge of Section 306 of the IPC i.e. abetment, inducement at the hands of accused, not coming on record, it is unsafe to hold them responsible for her death.

SUMMATION

14. On re-appreciating and analyzing the evidence on record, offence under Section 498-A of the IPC has not been cogently proved. Mere allegations are of harassment. What was the form of harassment and what was the nature of cruelty is not demonstrated by prosecution. It has not been demonstrated and substantiated that only because of abetment and inducement at the hands of accused, that too in the backdrop of demand, Ruksana committed suicide. Hence, essential ingredients for attracting offence under Sections 498-A and 306 of the IPC being patently missing, said charges cannot be said to be proved beyond reasonable doubt.

15. Perused the judgment under challenge. As pointed out by learned Counsel for appellants, on going through the reasoning part of the impugned judgment, it is noticed that learned trial Judge, in paragraph no.8, has also observed that *“It has come in the evidence that accused are related to the complainant even prior to this marriage of Ruksana with accused no.1. They were knowing the financial condition of the accused which is admittedly better*

compared to the brothers of Ruksana. The fact only emerges that Ruksana should have been given ill-treatment but not over the demand of money. This demand is with a stock allegation coming in the evidence of all the four witnesses. The harassment should have for some reason and though not for this demand to the tune of Rs.10,000/- it should have been for some demand.” Having so observed, it is surprising to note that learned trial Judge, by accepting the evidence of all relatives of deceased, held that the same is sufficient to hold that Ruksana was subjected to harassment both physical and mental.

It is noticed that trial Court has held that Ruksana should have been given ill-treatment but not over demand of money, but harassment should have been for some reason. However, still conviction is recorded for offence under Section 498-A of the IPC. This shows that judgment is recorded on conjunctures and surmises. Therefore, said judgment cannot be allowed to be sustained. Accordingly, I proceed to pass following order :

ORDER

- I) Criminal Appeal No.204 of 2003 is allowed.

II) The conviction awarded to appellant no.1 – Bhaiyya @ Subhan Shah s/o Bashir Shah and appellant no.3 – Kurshidbee w/o Bashir Shah in Sessions Case No.290 of 2001 by the learned III Ad-hoc Additional Sessions Judge, Aurangabad on 28-02-2003 for the offence punishable under Sections 498-A and 306 read with 34 of the Indian Penal Code, stands quashed and set aside.

III) The appellants stands acquitted of the offence punishable under Sections 498-A and 306 read with Section 34 of the Indian Penal Code.

IV) The appellants be set at liberty, if not required in any other case.

V) The 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 in respect of disposal of muddemal.

(ABHAY S. WAGHWASE)
JUDGE