



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

CRIMINAL APPEAL NO. 275 OF 2003

Bhikan s/o Bhagaji Kapse
Age: 32 years, Occu.: Driver,
R/o. Viramgaon, Tq.Phulambri,
Dist.Aurangabad.

....Appellant
(Orig. Accused No.1)

Versus

The State of Maharashtra

.....Respondent

.....
Advocate for Appellant : Mr. Ravindra S. Shinde
APP for Respondent : Mr.N.D.Batule

.....
CORAM : ABHAY S. WAGHWASE, J.

DATE : 18 JUNE, 2024

JUDGMENT :-

1. Appellant / convict is taking exception to the judgment and order of conviction dated 05-04-2003 passed by II Additional Sessions Judge, Aurangabad in Sessions Case No.300 of 2000 thereby holding appellant guilty for offence under Sections 498-A and 306 of the Indian Penal Code (IPC).

PROSECUTION CASE IN TRIAL COURT

2. Deceased Nanda was married to appellant Bhikan

(original accused no.1) on 28-05-1996. Accused nos.2 and 4 are parents of accused no.1 whereas accused no.3 is his sister and she was married and given at Dongargaon, Tq.Phulambri. On account of dispute between accused no.3 and her husband, she had come to reside with accused nos.1, 2 and 4.

For a period of two months after marriage, Nanda was treated well but thereafter, accused persons put up demand of Rs.50,000/- for purchase of Matador and started harassment of deceased Nanda. According to prosecution, she was beaten. Whenever deceased came to the maternal house, she reported about demand and harassment. Even on 07-09-1999, deceased reported harassment to brother PW2 Ramesh and on 08-09-1999 said brother came back. On the intervening night of 08-09-1999 and 09-09-1999 some persons came to enquire the whereabouts of Nanda. She was searched for, but her dead body was found in the well of accused itself. Therefore, on report of PW2 Ramesh, brother of deceased, crime was registered.

On completion of investigation, accused were chargesheeted and tried before learned II Additional Sessions Judge, who on appreciating oral and documentary evidence of prosecution, held appellant Bhikan alone guilty for offence under Sections 498-A and 306 of the IPC and acquitted accused nos.2 to 4 from all charges.

Said judgment and order dated 05-04-2003 is questioned by appellant husband by filing instant appeal.

SUBMISSIONS

On behalf of appellant :

3. Asserting innocence and claiming false implication, learned Counsel for appellant criticized both prosecution case as well as judgment under challenge. Learned counsel took this Court through the prosecution evidence and submit that prosecution has miserably failed to establish the charges beyond reasonable doubt. According to him, prosecution has failed to establish very cruelty as alleged as according to him, necessary ingredients for attracting said charge is not available in the prosecution evidence. He pointed out that witnesses are merely speaking about harassment and demand of Rs.50,000/-, but according to him, none of the witnesses have clarified as to in what form there was harassment. That there are mere allegations of teasing and taunting, but according to him, such accusations do not constitute ill-treatment as contemplated under Section 498-A of the IPC.

4. It is his further criticism that there are also baseless and false

allegation by brother of deceased regarding appellant husband keeping a mistress, and there is no evidence in that direction. He pointed out that such allegations are even not made in the report on the strength of which crime was registered. Rather for the first time, version is improved in the witness box to that extent.

5. It is his next submission that a day before incident, informant brother had visited house of accused, but there was no allegation of ill-treatment or harassment and even no reporting or lodging complaint to that extent. He took this Court through the testimony of PW2 Gayabai and would point out that this relative has not uttered about any ill-treatment or demand. That even PW4 Mainabai, mother of deceased, merely deposed about ill-treatment and harassment without elaborating its form and nature or when said instances took place. Inviting attention to the testimony of sister PW5 Ashabai, sister of deceased, learned counsel pointed out that this witness stated that whenever deceased came, she disclosed about ill-treatment, but it is emphasized that when there was such disclosure to sister is not stated by her. It is pointed out that PW6 Laddu, claimed to have accompanied PW2 Ramesh to the house of accused, but it is submitted that PW2 Ramesh has not deposed PW6

accompanying him at any point of time. Therefore, according to learned Counsel, evidence on the point of harassment and ill-treatment is not at all worthy of credence. On this point, learned counsel seeks reliance on ruling of Hon'ble Apex Court in the case of *Amalendu Pal alias Jhantu v. State of W.B.*, AIR 2010 SC 512 and would submit that here also out of the four accused, who demanded and who ill-treated and in what form, has not been established by prosecution and so according to him, there is apparently weak evidence in support of charge under Section 498-A of the IPC. However, according to him, still learned trial Court has erred in accepting above evidence in recording guilt. Learned counsel hasten to add that on same set of evidence, learned trial Court has refused to accept case of prosecution against accused nos.2 to 4. Thus, he criticized findings and conclusion reached at by learned trial Court on above charge of Section 498-A

6. As regards to offence under Section 306 of the IPC is concerned, he would strenuously submit that law enjoin prosecution to first establish abetment or inducement to commit suicide. He pointed out that, here there is nothing to show that there was ill-treated or cruelty, which was of such nature that deceased was forced

to end up her life. He pointed out that there is no iota of evidence in that regard. On the contrary, he submits that there is every possibility of deceased falling in the un-constructed and unprotected well when she went to fetch water. He pointed out that very essence of abetment, inducement and *mens rea*, which are *sine qua non* for attracting charge under Section 306 are patently missing. Thus he criticized the judgment and findings reached at by learned trial Court with regard to such charge also.

Lastly, he submitted that there is apparently improper appreciation of evidence and non-consideration of legal requirements and law. According to him, impugned judgment, being illegal and not sustainable in the eyes of law, same is required to be set aside.

On behalf of State :

7. Canvassing in favour of judgment, learned APP pointed out that barely after few months of marriage, accused persons put up demand of Rs.50,000/- for purchasing Matador for husband. For fulfillment of said demand, deceased was subjected to harassment and ill-treatment and she used to promptly report it to her family members. Learned APP pointed out that barely few days prior to the alleged incident, deceased had reported to her brother PW2 Ramesh

about the demand and harassment. That such brother has set law into motion. His testimony is supported and corroborated by his own mother, sister and even independent witness i.e. neighbour. It is pointed out that all witnesses are consistent about demand and harassment. That their evidence has not remained doubtful. That only because of ill-treatment and harassment, deceased committed suicide. That there was no other reason for her to commit suicide. Therefore, according to learned APP, learned trial Court rightly held husband responsible and guilty. According to him, there being correct appreciation of evidence as well as law and there being no merit in the appeal, prayers are made to dismiss the same.

EVIDENCE ON BEHALF OF PROSECUTION IN TRIAL COURT

8. In support of its case, prosecution has adduced evidence of in all six witnesses in the trial Court. Sum and substance of their evidence is as under :

PW1 Baburao Bajrang Palode, Sub-Inspector, is the Investigating Officer, who in his evidence at exh.49, narrated all the steps taken by him like enquiring AD, preparing inquest, referring body for post mortem, drawing panchanama and receiving complaint

from PW2 Ramesh and making it a base of registration of crime. He also arrested accused on 13-09-1999, sent viscera for CA.

PW2 Ramesh Murlidhar Jadhav, brother of deceased, in his evidence at exh.53 stated that after marriage, his sister Nanda went to resided with accused who resided with in-laws at Viramgaon. According to him, his sister was treated properly for two months, but thereafter, she was harassed by accused on account of demand of Rs.50,000/- for purchasing Matador. He stated that accused no.1 beat his sister whereas accused nos.2 to 4 used to tease his sister on account of demand of money. That whenever his sister came, she disclosed the harassment. That two days prior to the incident, he had been to the house of accused, that time also she informed about harassment to her on account of demand of money. On intervening night of 08-09-1999 and 09-09-1999, a Jeep came from Viramgaon with full of persons in search of his sister. That she was searched for and her dead body was found in the well of accused and therefore, after funeral, complaint exh.51 was lodged.

PW3 Gayabai w/o Dattu Khillare stated that her sister Sakhubai Narayan Kapse resides at Viramgaon and she is related to

accused. That 3-4 days prior to death of Nanda, when she went to Viramgaon, deceased met her and asked her to give message to her brother to come to see her. That she passed said message and thereafter, message of death of Nanda was received.

PW4 Mainabai w/o Murlidhar Jadhav, mother of deceased also stated that after 3-4 months of marriage, her daughter made complaint against accused husband for remaining outside the house for 3-4 months at a stretch. She also deposed that husband was intending to purchase Matador for himself and for the same, husband demanded Rs.50,000/- and on such count, there was ill-treatment. That all accused were harassing her. That during her visit to house of accused, her daughter requested her to take her alongwith or else she would do something to her life. That one day before death of Nanda, her son Ramesh visited Viramgaon and returned. That same night persons came making enquiry regarding whereabouts of Nanda. That next day dead body of Nanda was noticed in the well.

PW5 Ashabai w/o Kailash Chavan, sister of deceased also stated that her sister was treated well for 2-3 months and thereafter, accused husband demanded Rs.50,000/- for purchase of Matador.

That accused no.1 said to her that she should not come from the house of her parents without bringing money. That in absence of husband, accused persons beat her sister for demand of money for purchase of Matador. That whenever her sister came home, she informed about it.

PW6 Laddu s/o Gulam Nabi Patel, friend of PW2 Ramesh, deposed that he attended marriage of Nanda and he used to accompany PW2 Ramesh to the house of accused. According to him, when Nanda came to her parents' house she disclosed about ill-treatment. He claims that he accompanied PW2 Ramesh to request accused to not to harass deceased. That at the time of *Pola* festival, they learnt that Nanda was missing. That she was searched and her dead body was found in the well of accused no.1.

ANALYSIS

9. On re-appreciating the entire evidence, it is emerging that accused husband, parents-in-law, sister-in-law were charged for offence under Sections 498-A and 306 of the IPC. On conclusion of trial, only appellant husband held guilty and rest all are acquitted.

Case of prosecution rested on evidence of six witnesses, whose

testimonies are discussed above.

On re-appreciation of evidence, it is noticed that according to informant PW2 Ramesh, brother of deceased, all accused started harassing his sister on account of demand of Rs.50,000/- for purchasing Matador. But his mother PW4 Mainabai, attributes demand of Rs.50,000/- only to accused no.1 - husband and not to other accused. PW5 Ashabai, sister of deceased also attributes demand to only accused no.1 - husband and not to accused nos.2, 3 and 4. Therefore, witnesses are not apparently consistent on the point of very demand.

10. Secondly, PW2 brother, PW5 mother and PW5 sister of deceased are merely deposing that there was harassment and ill-treatment. None of them have elaborated or clarified nature of ill-treatment or nature of harassment. General and omnibus allegations are made about deceased Nanda being harassed and ill-treated.

11. PW2 Ramesh, brother / informant, in his substantive evidence does not speak about his brother-in-law accused no.1 leading adulterous life. Though he claims to have visited house of accused to meet his deceased sister, his evidence is silent about sister reporting

about accused husband maintaining a mistress. PW4 Mainabai, mother of deceased merely stated about hearing from her daughter that accused no.1 husband used to stay out of house for months together. Even sister PW5 Ashabai did not utter a single word about accused husband maintaining a mistress.

PW6 Laddu, friend of PW2 deposed about accompanying PW2 to the house of accused to give understanding to accused persons to not to harass deceased and therefore, for some period deceased was treated well. But such version is not coming from the mouth of PW2 brother. Two days prior to incident also brother allegedly visited house of deceased and stayed, but he has not stated about PW6 accompanying him to give any understanding to accused.

12. Resultantly, here it is noticed that PW2 Ramesh, brother of deceased is alleging harassment and ill-treatment at the hands of all accused, whereas PW4 mother and PW5 sister of deceased are alleging ill-treatment at the hands of accused no.1 on account of demand.

From the FIR, it is emerging that accused persons already own a Matador, but still accusations are made for demand of Rs.50,000/- for purchasing a separate Matador. Even demand for Matador is

quoted for Rs.50,000/-. Nobody is elaborating as to whether appellant husband intended to purchase second hand vehicle or a brand new one.

Consequently, on taking overall survey of above evidence on the point of charge of Section 498-A of the IPC, it is emerging that there are apparently general and omnibus allegations that there was harassment and ill-treatment. Allegations are made against husband for beating, but only informant speaks to that extent. His mother and sister are silent about it. Therefore, it is unsafe to rely on such inconsistent evidence.

13. Deceased allegedly committed suicide by jumping in well. Prosecution evidence is absolutely silent as to when deceased left house to commit suicide by jumping in the well. PW2 Brother, PW4 Mother speak about persons in a vehicle coming from Viramgaon to make enquiry regarding whereabouts of deceased Nanda. Informant claims that persons came in the intervening night of 08-09-1999 and 09-09-1999, but he himself has deposed that he had been to Viramgaon i.e. to the house of accused on 07-09-1999 and he stayed there upto 08-09-1999 and came to back his own Village Janephal. He claims that during his stay at house of accused, his sister

requested him to take her away to their house, but he convinced her. He alleges that she told that he should consider it as his last visit with her, however, surprisingly PW2 Ramesh, her brother, has not brought her home and he alone came back to Janephal on 08-09-1999. What happened after he left the house of accused till the intervening night i.e. when persons from Viramgaon coming in search of Nanda is not explained by prosecution. There is no evidence as to what transpired prior to deceased going missing. PW2 Ramesh does not speak about accused husband also coming in search of deceased. Case of defence is that he was driver and used to stay out of house for days together. Even PW4 Mainabai, has deposed that he used to stay out of house for a longer period. Therefore, with such material and in absence of concrete evidence about presence of accused husband in the house in proximity to the alleged missing of deceased Nanda, it is unsafe to infer his presence in the house and to further connect him to alleged suicide.

Therefore, what exactly happened on 08-09-1999 after PW2 brother allegedly left, is not clear. At what time, Nanda left the house is not clear. Exh.50 which is got exhibited through PW1 Palode goes to show that Nandabai left her house at around 05:30 p.m. on 08-09-1999, but her dead body is noticed in the well on at

11:00 a.m. of 09-09-1999. Autopsy Surgeon has not noted approximate time since death.

14. What prompted deceased Nanda to go towards the well has apparently not been established by prosecution. There is no iota of evidence in that direction. In view of charge under Section 306 of the IPC, it was essential on the part of the prosecution to adduce reliable evidence so as to connect appellant husband for said suicide. At the first count, there is no concrete evidence that death of Nanda was only and only suicidal and not otherwise.

15. It is worth noting that on same set of evidence, accused nos.2 to 4 are already set at liberty and acquitted from all charges. However, in absence of any evidence to show that accused no.1 husband was at his house on entire day of 08-09-1999, learned trial Court has held him alone guilty for abetment. What act he played is not explained by prosecution. This Court has not noticed any distinct evidence i.e. in the entire evidence of prosecution to infer abetment, inducement in the backdrop of demand of Rs.50,000/-. *Mens rea* is essential part, but same is also missing from prosecution evidence.

16. Consequently, in the light of above discussed material, there is weak evidence on the point of charge of Section 498-A of the IPC and further weak or no evidence on the point of abetment to commit suicide i.e. charge of Section 306 of the IPC. Hence, in the considered opinion of this Court, both charges fail.

17. On going through the impugned judgment, it is apparent that while appreciating evidence adduced by prosecution, essential requirements for establishing charges and settled law has not been correctly applied by the learned trial Judge. Therefore, said judgment cannot be allowed to be sustained necessitating indulgence at the hands of this Court. Accordingly, I proceed to pass following order :

ORDER

I) Criminal Appeal No.275 of 2003 is allowed.

II) The conviction awarded to appellant – Bhikan s/o Bhagaji Kapse in Sessions Case No.300 of 2000 by the learned II Ad-hoc Additional Sessions Judge, Aurangabad on 05-04-2003 for the offence punishable under Sections 498-A and 306 of the Indian Penal Code, stands quashed and set aside.

III) The appellant stands acquitted of the offence punishable under Sections 498-A and 306 of the Indian Penal Code.

IV) **The bail bonds of 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