



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 477 OF 2003

Maroti s/o Haribhau Kolhe
Age: 35 yrs, Occ: Agril,
R/o: Village Karla,
Tq & Dist. Jalna.

... Appellant

Versus

The State of Maharashtra

... Respondent

.....
Mr. Satej S. Jadhav, Advocate for the Appellant.
Mr. N. D. Batule, APP for the Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 11.06.2024

Pronounced on : 18.06.2024

JUDGMENT :

1. The appellant is taking exception to the judgment and order passed by IIIrd Additional Sessions Judge, Jalna in Sessions Case No. 26 of 1996 dated 22.05.2003, by which he stood convicted for offence punishable under Section 323 of the Indian Penal Code [IPC] and is sentenced to suffer 6 months imprisonment and to pay fine of Rs.200/-.

2. Moujpuri Police Station, Taluka Jalna entertained the complaint filed by father of deceased Vijaymala, who committed suicide on account of alleged harassment and ill-treatment meted out to her by her husband and in-laws. On 16.02.1995, informant Asruba (father of deceased) lodged report stating therein that his daughter Vijaymala was married to Maroti (accused no.1) about five years back and after marriage, she went to reside with her husband and in-laws. Out of marriage and cohabitation, she delivered two girls. He reported that initially for two years, she was treated well. However, thereafter whenever she came for festivals, she informed that accused persons were subjecting her to physical ill-treatment. They did not provide her food and kept her starved. Whenever she came to her maternal home, she informed about above ill-treatment meted out to her. After spending three months after delivery, she went back to husband and in-laws. Two months thereafter, they got news that Vijaymala committed suicide. He reported that said suicide was only because of ill-treatment of accused and thereby he lodged report Exhibit 73 which was made the basis of registration of crime and husband and in-laws were indicted for offence punishable under Sections 304-B, 306, 498-A r/w 34 of IPC and they were duly chargesheeted, upon which they were made to face trial before learned 3rd Additional Sessions Judge, Jalna, who, vide Sessions Case

No. 26 of 1996, recorded statements under Section 313 of the Code of Criminal Procedure, conducted trial, appreciated evidence and on hearing both sides, reached to the conclusion that prosecution failed to bring home the charges for offences punishable under Sections 304-B, 306, 498-A r/w 34 of IPC and acquitted all accused from said charges. However, accused husband (appellant herein) alone is held guilty for commission of offence punishable under Section 323 of IPC and he is sentenced to suffer 6 months imprisonment and to pay fine.

Above judgment and order dated 22.05.2003 is hereby questioned by the appellant-husband by filing instant appeal on various grounds mentioned in the appeal memo.

SUBMISSIONS

On behalf of the appellant:

3. Learned counsel for the appellant pointed out that there was false implication and complaint was false, fabricated, afterthought and out of annoyance of losing Vijaymala. He pointed out that it is not known whether consumption was suicidal or accidental. He

pointed out that prosecution had failed in bringing home charge under Sections 304-B, 306, 498-A of IPC and therefore, when entire charge for which the appellant and his relatives were chargesheeted and tried, not being proved, they were all acquitted from said charge. Therefore, there was nothing in support of offence under Section 323 IPC. He pointed out that even there was no distinct charge under Section 323 IPC.

4. He further pointed out that only because of the marks noted by autopsy doctor, above charge has been fastened and held as proved. He pointed out that there is no allegation about beating to deceased Vijaymala prior to alleged suicide. Learned counsel pointed out that deceased allegedly suffered convulsions. Age of alleged injuries and marks is not specified by autopsy doctor. There is no clear evidence about any assault. Therefore, conviction for offence under Section 323 IPC is in absence of trustworthy and reliable evidence.

5. He pointed out that there are omnibus allegations about subjecting deceased to physical ill-treatment and keeping her starved, but there was no supportive evidence in that regard. When main charges, for which appellant was chargesheeted and tried, had failed, according to him, learned trial court ought not to have held appellant

guilty for offence under Section 323 IPC, more particularly in absence of any evidence, either oral or documentary, i.e. in the form of medical certificate, and so he questions the very finding and prays to set the same aside for want of being proved.

On behalf of the State:

6. In answer to above, learned APP pointed out that accused persons subjected Vijaymala to physical ill-treatment. That, evidence shows that she was second wife. Whenever she went to her brother and parents, she reported ill-treatment meted out to her. That, there are allegations of assaulting her. Stick is recovered at the instance of appellant husband under memorandum of disclosure. Autopsy doctor has noticed injury marks. Therefore, there is material in support of such allegations and hence learned trial court committed no error whatsoever in recording guilt of the appellant for commission of offence under Section 323 IPC. The findings are supported by sound reasons and hence he prays that such charge being proved, the judgment cannot be faulted at and consequently he prays to dismiss the appeal for want of merits.

EVIDENCE BEFORE THE TRIAL COURT

7. It seems that in support of its case, prosecution has examined as

many as 8 witnesses. Their status and role and the sum and substance of their evidence is as under:

PW1 Neighbour Asaram merely stated that he knew accused. However, he did not support prosecution by stating that he had no knowledge of the incident and therefore, he was subjected to cross-examination by prosecution, but nothing fruitful could be elicited.

PW2 Brother Dnyanoba deposed that his sister Vijaymala was married to accused appellant in 1991 or 1992. After marriage she went to cohabit with her husband at Karla and she resided there with her husband and in-laws. After two years of marriage, whenever she came home, she told that accused physically assaulted her and did not provide proper food. When she came for second delivery, that time also she told about assault and ill-treatment. When she went back to her matrimonial house, after two months they got news of her death. Therefore his father lodged report Exhibit 73.

PW3 Narayan, paternal uncle of deceased also stated about her marriage with appellant. According to him, she was treated properly for two years. Thereafter, whenever she came for festivals, she reported that her husband and elder brother-in-law Datta assaulted her. They commented her for not being neat and clean. They did not provide her food and articles of daily use. When she came for delivery, she reported above conduct. After 15 days, they got news about her death.

PW4 Jaywanta, pancha to memorandum of disclosure and recovery of stick, did not support prosecution.

PW5 Autopsy doctor Rajayshree Agarwal, who opined death due cardio respiratory failure due to organo-phosphorous poison. Autopsy doctor also noticed contusion injuries on left thigh and right calf which were *ante mortem* in nature and were caused within 24 hours.

PW6 Head Constable Kharat, who drew spot panchanama Exhibit 71 and recorded statements.

PW7 ASI Mante and **PW8** PSI Shejul are police officials who carried out investigation at respective times and chargesheeted accused.

ANALYSIS

8. Admittedly, charge was for offence under Sections 304-B, 306, 498-A r/w 34 of IPC. Ultimately, vide judgment and order dated 22.05.2003, learned trial Judge, on complete appreciation of evidence of prosecution, acquitted all accused including present appellant from all said charges. However, appellant husband Maroti alone is held guilty, that too for offence under Section 323 IPC and is thereby sentenced to suffer 6 months imprisonment and to pay fine.

9. According to learned counsel for the appellant, there is no convincing, cogent and reliable evidence regarding deceased being beaten by appellant by stick. He pointed out that mere recovery is shown to be at his instance on the basis of memorandum, and guilt for said offence is recorded in absence of any material suggesting he beating her with the same stick. Learned counsel took this Court through the testimony of PW5 Doctor and would point out that Doctor has admitted and answered that said injuries could be two to four days prior to death. Learned counsel would add that said marks noticed by Doctor cannot be straightway attributed to appellant in absence of distinct evidence to that extent.

10. Here, exactly what preceded the suicide has not come on record. There is no evidence suggesting presence of accused appellant in the house when Vijaymala allegedly consumed poison. Neighbour PW1 was examined by prosecution, but he denied knowing anything about the incident. Therefore, virtually there is no evidence that prior to alleged consumption there was any overt act by appellant alone or he abetted the alleged consumption. It is pertinent to note that on same set of evidence, learned trial court has already acquitted remaining accused holding that case is not proved against them beyond reasonable doubt.

11. Though stick is shown to be recovered at instance the instance of appellant, it was expected of prosecution to further prove its use by appellant in causing so called marks on the person of deceased. Autopsy surgeon PW5 noted two contusions but further stated that there are no external or internal injuries. In cross, she has admitted that colour of bruises changes after two to four days. She further admitted that injuries might be two to four days prior to death. Her such evidence shows that she is not sure the said marks to be due to beating. Recovered stick is not confronted to her to seek her opinion whether the contusions are possible by said stick.

12. Consequently, there is nothing to connect use of stick by appellant alone and therefore, in absence of convincing evidence, in the considered opinion of this Court, learned trial court ought not to have fastened guilt for offence under Section 323 IPC. Charge Exhibit 61 is silent about commission of offence under Section 323 IPC. Therefore taking above circumstances into consideration, appellant alone ought not to have been held guilty for said charge.

13. Perused the judgment. On same set of evidence, accused nos. 2 to 5 are acquitted. Findings reached to record guilt under Section 323 IPC are not supported by sound and distinct reasons and therefore,

for such improper approach, impugned judgment cannot be allowed to be sustained. Hence, I proceed to pass the following order:

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellant Maroti s/o Haribhau Kolhe, by learned 3rd Additional Sessions Judge, Jalna in Sessions Case No. 26 of 1996 under Section 323 of IPC on 22.05.2003 stands quashed and set aside.
- III. The appellant stand acquitted of the offence punishable under Section 323 of IPC.
- IV. The bail bond of the appellant stand cancelled.
- V. 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 regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]