



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 478 OF 2003

Ramesh S/o. Narsingh Hire,
Age : 28 years, Occu. : Auto Rikshaw Driver,
R/o. Ballal, Tq. Bhokar,
Dist. Nanded.

... Appellant

Versus

The State of Maharashtra,
Through Police Station Officer,
Police Station Umri, Tq. Umri,
Dist. Nanded.

... Respondent

...
Mr. Rajendra N. Chavan, Advocate for Appellant
Mr. A.A.A. Khan, APP for Respondent - State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 14th JUNE, 2024

PRONOUNCED ON : 19th JUNE, 2024

JUDGMENT :

1. Appellant - husband Ramesh is hereby challenging the judgment and order of conviction recorded by IIIrd Additional Sessions Judge, Nanded, dated 08.05.2003 in Sessions Case No.74 of 2002, thereby convicting for offence punishable under sections 498A and 306 of Indian Penal Code (IPC).

FACTUAL MATRIX

2. Deceased Jyoti was married with appellant. After 5 to

6 months, accused husband demanded T.V. Such demand was met by informant father. 2 to 3 months thereafter, again when deceased Jyoti came, she reported that, husband is making demand of money for purchasing auto-rickshaw. Accused met with an accident and was required to be treated. His own father accused no.2 refused to pay the medical bill. There was demand of money and according to prosecution, there was ill treatment on that count. Finally, getting fed up Jyoti immolated herself by pouring kerosene, resulting into 95% burns and succumbing to the same. On lodgment of complaint by father, crime was registered.

3. PW10 P.I. Balu Dewde carried out investigation and after gathering sufficient evidence, charge-sheeted accused husband and in-laws.

4. Accused husband and in-laws made to face trial before IIIrd Additional Sessions Judge, Nanded. In support of its case, prosecution adduced evidence of in all 10 witnesses. Documentary evidence was also relied.

5. After appreciating oral and documentary evidence, learned trial Judge held that prosecution had failed to prove its case and charges against accused nos.2 to 6 and acquitted them.

However, appellant husband alone was found to be guilty for offence punishable under sections 498A and 306 of IPC and is ultimately sentenced to suffer imprisonment for one year and three years, respectively, and to pay fine. Such judgment of conviction is now taken exception to by filing instant appeal.

SUBMISSIONS

On behalf of appellant :

6. Learned counsel for appellant pointed out that, there was apparently false implication. That, prosecution has failed to establish the charges by leading cogent and reliable evidence. That, he took this court through the testimonies of parents and brother of victim and stated that, it is conspicuously emerging that there are mere omnibus and general allegations. He pointed out that, witnesses are merely speaking about ill treatment, but none of them has specifying nature of ill treatment. He pointed out that, even, when exactly there was alleged ill treatment is not stated by any of the witnesses. Therefore, according to him, essential ingredients for attracting section 498A of IPC as contemplated under law are patently missing from the prosecution evidence.

7. As regards to suicide is concerned, learned counsel pointed out that, prosecution's own witness deposed about deceased suffering accidental burns while cooking. That, not only

witnesses are stating about it, but even spot panchanama categorically shows that, incident occurred near the earthen chulha where cooking was in progress. Therefore, according to learned counsel, deceased Jyoti had apparently suffered accidental burns and it was not a case of suicide as alleged post occurrence only. According to him, deliberately and intentionally a different colour was given by father by filling false and afterthought complaint on account of annoyance of losing daughter. He took this court through the testimony of other witnesses also and pointed out that their testimony is of no avail for prosecution to establish the charges. He pointed out that, learned trial court did not appreciate the evidence in the light of above legal requirements. That, there is apparently improper appreciation of law as well as evidence and hence he seeks indulgence for setting aside the judgment by allowing the appeal.

He seeks reliance on following rulings :-

- (i) *State of Maharashtra v. Rajendra s/o. Kashirao Bhujade, 2017 ALL MR (Cri.) 2256*
- (ii) *Assoo v. State of Madhya Pradesh, 2012 CRI. L. J. 658*

On behalf of Respondent - State :

8. In answer to above, learned APP supported the judgment submitting that, parents and brother are consistent about demand and ill treatment. That, ill treatment began after 5 to

6 months and all witnesses are consistent on that point. That, initially there was demand of T.V. It was fulfilled and for some days, there was no ill treatment, but subsequently again accused husband put up demand of Rs.35,000/- for purchasing auto-rickshaw. On that count, there was ill treatment and harassment. That, victim reported about ill treatment, whenever she came for festival. That, even brother of victim, who was put up at Nanded to ply the auto-rickshaw of accused, has deposed that, there was harassment and ill-treatment to his sister. That, he was witness to the said maltreatment. Therefore, according to learned APP, there being cogent, clear and consistent evidence, learned trial court committed no error whatsoever in accepting the case of prosecution as proved and recording the guilt of husband alone. He pointed out that, the very fact of acquittal of in-laws itself is sufficient to hold that, there is proper consideration and analysis. According to him, there is no merit in the appeal and the same be dismissed.

SUM AND SUBSTANCE OF EVIDENCE ON RECORD

9. **PW1** Gangadhar is the spot pancha. He has not supported the prosecution.

PW2 Baburao father of deceased, testified that, everything was smooth for 5 to 6 months, there was initially

demand of T.V. and on its fulfillment again demand for purchase of auto-rickshaw was raised. After accident of accused husband, for payment of medical bills, there was demand of money. Deceased reported ill treatment and harassment to her, when she came for festivals. Finally, message of burns suffered by Jyoti were received.

PW3 Parvatibai, mother of deceased also stated that, when her daughter came her home, she was reporting about demand of money for purchasing auto-rickshaw by accused no.1. Finally, she got a message about daughter being serious. According to this witness, her daughter might have committed suicide due to ill treatment given by accused persons.

PW4 Prakash, brother of deceased also stated about ill treatment commencing after 5 to 6 months. According to him there was demand of Rs.35000 for rickshaw. During her visit of her sister's place he used to see about quarrels with sister and ill treatment meted out to her. Finally, they got the news about serious condition of his sister.

PW5 Sheshabai, sister of PW3 Parvatibai, stated that, whenever victim met her, she told that, there was ill treatment on account of demand of money. Twice -thrice deceased Jyoti came to her house and every time she reported about the demand of

money. Accused no.1 told her about the burns of Jyoti and so she went to hospital, but she died in the hospital on the same day.

PW6 Ramdas informed that, he knew the accused. Deceased to be wife of accused no.1. His house was near the house of the accused at Ballal. Accused no.1 was working in a factory at Nanded. On 20.09.2001, he learnt that Jyoti while cooking in the house, sustained burn injuries. Thereafter, he and others took her to the hospital, but she died due to burns.

PW7 Nagorao, pancha to spot panchanama did not support the prosecution.

PW8 Kailash is pancha to inquest panchanama.

PW9 Mirza is another pancha to inquest panchanama.

PW10 P.I. Balu Dewde is the Investigating Officer.

ANALYSIS

10. Though prosecution has rested its case on oral evidence of almost 10 witnesses, crucial evidence is that of PW2 Baburao - father , PW3 Parvatibai - mother, PW4 Prakash - brother and PW5 Sheshabai - maternal aunt of deceased.

11. Here, conviction is recorded for offence punishable under sections 498A and 306 of IPC. Before adverting to analyze

the evidence, it would be apt to give brief account of settled legal requirements for attracting both the charges.

Offence under section 498A of IPC

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

13. On carefully evaluating above evidence, it seems that, 5 to 6 years prior to the incident of burns suffered by deceased Jyoti, initial period of six months was smooth. Informant father speaks about demand of television raised by husband and the same to be met. It is noticed that, he has not alleged that at the time of said demand, there was any ill treatment. Rather, he merely deposed that, accused husband asked his daughter to bring TV. He claims

that 2 to 3 months thereafter, when she was brought to his house for festival, she reported that, accused persons ill treated her. For which festival she came after Diwali is unclear from father's evidence. He merely deposed about ill treatment, but did not specify or narrate mode and form of ill treatment. Father stated that, thereafter accused husband resided with his daughter separately at Nanded and in examination-in-chief itself he deposed that, they both cohabited happily for a period of one and half year. Then he alleges that, accused no.2 started ill treatment by making demand of money. Such allegations are attributed to accused no.2, who is father-in-law and not husband, who is already shown to be residing separately on account of deceased and accused husband shifting to Nanded. Informant does not specify exact amount demanded by such accused no.2. As stated above, it is to be noted that, at such point of time, deceased and accused husband are already residing separately at Nanded, whereas, rest of the accused resided at Ballal, Tq. Bhokar.

Then, informant alleges that, accused no.1 husband started asking him to purchase auto-rickshaw for him. His such testimony signifies that, husband did not assert or demand money for purchasing auto-rickshaw, but merely seems to have asked him to arrange auto-rickshaw.

14. Again in further examination-in-chief, informant himself deposed that, meanwhile, accused husband himself obtained loan and purchased auto-rickshaw. Therefore, before above demand was decided to be met by arranging fund, as is claimed by informant, accused husband himself has apparently purchased rickshaw by raising loan. Therefore, the above accusation of demand of Rs.35,000/- for auto-rickshaw and ill treatment on such count, is rendered doubtful.

15. PW3 Parvatibai mother of deceased, in her testimony itself has stated that, whenever her daughter visited house, she told that, accused no.1 was demanded money for purchasing auto-rickshaw. But, she has not deposed, as like of her husband, that accused himself purchased rickshaw by raising loan. She is silent about demand of T.V. as is deposed by her husband. Though she stated that her daughter was severely ill treated, even she does not specify when and in what form ill treatment was subjected to deceased. Rather, she deposed that, her daughter might have committed suicide. Her such testimony itself shows that she is not sure and is merely suspecting suicide.

16. On visiting evidence of brother PW4 Prakash, it is noticed that, he had stayed at deceased place at Nanded by leaving

his own place at Nashik to ply auto-rickshaw allegedly purchased by accused husband. Though he claims that, during his stay he noticed quarrel and ill treatment to his sister, he has also not elaborated reason of quarrel or nature and mode of ill treatment. He has not reported about it to anyone till his statement was recorded by police.

17. What can be culled out from above discussed material is that, witnesses are not at the first count describing the nature of ill treatment. General and omnibus allegations by using the term ill treatment are levelled. What was the exact mental and physical cruelty inflicted is not elaborated by any of the witnesses and even no specific instances are quoted by any of them.

Therefore, mere bald allegations without narrating details, would not be itself sufficient to gravitate charge of 498A of IPC. Cruelty as contemplated under law is not met in the above evidence.

Offence under section 306 of IPC

18. Accused is convicted for offence under section 306 of IPC i.e. abetment to commit suicide. Before advertng to the merits of the evidence, it would also be fruitful to spell out essentials 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 :

“The accused kept on irritating or annoying the deceased by words, deeds or willful omission or conduct which may even be a willful silence until the deceased reacted, or pushed or forced the deceased by his deeds, words or willful omission or to conduct to make the deceased move forwards more quickly and (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.”

19. 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 has

been time and again decided by the Hon'ble Apex Court in the cases viz; *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; *State of West Bengal v. Indrajit Kundu and others* reported in (2019) 10 SCC 188 and very recently in the case of *V.P.Singh etc. v. State of Punjab and others* reported in 2022 SCC Online SC 1999.

In above series of cases, it has been held and reiterated that accused persons should intent that deceased should end up her life. With that object in mind, if they deliberately create circumstances, which are of such nature, that deceased is left with no other alternative but to end up her life, only then charge of abetment to commit suicide can be said to be successfully brought home. Abetment is equally an essential factor to be proved by prosecution.

20. Allegation here in the case in hand is that, because of ill treatment and demand, deceased Jyoti immolated herself. Alleged incident of burns is of 20.09.2001. At that point time, admittedly accused husband alone was residing with deceased at Nanded. Other accused were admittedly residing separately. He was not shown to be present in the house, when the alleged incident took place so as to connect him with alleged burns. In fact, evidence of

PW6 Ramdas who is prosecution's own witness, goes to show that, while cooking deceased suffered burns. This witness has taken her to the hospital. In trial court, prosecution failed to gather and place on record hospital admissions papers to ascertain as to what was the history reported at the admission stage itself. Such papers were essential to form decision as to whether episode of burns was suicidal, accidental or otherwise. Be it so.

Spot panchanama, to which attention of this court is invited by learned counsel for appellant, goes to show that, episode of burn has taken place near earthen chulha. Burnt pieces of clothes are said to be lying near the cooking place. On the strength of such material, inference can definitely be drawn that, burns were suffered while cooking activity.

21. Therefore, here, as there is nothing to infer that only because of ill treatment and demand, deceased immolated herself, case so put-forth by prosecution cannot be straightaway accepted. Presence of accused is not marked or demonstrated at the time of alleged episode to hold him responsible for her burns. In fact, as discussed above, prosecution's own witness suggest that deceased suffered accidental burns.

Resultantly, there is weak and fragile evidence regarding offence of 498A and 306 of IPC. Cruelty and abetment as contemplated under law has not been established.

22. Perused the judgment. Apparently there is improper appreciation of evidence. No satisfactory and sound reasons are assigned for accepting the case of prosecution. The above discussion and features noticed by this court on re-appreciation are not taken into account by learned trial Judge and hence interference is called for. Hence, I proceed to pass the following order :-

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to appellant - Ramesh S/o. Narsingh Hire in Sessions Case No. 74 of 2002 on 08.05.2003 for offence punishable under sections 498A and 306 of Indian Penal Code (IPC), stands quashed and set aside.
- III) The appellant stands acquitted of the punishable under sections 498A and 306 of Indian Penal Code (IPC).
- IV) Bail bonds furnished by the appellant stands 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, J.)