



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

CRIMINAL APPEAL NO.524 OF 2003

. Dattatraya s/o. Kerba Ghuge,
Age: 26 Years, Occu.: Teacher,
R/o.: House No.1-3-2954,
Kranti Colony, Ambika Nagar,
Beed, Dist.: Beed

**.. Appellant
(Ori. Accused No.1)**

Versus

. The State of Maharashtra

.. Respondent

...
Advocate for Appellant: Mr. Joydeep Chatterji
APP for Respondent/State: Mr. Rajdeep D. Raut
...

CORAM : ABHAY S. WAGHWASE, J.
Reserved on : 26.06.2024
Pronounced on : 02.07.2024

JUDGMENT:

1. Appellant who stood convicted by learned 3rd Adhoc Additional Sessions Judge, Beed for offence under sections 498-A, 306 and 304-B of the Indian Penal Code, 1860 (IPC), is hereby taking exception to the judgment passed in Sessions Case No.51/2002, dated 21.07.2003.

FACTS LEADING TO TRIAL

2. Deceased – Jyoti was married to present appellant, who also was a teacher. At the time of marriage, it was decided between the parties

that amount of Rs.50,000/- would be given by way of dowry along with 2 tola gold. As agreed, Rs.20,000/- was paid in advance and even half tola gold was decided to be given at the time of marriage and remaining amount of Rs.30,000/- and 1 ½ tola gold was decided to be given after marriage. After marriage, Jyoti came to reside with the appellant at Borfadi and after spending 1 ½ month there, she and present appellant rented a room in the very house of father-in-law i.e. father of Jyoti at Gramsevak Colony, Beed.

According to prosecution, subsequently, the appellant husband started putting demand of remaining dowry amount and ornaments i.e. 2 months prior to the incident in question. One and half month prior to the incident, parents and brother of appellant raised quarrel for the unpaid dowry and gold. One month prior to the incident appellant also beat Jyoti. On 10.11.2001, getting fed up of the demand and ill treatment Jyoti consumed poison and she expired on 11.11.2001.

Therefore her father PW-8 Arjun lodged report on the basis of which PW-9 and PW-10 carried out investigation at respective times and chargesheeted accused husband as well as his parents and brother.

Trial was conducted by the learned 3rd Adhoc Additional Sessions Judge, Beed, vide Sessions Case No.51/2002 and on analysing and appreciating the original and documentary evidence adduced by the prosecution, learned trial judge held appellant husband alone guilty for

above offence and acquitted rest of the accused from all charges vide judgment and order dated 21.07.2003. Said judgment is now assailed by filing instant appeal.

SUBMISSIONS

3. Sum and substance of the arguments put-forth by the learned counsel for the appellant is that, there is false implication. There was no convincing, cogent, reliable evidence in support of any of the charges for which appellant was tried. Learned counsel pointed out that there is no convincing evidence about any dowry being demanded and or part dowry being paid and for remaining dowry there was any cruelty or harassment. Learned counsel pointed out that, in fact, the appellant was residing in a rented room of his father-in-law informant. Therefore, deceased daughter was very much in the house of informant itself. He pointed out that there is no independent evidence about any quarrel in the backdrop of remaining dowry. No independent witnesses were examined on the point of paid and unpaid dowry in spite of their names given in the testimonies of prosecution witnesses.

4. He took this court through the testimonies of PW-2 and PW-3, who are immediate neighbours and he pointed out that even their evidence, does not suggest anything concrete about demand or quarrel in such backdrop. He pointed out that there is no evidence in support of

charge of Section 498-A of IPC. According to the learned counsel, considering the prosecution evidence, learned trial court itself has acquitted accused nos.2 to 4 from all the charges but husband alone is held guilty for Section 498-A of IPC, even when there is no convincing, cogent and reliable evidence in that regard. He emphatically submitted that the essential ingredients as contemplated in law for attracting Section 498-A of IPC being apparently missing, learned trial court ought not to have fastened the guilt for the said charge.

5. As regards charges of Section 304-B of IPC is concerned, he submits that said provision contemplates cruelty or harassment being meted out soon before the death but here according to him, there is no evidence to show that there was any demand and ill treatment in proximity to alleged consumption on 10.11.2001. That, witnesses are speaking about alleged demand raised since one and half month prior to the incident and, therefore, according to him, by any stretch of imagination such evidence can be applied to attract offence under Section 304-B of IPC.

6. While criticizing learned trial court on the point of Section 306 of IPC, learned counsel pointed out that deceased has allegedly left the house to attend her work at school and allegedly returned in the house at 03:45 p.m. That time husband was not in the house and there is

no dispute to that extent by prosecution also. He pointed out that deceased consumed poison while her mother, sister-in-law were very much present in the house. Why she consumed poison is also not known. There is no evidence as to how she consumed poison. Therefore, according to learned counsel when very husband appellant is not shown to be around at the time of alleged consumption, he ought not to held guilty for abetment or inducing the deceased. Resultantly, he questions the very finding recorded by the learned trial judge holding the appellant guilty for offence under Section 306 of IPC.

Lastly, he submitted that testimonies of parents is full of material omissions and contradictions. Material witnesses are not examined. There is no cogent, reliable, independent evidence in support of any of the charges and, as such, according to him, the conclusion reached at by the learned trial court is being in absence of legally acceptable evidence, prosecution had miserably failed to establish the charges. For all above reasons, he questions the legality and sustainability of the impugned judgment and prays to set aside the same.

7. Refuting the above submissions and supporting the judgment of learned trial court, learned APP submits that prosecution had established the case beyond reasonable doubt. That, parents are consistent about dowry demand and cruelty and harassment by husband,

he used to beat her. That, appellant and deceased resided in the very house of informant as a tenant. They were aware of the treatment meted out to their daughter. That, both the parents have consistently deposed about their daughter reporting demand and ill treatment given to her by her husband. Their evidence has remained unshaken.

Learned APP further pointed out that the demand was persistent and consistent. According to the learned APP on the day of occurrence also deceased had informed her mother about appellant meeting her at Georai bus stand and abusing her in the backdrop of demand. Finally getting fed up of ill treatment she came home and consumed poison. He is solely responsible. There is no other reason for committing suicide. Not only death has taken place within 7 years and, therefore, as all charges are cogently proved, according to the learned APP, trial court has committed no error in recording guilt of husband alone and, hence, he prays to dismiss the appeal for want of merit.

EVIDENCE ON RECORD

8. **PW-1** Indramohan, panch to spot panchanama Exhibit-25. He deposed about panchanama having drawn and in his presence police seized bottle found in the front room.

9. **PW-2** Dwarka stated that she new informant, his daughter, son-in-law and the parents and brother of the son-in-law. That, the

marriage being performed 6 months prior to the death of Jyoti and her husband residing in the rented room owned by informant. According to this witness, one and half month prior to the death there was quarrel between the deceased, her husband, brother of her husband and in-laws on the road itself. The reason behind the quarrel was dowry amount. Later on, she heard shouts of the mother of Jyoti and when she came out she found Jyoti unconscious and strong smell emanating from her mouth and she having taken to the hospital and she expired on the next day.

10. **PW-3** Bhimabai neighbour deposed at Exhibit 29 about deceased and her husband came to reside in the rented house of informant but in chief itself this witness stated that she was not knowing anything about the matrimonial relations between Jyoti and her husband but stated that there was quarrel between in-laws of Jyoti and parents of Jyoti.

11. **PW-4, PW-5 and PW-6** are colleagues and teachers of deceased who were working as teachers in the primary school at Rajpimpri and they all deposed that on 10.11.2001, it was last working day before Diwali. That day school was over by 12:00 noon. They all and deceased travelled from Rajpimpri to Georai bus stand.

12. **PW-7** Gaulan mother testified that at the time of talks of marriage an amount of Rs.50,000/- was decided as dowry and 2 tola gold to be given to the husband. As per agreement Rs.20,000/- and half tola gold were given and remaining were agreed to be paid after marriage, which was performed on 06.04.2001. After spending one and half month at Borfadi her daughter and son-in-law came to reside in her house itself but on rent basis and they went for attending services in the morning and returned in evening. According to this witness, husband started harassing her daughter Jyoti over unpaid dowry and gold since 2 months prior to the incident. 1 ½ month prior to the incident her daughter's in-laws and brother of husband had came to the house and at that time quarrel was raised over unpaid dowry. One month prior to the incident her daughter was beaten by her husband in the backdrop of unpaid dowry and gold. On 10.11.2001 around 03:45 p.m. while she and her daughter-in-law were on the terrace deceased Jyoti came and after uttering "मी जगत नाही" she fell unconscious and was taken to the hospital. According to this witness her daughter consumed poison and committed suicide.

13. **PW-8** Arjun informant father also stated about dowry of Rs.50,000/- being fixed, Rs.30,000/- and half tola gold given at the time of marriage and remaining to be given after marriage. Even according to him, after 2 months husband started demanding balance dowry amount

and gold and harassed his daughter. One and half month prior to the incident parents and brother of his son-in-law came and demanded unpaid dowry amount and gold and abused in filthy language. On 10.11.2001, when he returned home from outside, saw his daughter unconscious. She died because of consumption of poison and, therefore, after her death he lodged report.

14. **PW-9 and PW-10** are Investigating Officers who narrated about respective steps taken by them at the time of investigation till filing of the charge-sheet.

ANALYSIS

Section 498-A of IPC:

15. Admitted position is that deceased Jyoti and present appellant got married on 06.04.2001. Though both are by occupation teachers, but they are teaching in different schools. There is further no dispute that at the time of incident deceased and present appellant were residing in very property owned by informant but on rent. The incident of consumption also seems to have taken place in the very premises of informant.

Prosecution came with the case that at the time of fixing marriage, it was agreed that Rs.50,000/- by way of dowry amount and 2 tola gold would be given. It was further agreed that at the time of

marriage Rs.20,000/- cash and half tola gold was given to the husband and remaining Rs.30,000/- and one and half tola gold was to be given after marriage. Here it is noticed that there is no independent witness who was party to the said meeting where above talks were agreed. On carefully reading evidence of mother PW-7, it is emerged that according to her, her daughter and son-in-law i.e. the appellant since about one and half month had come to stay in the room of her house on rent basis. According to her, appellant started harassing her daughter over unpaid dowry of Rs.30,000/- and half tola gold. One and half month prior to the incident parents and brother of appellant had come and raised quarrel over unpaid dowry. She gave names of neighbours as Abhiman Kate, Dwarka Sanap and other persons.

Again she stated that appellant husband used to quarrel and harass her daughter. One month back he beat her and while Jyoti was weeping inquiry was made with her and she told that husband beat her over unpaid dowry of Rs.30,000/-.

Therefore, according to mother, 1 month prior to the death of Jyoti, husband had beaten her for unpaid dowry. In cross, at paragraph no.15, mother had admitted that police did not record her statement. She further candidly admitted that for the first time she was deposing that her daughter after marriage went to reside at Borfadi and one and half

month thereafter, there was harassment to her over Rs.30,000/- and one and half tola gold and husband always used to harass over the same.

16. Now, if we analyse evidence of informant father PW-8, the sum and substance of his evidence is also that two months after marriage everything was smooth. Thereafter, according to him, appellant husband demanded balance dowry of Rs.30,000/- and one and half tola gold to him, then he stated that over it husband started harassing his daughter.

17. Firstly, his evidence shown that demand was made to him directly and not to his daughter. Secondly, he merely makes a vague and general allegations that husband started harassing his daughter. What was the nature of harassment has not been clarified by him. As pointed out by the learned counsel for the appellant, if we visit his cross, more particularly, para 12, following omissions are brought on record and the same are got proved through Investigating Officer; “that, his family members and family members of accused were present for the initial talks of marriage; that it was agreed to give Rs.50,000/- and 2 tola gold as dowry; Rs.20,000/- cash and half tola gold given at the time of marriage; that unpaid dowry was decided to be paid after marriage; that after marriage his daughter went to reside at Borfadi and stayed there for one and half month”. He answered that while lodging report he had stated to the police that his daughter told him to give Rs.30,000/- and one half

tola gold to her husband. But he is unable to state why police did not take note of it. He also answered that while lodging FIR he had reported that one and half month prior to the incident parents of appellant and brother of appellant had came to the house and had demanded Rs.30,000/- and 1 ½ tola gold to them. He is unable to assign reason why it is not appearing in the report. Omission is also brought as regard to appellant breaking watch of deceased Jyoti in paragraph no.13. He candidly answered and admitted that accused has not demanded Rs.30,000/- for the purpose of grape garden at any time but such version is finding place in his report Exhibit 52. Remaining cross is on other aspect.

Therefore testimonies of his mother and father of deceased are apparently full of material omissions, which are going to the very root of prosecution case. Mother has candidly admitted about first time deposing about decided dowry part of it being paid and for remaining unpaid dowry and gold there was harassment. Informants evidence also is shown to be full of material omissions. Therefore very testimonies of parents of deceased, is falling short of essential requirements for attracting Section 498-A of IPC. They merely used word harassment and ill treatment without elaborating it's nature and only mentioning about there daughter being beaten once that too one month prior to the death of Jyoti.

18. That, PW-2 and PW-3 are examined by prosecution who are acquaintance and neighbour. PW-2 merely stated that there was quarrel over dowry amount. However, this witness in cross para 7, she stated that one and half month prior to the death of Jyoti her husband, brother of her husband and her in-laws were quarreling on the road, the same is not finding place in the statement of police and she is unable to assign why it is not finding place in her statement. In cross she admitted that for the first time that she had stated to the police that there used to be quarrel between the deceased and her husband. Likewise PW-3 in chief itself has stated that she does not know on what count there used to be quarrel between Jyoti and her husband or quarrel between in-laws of Jyoti and parents of Jyoti. Therefore, considering the evidence of parents of deceased, PW-2 and PW-3, prosecution evidence is weak and falling short to attract rigors of Section 498A of IPC.

19. In umpteen cases the Hon'ble Apex Court has time and again dealt and discussed the requirements for attracting Section 498-A i.e. in the cases like *Giridhar Shankar Tawade v. State of Maharashtra* (2002) 5 SCC 177; *Gurnaib Singh v. State of Punjab* (2013) 7 SCC 108; *State of Andhra Pradesh v. M. Madhusudhan Rao* (2008) 15 SCC 582; *Bhaskar Lal Sharma v. Monica* (2009) 10 SCC 604 and *K. Subba Rao v. The State of Telangana* (2018) 14 SCC 452.

Considering the law settled in such cases and comparing with the above discussed testimonies of prosecution witnesses in the considered opinion of this court there is weak and fragile evidence on the point of Section 498-A of IPC.

Sections 304-B and 306 of IPC:

20. Conviction is also recorded for offence under Sections 304-B and 306 of IPC.

According to prosecution, on 10.11.2001, appellant husband harassed deceased in the backdrop of demand of unpaid dowry of Rs.30,000/- and one and half tola gold and, therefore, precisely for the said reason she consumed poison.

Prosecution has adduced evidence of PW-4, PW-5 and PW-6 Teachers, but their evidence is absolutely of no avail to the prosecution. From their testimonies it has merely come on record that on 10.11.2001 after the school was over by 01:00 p.m., deceased had reached up to Georai bus stand. When it is a case of prosecution that appellant husband met her on bus stand and put up demand and quarrel being taken to that extent at the bus stand, then it was expected by prosecution to adduce evidence in that regard. Unfortunately there is no distinct evidence about appellant and deceased meeting at Georao bus stand after she returned from school. Though the Investigating Officer in cross has admitted that

he made investigation at bus stand, there is no distinct and independent evidence about both the appellant and deceased together at the bus stand and, further, no evidence about talks or conversation taking place between them at the bus stand.

21. According to mother PW-7, she and her other daughter-in-law were on the terrace at about 03:45 p.m. That time her deceased daughter arrived and informed that she had met the appellant husband on the bus stand. Thereafter this witness deposed that she allegedly informed deceased that she would come down. But deceased herself came on the terrace and said that "मी जगत नाही" (she will not survive) and she fell unconscious and was therefore taken to hospital.

On analysing the said evidence on record it is emerging that from bus stand deceased had reached her own house as there was conversation between deceased and PW-7, however, what exactly happened at the bus stand or even after reaching the house till deceased herself climbed to the terrace is a mystery. There is no evidence to show that on that day after deceased alighted at Georai bus stand and she reached her own house, accused had come in her contact. What made deceased to consume poison is unclear. Unless it is shown that accused subjected deceased to such cruelty that she is left with no other alternative but to go and consume poison or that accused after meeting

deceased abated and induced her to consume poison, guilt cannot be fastened against him. Admittedly, deceased alone had reached her place from Georai bus stand and consumed poison in her own house. Presence of accused is not established at Georai bus stand. What happened at bus stand is not conveyed by deceased and she merely informed PW-7 that she met her husband at Georai bus stand but what exactly had happened at Georai bus stand, is not known to any one and there is no clear evidence in that regard. Therefore, unless there is material showing that appellant husband subjected deceased to such cruelty on 10.11.2001 that she was left with no other alternative but to end up her life or he induced and abated her and, only due to it, she consumed poison, it is unsafe to fasten guilt on appellant. Consequently, in the considered opinion of this court, when there is no evidence to show either presence of accused at the bus stand or on the way to her house or at the place where consumption was made, he cannot be held responsible for her consumption. From where poison was brought is also not surprisingly investigated by the Investigating Officer.

22. Therefore in the light of available material on record, it cannot be said that charge of Section 306 of IPC is brought home. Even charge of Section 304-B of IPC cannot be fastened for the simple reason that what this provision contemplates is that cruelty and ill treatment

being meted out in the backdrop of dowry demand soon before said consumption. But prosecution witnesses are speaking about accused husband putting up demand since 2 months prior to the incident. Therefore, even charge of Section 304 of IPC fails.

23. Perused the judgment under challenge.

24. In the considered opinion of this court, learned trial court has not appreciated the evidence on record. Only examination-in-chief of parents seems to be taken into consideration. Cross which carried material omissions has not been taken into account and even not discussed while arriving to the finding and drawing conclusion. Resultantly, there is improper appreciation and hence needs interference. Accordingly, I proceed to pass following order :

ORDER

I) Criminal Appeal No.524 of 2003 is allowed.

II) The conviction awarded to appellant Dattatraya Kerba Ghuge in Sessions Case No.51 of 2002 by the learned III Ad-hoc Additional Sessions Judge, Beed, on 21-07-2003 for the offence punishable under Sections 498-A, 306, 304-B of the Indian Penal Code, stands quashed and set aside.

III) The appellant stands acquitted of the offence punishable under Sections 498-A, 306, 304-B 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, J.]

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