



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

CRIMINAL APPEAL NO. 567 OF 2003

Bhaskar s/o Namdeo Solunke
Age: 32 years, Occu.: Agri.,
R/o. Nagapur, Tq.Parli – Vaijinath,
Dist.Beed.

....Appellant
(Ori. Accused)

Versus

The State of Maharashtra

.....Respondent

.....
Advocate for Appellant : Ms. Ashwini Annasaheb Lomte
APP for Respondent : Mrs.Chaitali Choudhari - Kutti
.....

CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 05 SEPTEMBER, 2024
PRONOUNCED ON : 12 SEPTEMBER, 2024**

JUDGMENT :-

1. Convict for offence punishable under Sections 498-A and 306 of the Indian Penal Code (IPC) is hereby taking exception to the judgment and order of conviction passed by II Adhoc Additional Sessions Judge, Ambajogai dated 05-08-2003 in Sessions Case No.33 of 2001.

PROSECUTION STORY IN BRIEF

2. Deceased Sumitrabai was married to appellant in the year

1997. For a period of 6-7 months of marriage, everything was smooth, but thereafter husband and in-laws subjected her to cruelty. Harassment was on account of their demand of Rs.10,000/- and one tola gold. For coercing her to see that their demand is met, she was beaten and kept starved. She reported it to her parents. In due course, she also delivered a baby boy. Till the child grew upto 2 years, in above backdrop of demand, Sumitrabai was subjected to cruelty. Prosecution claims that finally getting fed up of the same, she jumped in the well alongwith child and ended up her life. PW1 Eknath, father of deceased Sumitrabai, after completing last rituals, lodged report with Parali Rural Police Station, Dist.Beed, on the strength of which, crime was registered and also investigated by PW7 Lamture, who after completing investigation and on gathering sufficient evidence, chargesheeted accused husband and in-laws for commission of offence under Sections 498-A and 306 read with 34 of the IPC.

At trial, case of prosecution was rested on evidence of in all 7 witnesses. Defence denied to lead any evidence. On appreciating and analyzing the evidence, learned trial Judge, held charged as proved, but only as against appellant husband alone i.e for offence under Section 498-A and 306 of the IPC and consequently, by

judgment and order dated 05-08-2003, convicted appellant husband but acquitted rest of the accused from all the charges.

Precisely there is challenge to above judgment and order of conviction by husband by filing instant appeal.

SUBMISSIONS

On behalf of appellant :

3. Taking this court through testimonies of PW2 Kevalbai, PW3 Eknath (parents of deceased) and PW6 Dattatraya, cousin of deceased, learned Counsel for the appellant submitted that going by their testimonies, it is abundantly clear that parents and cousin are levelling vague, general and omnibus allegations. She took this court through evidence of all three witnesses and submitted that they all merely speak about cruelty and harassment without specifying nature of cruelty, manner of harassment or even when instances of cruelty and harassment took place. She emphasized that deceased had 2 years old son and her marriage was of 1997. Therefore, for a period of almost 3 years, there was no previous complaint of any sort anywhere. Learned Counsel pointed out that vague allegations are made that whenever deceased came to maternal home, she reported harassment and cruelty, but exactly when she came and reported is

not getting clear from anybody's evidence. She pointed out that except parents and cousin, no other independent witness has been examined. She even pointed out that PW2 Kevalbai, mother of deceased named neighbours of accused i.e. Dagadu, Haribhau, Babu etc, who were mediators, but even they are not examined by investigating machinery. She further emphasized that there are allegations of demand of Rs.10,000/- and one tola gold, but allegations are attributed against all accused without specifying who made demand and she also not stated for what demand was raised. It is her submission that cruelty as contemplated under law is not proved from the testimonies of PW2, PW3 parents and PW6 cousin of deceased. Consequently, she questions very charge as well as guilt recorded for offence under Section 498 of the IPC. She also posed a question as to how when in-laws are acquitted from all charges, on what basis husband alone held guilty, is not reasoned out by learned trial Judge and therefore, she questions maintainability and sustainability of the findings and judgment of guilt

4. As regards to offence under Sections 306 of the IPC is concerned, she would point out that to attract said charge, it is imperative for prosecution to positively establish beyond reasonable

doubt that there was abetment, inducement or instigation to commit suicide. Here according to her, none of such essential ingredients are available in the prosecution evidence. She added that, at the first count, prosecution has not proved beyond reasonable doubt that death of Sumitrabai and her child was only and only suicidal and not otherwise. On this count, she took this court through spot panchanama wherein there is description of well and she pointed out that it has come in evidence that it was a constructed well merely two feet above ground level and has stairs to go down and therefore, she expresses possibility of accidental fall while fetching water. She further submitted that here there is no iota of evidence showing deceased jumping with the child and therefore, according to her, it is not open for prosecution to assume or presume death to be suicidal one. She also posed a question that there is nothing in proximity to 17-01-2001 suggesting involvement of husband in either raising alleged demand or subjecting deceased Sumitrabai to any maltreatment and it was of further such gravity that she was forced to take extreme step of jumping that too with a minor. Consequently, she seeks reliance on following decision.

(I) Judgment of Hon'ble Supreme Court in case of *Kamalakar v. State of Karnataka* dated 12-10-2023 in Criminal Appeal No.1485 of 2011.

(II) Judgment of this Court in case of *Ram S/o Digambar Giri and Others v. The State of Maharashtra* dated 15-06-2022 in Criminal Appeal No.175 of 2002.

5. Lastly, while concluding she submitted that in the light of above, when necessary ingredients for both charges being missing from prosecution evidence, she questions impugned judgment and its correctness and finally prays to set aside the same by allowing the appeal.

On behalf of State :

6. Supporting the judgment of learned trial Judge, learned APP pointed out that barely after one and half months of marriage, deceased was harassed and subjected to cruelty by husband and in-laws for meeting their demand of cash and gold. That Sumitrabai reported about demand and ill-treatment to her parents. That they had expressed their inability to meet the said demand, however, still mal-treatment continued and it went to such an extent that deceased was compelled to end up her life with a small child. According to learned APP, at the time of alleged suicide, deceased was in the custody of appellant husband and in-laws. That they cannot escape

without offering explanation as to how Sumitrabai went towards well and further found dead. According to her, they are solely responsible for her suicidal death as well as death of the minor. That learned trial Court has correctly appreciated available evidence and has found testimonies of parents not only worthy of credence but even consistent and that there was no inconsistencies and material contradictions so as to disbelieve their versions. Consequently, she canvassed in favour of the impugned judgment and prays not to disturb well reasoned and sound judgment.

EVIDENCE IN TRIAL COURT

7. In support of its case, prosecution has adduced evidence of in all seven witnesses. Sum and substance of their evidence is as under :

PW1 Dr.Praveen Kachrual Tapadiya, Autopsy Surgeon, who conducted *post mortem* on the body of Sumitrabai and her child, opined death due to “cardio respiratory arrest because of drowning”.

PW2 Kevalbai w/o Eknath Jadhav, mother of deceased deposed that after 5-6 months of marriage, there was harassment and cruelty at

the hands of accused. She was subjected to beating and kept starved regarding which she reported whenever she came maternal home. According to her, harassment and cruelty was in the backdrop of demand of Rs.10,000/- and one tola gold and because of the same, she jumped in the well with her son and succumbed to death.

PW3 Eknath Narayan Jadhav, who is informant and father of deceased also in his evidence at exh.40 testified that Sumitrabai was properly maintained for 6-7 months after marriage. Thereafter, accused nos.1 to 5 started harassment and cruelty to Sumitrabai so as to bring one tola gold and Rs.10,000/- from her parents. There was beating and starvation. Whenever his daughter came, she reported about it. On 17-01-2001, a message was received about the suicide. After funeral, he lodged report.

PW4 Prabhakar Digamberappa Tondare, Pancha to spot panchanama identified the same to be at exh.47.

PW5 Shivaji Dhondiram Gund is Police Head Constable, who entertained AD report received from Police Patil and subsequently registered crime bearing no.7 of 2001.

PW6 Dattatraya Digamber Jadhav, cousin of deceased, stated that his cousin sister died on 17-01-2001, who was married in 1997 with accused no.1. She was properly maintained for 5-6 months. Thereafter, accused nos.1 to 5 started harassment and cruelty. There was beating to Sumitrabai for demand of Rs.10,000/- and one tola gold. When she came for festivals, she disclosed such facts to him. On 17-01-2001 news of suicide was received.

PW7 Basweshwar Ramlingappa Lamture, Investigating Officer, who narrated all steps taken by him during investigation till filing chargesheet.

ANALYSIS

8. Here admitted facts could be summarized as under. Firstly, Sumitrabai was married to appellant husband in summer of 1997. Secondly, out of the wedlock they had two years old son. Thirdly, Dead body of Sumitrabai and her baby floating in the well belonging Shivappa.

9. Here prosecution though examined seven witnesses, crucial

and relevant evidence is only of PW2 Kevalbai, PW3 Eknath and PW6 Dattatraya i.e. parents and cousin of Sumitrabai. Meticulously analyzed their testimonies. It is noticed that though consistent, they all three are deposing about cruelty and harassment meted out to Sumitrabai by all accused on account of demand of Rs.10,000/- and one tola gold. As pointed out none of them have spelt out or specify as to what was the nature of cruelty either physical or mental and form of cruelty. They are unanimously using the word harassment, but in what form, is not stated by any of them. That apart none of them have specified as to when, where instances of cruelty or harassment took place. Out of three years cohabitation, it has come in the evidence of PW2 and PW3 parents that she spent 7-8 months in their house when she had come for delivery. If the child is of two years of age at the time of incident, then child was born within one year of marriage, but mother and father i.e. PW2 and PW3 are found to be attributing harassment and ill-treatment after 7-8 months of marriage. Law contemplates that cruelty has to be proved beyond reasonable doubt. In umpteen judgments, essential ingredients for attracting offence under Section 498-A of the IPC are repeatedly dealt and discussed by the Hon'ble Apex Court. It is required to be demonstrated that there was both physical and mental cruelty or

torture so as to attract charge under Section 498-A of the IPC. Here it is conspicuously emerging that PW2 and PW3 parents and PW6 cousin are deposing about cruelty and harassment, but they are neither giving instances or its details. The Hon'ble Apex Court in the case of *State of Andhra Pradesh v. M. Madhusudan Rao*, (2008) 15 SCC 582 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*".

10. Here on visiting **cross-examination** of PW2 Kevalbai, more particularly paragraph 6, she is found to be answering that Sumitrabai never came to the house unless she was brought. According to her, first disclosure of harassment and cruelty was at the time of first mango season after marriage. If marriage was of May 1997 then first disclosure has to be during summer of 1998. She has admitted that one month prior to death of Sumitrabai, she had attended ceremony of removal of hairs of child of deceased commonly known as "*Jawal*". It is pertinent to note that she has not uttered a single word about hearing any ill-treatment either physical

or mental during such visit to her daughter. Her son Govind allegedly accompanied her to attend said ceremony but Govind is not examined here. On the contrary, she answers that she returned back to the house when present appellant allegedly started levelling allegations against her. She even answers that she did not go to see grandson, who was admitted due to some illness four months prior to the incident. Therefore, every aspect of harassment, cruelty in the backdrop of any demand itself comes under shadow of doubt. Further she claims that deceased daughter came to see when her father i.e. informant was admitted in the hospital, but informant himself denied visit of his daughter till her death. Therefore, parents are not consistent.

Following omissions are brought in the testimony of PW2 Kevalbai, mother of deceased :

That she convinced accused persons that their demand would be satisfied, however, their demand could not be met; that despite convincing accused, they continued the act of harassment and cruelty. In paragraph 16 of cross-examination, she has admitted that accused nos.1 and 3 own a big wada having several rooms.

Likewise informant PW3 Eknath, father of deceased in **cross-examination** admitted that he gave daughter to accused husband as

he owned considerable land. He admitted that his daughter came home only if she was brought. This suggests that there was no contact by deceased herself at any point in any mode till she allegedly visited parents house. In paragraph 14 of cross-examination, father too has admitted that accused no.1 and 3 has big wada consisting four rooms and present appellant and his daughter resided separately and had separate cooking facility.

11. **PW6** Dattatraya, cousin is resident of Musalewadi. He seems to be son of uncle of deceased Sumitra. He merely stated that accused nos.1 to 5 started harassment and cruelty and beating to Sumitra to fulfill demand of Rs.10,000/- and one tola gold and she was subjected to harassment and cruelty. He has also like his uncle and aunt i.e. PW2 and PW3 not given detail of cruelty or harassment.

Consequently, in the considered opinion of this Court, evidence on Section 498-A of the IPC is very weak and fragile in nature. Allegations are apparently vague and general in nature.

12. No doubt unfortunate death of Sumitrabai alongwith the child has taken place in the well water, however, dead body was traced on 17-01-2001. What preceded the jump or fall has not come on record.

There is no missing complaint. When Sumitrabai left house and company of husband and reached the well is not getting clear. What made her to go towards well is a pure guesswork. There is no material suggesting that in proximity to the jumping or fall, there was any role played by appellant husband in either instigating, abetting, or inducing her to commit suicide. Parents have attended ceremony "*Jawal*" ceremony of child one month prior to the incident. As stated above, there are no allegations or any information from Sumitrabai. Witnesses directly speak about getting message on phone about dead body of child seen floating in well water and subsequently, dead body of Sumitrabai also traced in same well water. When she went near the well, how did she fell, whether it was accidental or suicidal, was expected to be demonstrated by prosecution by leading cogent, convincing and legally acceptable evidence or even circumstances. Here unfortunately, there is neither direct or circumstantial evidence on the point of death of Sumitrabai with the child. Therefore, it is not open for anyone to assume or presume that it was a case of suicide or otherwise unless suicidal jumping is cogently or firmly established. When there is no material suggesting instigation, abetment, inducement to commit suicide, charge of Section 306 cannot be said to be proved.

13. Perused the judgment under challenge. Learned trial Judge seems to have got influenced by the submissions of the State that there is death alongwith the child, but legal requirements for attracting the charges are patently not available and even reasons for accepting prosecution version are not assigned by the learned trial Judge. Therefore, impugned judgment not being supported by concrete findings and by assigning sound reasons, it cannot be allowed to be sustained. Appellant succeeds. Accordingly, I proceed to pass following order :

ORDER

- I) Criminal Appeal No.567 of 2003 is allowed.
- II) The conviction awarded to appellant – Bhaskar Namdeo Solunke in Sessions Case No.33 of 2001 by the learned II Adhoc Additional Sessions Judge, Ambajogai on 05-08-2003 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

SPT