



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.571 OF 2003

Pralhad S/o. Uttam Jadhav,
Aged : 38 years, Occu. : Agriculture,
R/o. Pewa, Tq. Hadgaon,
Dist. Nanded

... Appellant.

Versus

The State of Maharashtra,
through the Police Station Officer,
Police Station, Hadgaon,
Dist. Nanded.

... Respondent

...
Mrs. Rekha Choudhari h/f. Mr.S.S.Choudhari, Advocate for
Appellant.

Mrs. Uma S. Bhosale, APP for Respondent - State

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 12 JULY 2024

PRONOUNCED ON : 16 JULY 2024

JUDGMENT :

1. In this appeal, there is challenge to the judgment and order of conviction recorded by the learned Joint District Judge & Additional Sessions Judge, Nanded in Sessions Case No.136 of 2000, by which appellant is held guilty and convicted for offence punishable under sections 498A and 306 of Indian Penal Code (IPC).

PROSECUTION CASE IN NUTSHELL IS AS UNDER

2. Hadgaon Police Station registered crime bearing No.7

of 2000 on the report lodged by brother of PW2 Devidas, alleging that, his sister Radhabai was married to appellant about five years back. For initial period of 2 to 3 years, she was treated properly. Thereafter, accused husband and in-laws started demanding Rs.40,000/- for purchase of field. Informant brother could manage to meet the demand of only Rs.4,000/-. For remaining amount demand was again raised. Brother got the news that his sister Radhabai died in the house of accused. Therefore, he lodged report, on the basis of which, crime was registered bearing No.7 of 2000 for offence punishable under sections 498A and 304B read with section 34 of Indian Penal Code (IPC).

3. Investigation was carried out by PW9 Police Constable Shelke, who after gathering sufficient evidence, charge-sheeted accused and they were made to face trial before learned Joint District Judge and Additional Sessions Judge, Nanded, who on appreciating oral and documentary evidence, acquitted accused nos.2 to 4 from all charges, but convicted appellant husband alone for offence punishable under sections 498A and 306 of IPC.

SUBMISSIONS

On behalf of Appellant : -

4. Learned counsel for appellant pointed out that, prosecution has miserably failed to establish the charges by

leading cogent and reliable evidence. According to her, all allegations are merely confined only to demand. That, none of the witnesses has uttered about any harassment or cruelty meted out to deceased. Therefore, according to her, very purport of attracting section 498A of IPC is lost. She further pointed out that, there is no independent corroboration to the testimony of brother and mother, who are also not consistent about demand. She further pointed out that, there was no previous complaint in cohabitation for around 4 to 5 years. It is pointed out that, even FIR is silent about quantum of demand made. According to her, testimonies of witnesses are full of material omissions and contradictions. That, as essential ingredients for attracting the charges were not available and when on same set of evidence accused nos. 2 to 4 were acquitted from all charges, according to her, it is improper and erroneous on the part of learned trial Judge to choose husband alone guilty for offence punishable under sections 498A and 306 of IPC. According to her, there is patently improper appreciation and findings are not supported by sound reasons. That, law has not been correctly appreciated and for all above reasons, learned counsel submits that, judgment being perverse, is required to be set aside by allowing the appeal.

On behalf of Respondent – State :

5. While apprising above submissions, learned APP pointed out that, there is prompt complaint. Brother and mother, in their evidence speak about demand of Rs.40,000/- being raised for purchasing field. That, deceased had reported about such demand to them. She died due to consumption of poison. That, unnatural death has taken place in the house of accused, but there is no explanation. Therefore, according to her, learned trial court rightly appreciated the evidence and committed no error whatsoever in holding the accused husband guilty and hence for above reasons, she prays to dismiss the appeal for want of merits.

EVIDENCE ON RECORD IN TRIAL COURT

6. **PW1** Sharad, pancha to inquest panchanama and seizure panchanama of clothes and articles at Exhs.26 and 27, respectively.

PW2 Devidas, brother of deceased at Exh.28 deposed that, his sister was married to accused. For 2 to 3 years, she was maintained properly and thereafter there was demand of Rs.40,000/- for purchase of field. He paid Rs.4,000/-. For remaining amount, there was demand. Then the news of death was received. Therefore, he lodged report at Exh.29.

PW3 Laxmibai, mother of deceased also deposed that, daughter was treated properly for 2 to 4 years. Thereafter, there was harassment for a year before death. Husband demanded Rs.40,000/- for purchase of the field. They paid Rs.6,000/- only and therefore accused were not happy with this amount. They got the news about death of Radhabai.

PW4 Subhash stated that, deceased was happy for first four years. Thereafter, there was demand of Rs.40,000/- for purchase of field. They paid Rs.6,000/- to accused. He learnt from his sister Radhabai that threats to her life and she was harassed by husband and in-laws.

PW5 Raghoji uncle of deceased stated that, one month prior to death, there was dispute in the house of Maroti. According to him, he learnt from Maroti about questioning by one Madhav and Mina for not paying amount of Rs.40,000/-.

PW6 Devidas an acquaintance claims that, he knew complainant and accused. That, he had met the accused Pralhad, who allegedly told that when they met at Mantha he had come to take money.

PW7 Dr. Venkat Dhage, who conducted postmortem, deposed that opinion was reserved for CA report. After receiving

CA report, he gave opinion about cause of death due to Organo Choloro Insecticidal poison.

PW8 ASI Jogdand is the PSO and **PW9** Police Constable Shelke, who narrated all steps taken during investigation till filing charge-sheet.

ANALYSIS

7. Taking above submission into consideration and on re-appreciating the entire evidence, it is noticed that, death of Radhabai is of 26.05.2000. Allegations are of commission of offence punishable under sections 498A and 306 of IPC.

8. Admittedly, though husband and in-laws were tried, the in-laws are acquitted by trial court by the impugned judgment itself. Though as many as 9 witnesses were examined, evidence of two brothers, mother and acquaintance is only of relevance and significance.

9. On carefully going through the same, it is noticed that, according to informant PW2 Devidas, everything was smooth for a period of 2 to 3 years. But, thereafter there was demand of Rs.40,000/- for purchase of field. He paid Rs.4,000/-. But, his further substantive evidence is only about asserting demand for

remaining amount. His substantive evidence is patently silent about any harassment and ill treatment for not meeting demand.

10. Mother PW3 Laxmibai stated that, everything was smooth for 2 to 4 years. According to her, there was demand of Rs.40,000/- and Rs.6,000/- were paid. Quantum of payment allegedly made is not like the one stated by informant son. Though, they both claimed that amount was raised from relatives, but none are examined. To which accused payment was made and when, is also not coming on record. Even other brother does not clarify about quantum. He has stated about threat to kill, which is apparently not stated by informant brother or mother. Therefore, apparently, witnesses are not lending support to each other. Except some of them stating about harassment and what was the form either physical or mental and what was the specific instances, has not been stated by any of them. To attract section 498A of IPC, it is incumbent upon the prosecution to demonstrate consistent demand and consistent harassment. These requirements are not fulfilled in the case in hand.

11. Though there is charge for 306 of IPC, there is no iota of evidence to show that prior to the consumption, there was any abetment, inducement or instigation in the backdrop of any

demand. There is nothing which indicates any active role by appellant in inducing, instigating or abetting suicide or intentionally aiding commission of suicide. There is even nothing to show that, there was willful conduct on the part of appellant husband subjecting deceased to cruelty or coercing deceased in the backdrop of demand. Therefore, even essential ingredients for attracting section 306 of IPC are not found in the case in hand. Such legal requirements are expounded by Hon'ble Apex Court in the case of *Gurucharan Singh v. State of Punjab*, (2020) 10 SCC 200; *Amalendu Pal v. State of W.B.*, (2010) 1 SCC 707; *S.S. Chheena v. Vijay Kumar Mahajan*, (2010) 12 SCC 190; *Ramesh Kumar v. State of Chhattisgarh*, (2001) 9 SCC 618.

12. Therefore with such quality of evidence on record, in the considered opinion of this court, prosecution evidence is falling short to attract the offence.

13. Perused the judgment, above aspects are not taken into account by learned trial court. Apparently, there are material omissions and contradictions in the cross of witnesses, which is appreciated by learned trial Judge. Moreover, on same set of evidence, accused no.2 to 4 are acquitted. There is no justification on same evidence only husband is liable. Consequently, it is a fit

case to allow the appeal and accordingly I proceed to pass the following order :-

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to Pralhad S/o. Uttam Jadhav in Sessions Case No. 136 of 2000 by the learned Joint District Judge & Additional Sessions Judge, Nanded on 31.07.2003 for offence punishable under sections 498A and 306 of Indian Penal Code, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under sections 498A and 306 of Indian Penal Code.
- IV) The bail bonds of 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.)