



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 508 OF 2003

Sudhakar s/o Shantaram Sapkale,
Age : 25 years, Occupation labourer,
R/o. Jalgaon, Tal. & Dist. Jalgaon.

... Appellant
[Orig. Accused]

Versus

State of Maharashtra

... Respondent

.....
Mr. B. R. Waramaa, Advocate for the Appellant.
Mrs. Uma S. Bhosale, APP for the Respondent-State.
.....

AND
CRIMINAL APPEAL NO. 700 OF 2003

The State of Maharashtra
Through PSI Police Station
Jalgaon C.R. No. 60/2002.

... Appellant

Versus

Sudhakar Shantaram Sapkale,
Age : 25 years, Occupation labourer,
R/o. Jalgaon, Tal. & Dist. Jalgaon.

... Respondent
[Orig. Accused]

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Mrs. Uma S. Bhosale, APP for the Appellant-State.
Mr. B. R. Waramaa, Advocate for the Respondent.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 11.07.2024
Pronounced on : 15.07.2024

JUDGMENT :

1. Appellant convict Sudhakar, vide Criminal Appeal No. 508 of 2003, has taken exception to his conviction for offence under Section 498-A of the Indian Penal Code [IPC], whereas State has also filed Criminal Appeal No. 700 of 2003 questioning his acquittal from charge under Section 306 of IPC.

Both appeal being arising out of the same judgment and order, they are heard together and decided by this common judgment.

FACTS IN BRIEF, LEADING TO TRIAL

2. Deceased Shobha, who was second daughter of informant PW1, after one month of her marriage, reported him that husband suspected her fidelity and beat her. That, his daughter was not sent to cohabit for almost a month, but when her mother-in-law came and assured that there would not be further ill-treatment and beating, deceased was allowed to go to cohabit on 21.09.2002. On 27.09.2002, message was received that Shobha suffered burns. All relatives went there. Shobha died due to burns and so, after funeral, father set law into motion.

3. Crime was registered, investigated and finally, accused husband was chargesheeted and tried by IVth Ad-hoc Additional Sessions Judge, Jalgaon vide Sessions Case No. 170 of 2002 on charge of 498-A and 306 of IPC.

4. At trial, prosecution adduced evidence of in all 5 witnesses and also relied on two dying declarations, postmortem report, panchanamas etc. After appreciating the oral and documentary evidence adduced by prosecution, vide judgment and order dated 04.07.2003, appellant came to be convicted for commission of offence under Section 498-A of IPC only and he was acquitted for offence under Section 306 IPC.

5. Said conviction for above offence is questioned by filing instant appeal, on various grounds mentioned in the appeal memo.

6. State has also preferred appeal getting aggrieved by his acquittal from offence under Section 306 of IPC.

SUBMISSIONS

On behalf of the appellant convict:

7. Learned counsel for the appellant pointed out that apparently, in the case in hand there is no convincing, reliable or legally

acceptable evidence as, according to him, very essential ingredients for attracting offence under Section 498-A as well as Section 306 of IPC are not available in the prosecution evidence. He pointed out that learned trial court has already acquitted accused husband from charge under Section 306 of IPC. Questioning the judgment of the trial court for recording guilt for offence under Section 498-A of IPC, firstly, learned counsel took this Court through the testimony of informant father and the answers given by him in cross, and submitted that except testimony of father, there is no other evidence. According to him, cross of informant father also exposes that his version is not only unworthy of credence, but is also full of material omissions and contradictions. Learned counsel reiterated that, the essential ingredients for attracting Section 498-A and the legal requirements to attract offence of cruelty not being available, learned trial court ought not to have accepted prosecution version.

8. As regards the dying declarations are concerned, he took this Court through both the dying declarations i.e. at Exhibits 26 and 31 respectively, and would submit that dying declarations are patently inconsistent. Different versions are stated in each of it. That apart, according to him, there are several shortfalls and infirmities while recording dying declarations and it is evidence from the testimony of

authorities who recorded the same. He took this Court through the substantive evidence of PW2 Senior Clerk as well as the police officer PW3 who recorded dying declarations. According to him, the infirmities pointed out by him are itself sufficient to doubt the very authenticity of the dying declarations. He emphasized that the contents of dying declarations are contrary to the prosecution version and thus, according to him, learned trial court ought not to have relied or considered the same for accepting the case of prosecution.

On behalf of the State :

9. Supporting the judgment and order of conviction under Section 498-A IPC, and criticizing the observations of the trial court for acquittal from Section 306 IPC, learned APP pointed out that the evidence is truthful and convincing on the point of husband suspecting character consistently. According to learned APP, it amounts to mental cruelty. That, only because of the same, deceased poured kerosene, and husband is solely responsible. She has named him in both dying declarations. Even informant father's testimony is intact as regards the ill-treatment is concerned. For all above reasons, she canvasses in favour of the finding of guilt under Section 498-A IPC, but questions the acquittal under Section 306 IPC by submitting

that there was clear abetment and inducement and circumstances created by husband, only due to which, deceased committed suicide. Therefore, according to her, offence of Section 306 IPC was also made out, but learned trial court did not appreciate the same and hence, she seeks to allow the appeal, i.e. Criminal Appeal No. 700 of 2003, by setting aside the judgment and order to that extent.

EVIDENCE BEFORE THE TRIAL COURT

10. The role and status of the five prosecution witnesses and the sum and substance of their evidence can be summarized as under :

PW1 Shivaji, father of deceased, stated that his second daughter i.e. deceased Shobha, was married to accused in May 2000. After marriage, his daughter used to visit his house. After one month of marriage, she told that husband raised doubt on her character and even beat her. That, accused dropped her and did not come into the house and even did not come to take her for a month and during such period also, his daughter complained about beating after doubting her character. On 21.09.2002, mother-in-law of deceased came and assured that her son has reformed and that there would be no ill-treatment and so deceased was allowed to go, but on 27.09.2002, news of burns was received.

PW2 Sau. Nalini Yadav Joshi, a Senior Clerk in the office of Tahsil, deposed about memo being received from Shanipeth Police Station to record dying declaration and accordingly, she went to the hospital, recorded dying declaration and handed copy to the police, which she identified to be at Exhibit 26.

PW3 PSI Chaudhari stated that on 27.09.2002, he recorded dying declaration by visiting Civil Hospital. Regarding the incident, deceased reported to him that there was quarrel with husband and in-laws. On the next day, because of previous day's incident, she poured kerosene and set herself on fire. He identified said statement at Exhibit 31.

PW4 PSI Pawar was the Investigating Officer.

PW5 Dr. Vijaya Wani, who gave certification before recording both the dying declarations.

11. Here, after considering the above submissions and on analyzing the above substantive evidence of five witnesses, admittedly, there is only testimony of informant father and no other relative. Neither appellant nor the State questioned death of Shobha to be due to burns. Even when appellant was chargesheeted for offence under Sections 498-A and 306 of IPC, trial court has acquitted him from

charge under Section 306 IPC which is the subject matter of challenge in the appeal by State. First, let us see whether there is evidence establishing the charge under Section 498-A of IPC.

ANALYSIS

12. As to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark cases of *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.

13. As stated above, father's testimony is the only oral evidence which is to be appreciated. On doing so, it is noticed that he alleges that after one month of marriage, he learnt from his daughter that husband doubted her character and beat her. In spite of stating so in the substantive evidence at Exhibit 16, as pointed out, para 6 of his cross shows that he has lodged report Exhibit 17 one day after the death and he admitted in cross that he lodged report on the basis of oral version reported by his daughter to police. This is a material

omission which goes to the very root of the accusations of doubting character and beating. Para 9 of his cross also shows that there is omission about daughter, after one month of marriage, informing that husband used to beat her. Above is the only testimony on the point of Section 498-A IPC. There is no other corroborative piece of evidence.

14. Here, there are two dying declarations. First one seems to be at Exhibit 31 and it is recorded at 10.30 a.m. on 27.09.2002. Substance of the first dying declaration is that on 26.09.2000 at 9.00 a.m., husband, mother-in-law and father-in-law were quarreling *inter se* between them on account of giving divorce to her. That, husband said to his parents that if she is kept in the house, he would kill her, which annoyed her. Therefore, on 27.09.2002, around 6.30 p.m., while cooking, in the backdrop of previous day's quarrel, and also because of suspicion raised by husband, she poured kerosene and set herself on fire. Her family members doused the fire. Husband, mother-in-law, father-in-law, uncle and others shifted her to the hospital. In this very dying declaration, she has clearly stated that for said incident, she has no complaint and nobody should be held responsible.

15. Second dying declaration at Exhibit 26 seems to be recorded at 10.45 a.m. i.e. in quick succession to Exhibit 31, within a gap of 10 to

15 minutes. In this dying declaration, she states that husband used to regularly suspect her character and pick up quarrels. One day back also, there was quarrel between herself and husband and therefore, at 6.30 a.m., in rage of anger, she incinerated herself. Her family members shifted her to hospital.

16. There are series of judgments on the point of manner of appreciation of dying declaration. Since the judgment in *Khushal Rao v. State of Bombay*, AIR 1958 SC 22 to *Paniben v. State of Gujarat* ; (1992) 2 SCC 774, *Laxman v. State of Maharashtra* ; (2002) 6 SCC 710, *Ganpat Bakaramji Lad v. State of Maharashtra* ; 2011 ALL MR Cri. 2249 *Surendrakumar v. State of Punjab* ; (2012) 12 SCC 120, *Jagbir Singh v. State (NCT of Delhi)* ; (2019) 8 SCC 779 and *Madan v. State of Maharashtra* ; (2019) 13 SCC 464 and very recently in *State of Uttar Pradesh v. Veerpal and Another*, (2022) 4 SCC 741, law on manner of appreciation of dying declaration has been propounded and certain principles have been culled. The principle expounded in above rulings is that dying declaration should be, firstly, voluntary and secondly, it should be truthful and further, inspire confidence of the court. There is no format for recording dying declaration.

17. Here, testimony of informant PW1, more particularly para 8 of his cross goes to show that when he reached Civil Hospital, at that time, process of recording dying declaration was going on. According to him, apart from police, one lady was also recording dying declaration. That time, he himself and his wife were present there. Such answers of informant father show that dying declarations were simultaneously recorded by two authorities, i.e. PW2 as well as PW3, at one and the same time, and that too, in presence of parents.

18. As stated above, in first dying declaration, deceased has herself categorically declared that nobody is to be held responsible and she had no complaint against anybody. Even it is further worth noting that on 26.09.2002, there were alleged quarrels, that too, *inter se* between husband and his parents, as is evident from the text of first dying declaration. Occurrence of immolation is of next day i.e. 27.09.2002. She herself stated that in rage of anger, she poured kerosene. Therefore, here, there is nothing to hold any participation of husband in inducement or in abetment to commit suicide. Precisely for said reason, even trial court has acquitted accused from charge of Section 306 IPC.

19. To sum up, here, there is no convincing evidence even on the point of Section 498-A IPC. Marriage was of May 2000. Father's evidence shows that she had stayed for a month in his house. Mother-in-law allegedly took her on 21.09.2000 and incident is of 27.09.2002. Alleged incident appears to have taken place within a span of one week after she came back to cohabit. Her both dying declarations are only about husband suspecting character. She has not spoken about she being beaten on that count. Only informant father deposed about hearing from daughter that there was beating also, but even that is noticed to be an omission. Therefore, apparently and palpably, evidence on the point of cruelty is weak in nature.

20. As stated above, there is nothing on record to hold either cruelty meted out or abetment, inducement or that there was any intentional act on the part of the husband or he creating circumstances compelling her to end up her life. Hence, this charge is rightly held to be failed. No case is made out on merits by State to interfere in such findings. Hence, I proceed to pass the following order:

ORDER

- I. Criminal Appeal No. 700 of 2003 is dismissed.
- II. Criminal Appeal No. 508 of 2003 is allowed.
- III. The conviction awarded to the appellant Sudhakar s/o Shantaram Sapkale, by learned IVth Ad-hoc Additional Sessions Judge, Jalgaon in Sessions Case No. 170 of 2002 under Section 498-A of IPC on 04.07.2003 stands quashed and set aside.
- IV. The appellant stand acquitted of the offence punishable under Section 498-A of IPC.
- V. The bail bonds of the appellant stand cancelled.
- VI. Fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VII. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]