



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

CRIMINAL APPEAL NO. 717 OF 2003

1. Sambhaji S/o Chudaman Patil,
Age: 23 years, Occu.: Labour,
2. Seetabai W/o Chudaman Patil,
Age: 51 years, Occu.: Labour,
3. Chudaman S/o Raghunath Patil,
Age: 61 years, Occu.: Labour,
4. Pintu @ Chintaman S/o Chudaman Patil,
Age: 26 years, Occu.: Labour,

All R/o. Nipane, Taluka Pachora,
District Jalgaon

.. Appellants
(Ori. Accused Nos.1 to 4 respectively)

Versus

. State of Maharashtra

.. Respondent

...
Advocate for Appellants: Mr. Joydeep Chatterji
APP for Respondent/State: Mr. A. A. Khan

...
WITH
...

CRIMINAL REVISION APPLICATION NO. 403 OF 2003

- . Atmaram S/o Baliram Patil,
Age: 60 years, Occu.: Agri.,
R/o.: Don (digar), Tq.: Chalisgaon,
Dist.: Jalgaon

.. Petitioner
(Ori. Compl.)

Versus

1. Sambhaji S/o Chudaman Patil,
Age: 23 years, Occu.: Labourer,

2. Seetabai Chudaman Patil,
Age: 51 years, Occu.: Labourer,
3. Chudaman S/o Raghunath Patil,
Age: 61 years, Occu.: Labourer,
4. Pintu @ Chintaman S/o Chudaman Patil,
Age: 26 years, Occu.: Labour,

All are R/o. Nipane, Tal-Pachora,
District: Jalgaon

5. The State of Maharashtra **.. Respondents**
(Resp. Nos.1 to 4 are Org. Accused)

...

Advocate for Applicant: Mr. Paresh B. Patil
Advocate for Respondents No.1 to 4: Mr. Joydeep Chatterji
APP for Respondent No.5/State: Mr. A. A. A. Khan

...

CORAM : ABHAY S. WAGHWASE, J.
Reserved On : 26.06.2024
Pronounced on : 03.07.2024

JUDGMENT:

1. Instant appeal arises out of judgment and order passed by learned First Adhoc Additional Sessions Judge, Jalgaon, dated 08.10.2003 in Session Case no. 119 of 2001 convicting present appellants for offence under Section 498-A read with Section 34 of the Indian Penal Code, 1860 (IPC) and sentencing them to suffer rigorous imprisonment for 3 years and to pay fine.

Acquittal of accused from charge under Sections 304-B read with Section 34 of IPC and 306 read with Section 34 of IPC is questioned by original complainant by filing above Revision.

FACTS LEADING TO THE TRIAL ARE AS UNDER

2. In all 4 accused were charge-sheeted by Pachora Police Station on report lodged by PW-1 Atmaram at Exhibit 33 on the premise that Vaishali was married to appellant / husband Sambhaji in the year 2001. After 8 days when informant brought her, she complained about beating and ill treatment by all accused and not providing food for remaining dowry of Rs.9,000/- and for demand of Rs.50,000/- for setting up grocery shop. As above demand was not met Vaishali was abused, beaten and ill treated. On 31.03.2001 Vaishali Vomitted and died and, therefore, father lodged report with Pachora Police Station against husband and in-laws resulting into registration of crime.

After conclusion of investigation and on gathering sufficient evidence against accused, they were made to face trial for charge under Sections 498-A, 304-B, 306 all read with Section 34 of IPC before First Adho Additional Sessions Judge, Jalgaon, who on appreciating the evidence of prosecution, by his judgment and order dated 08.10.2003 convicted appellant Sambhaji, Seetabai, Chudaman and Pintu by holding them guilty for offence under Section 498-A read with 34 of IPC. However, they were acquitted for charge under Sections 304-B read with Section 34, 306 read with Section 34 of IPC.

Above judgment is questioned by appellants convicts as well as complainant who is aggrieved by acquittal of accused from charge

under Sections 304-B read with Section 34, 306 read with Section 34 of IPC, preferred Revision. Both proceedings being arising from a common judgment, are dealt and decided together.

SUM AND SUBSTANCE OF THE EVIDENCE IN TRAIL COURT

3. It seems that prosecution has adduced evidence of in all 11 witnesses. Their role and status and the sum and substance of their evidence is as under :

PW-1 Atmaram informant father deposed that marriage of Vaishali was fixed with Sambhaji and dowry of Rs.32,000/- was fixed. Out of it Rs.23,000/- was paid. For remaining Rs.9,000/- and for additional Rs.50,000/- for setting up grocery shop accused person ill treated his daughter and she reported him, as well as his wife personally saw ill treatment. Vaishali died only due to ill treatment and cruelty meted out to her.

PW-2 Ashok Panch to seizure of postcard Exhibit 38.

PW-3 Mathurabai mother deposed that at the time of marriage Rs.32,000/- was fixed by way of dowry and Rs.23,000/- were given at the time of marriage. Rs.9,000/- had remained by way of balance. After 2 to 4 days her daughter came and accused father in-law came to fetch her and at that time he demanded balance of Rs.9,000/- unpaid dowry and even demanded Rs.50,000/- for grocery shop. She accompanied daughter to her matrimonial house and in her presence accused ill treated her daughter. After 7

to 8 days news was received that Vaishali was serious and she vomited blood. In the undergarment of her daughter postcard was found and her husband has handed it to police.

PW-4 Dr. Ramkrishna Autopsy Doctor who conducted post mortem opined that death was due to poisoning.

PW-5 Panch to Inquest Panchana Exhibit 44, Spot Panchana Exhibit 45 and Seizure Panchanama of Vomit and earth Exhibit 46.

PW-6 Second Panch to seizure of postcard and notebook Exhibit 48.

PW-7 Gangubai Cousin of deceased deposed about Rs.32,000/- dowry being fixed , Rs.9,000/- remained unpaid and after 8-10 days when her sister came she told about demand of remaining dowry and Rs.50,000/- for grocery shop and on such count there to be ill treatment. After residing 10-15 days Vaishali went back. After 8 to 10 days thereafter message was received that Vaishali was serious. All went to Nipane and they found her dead body in Osari.

PW-8, | Investigating Officers.

PW-10 |

and |

PW-11 |

PW -9 Parshuram is Handwriting Expert, who issued opinion Exhibit 74.

SUBMISSIONS

On behalf of the appellants:

4. Criticizing the judgment learned counsel for the appellants pointed out that prosecution had failed to establish the charges beyond reasonable doubt. That, allegations of ill treatment made by prosecution witnesses, more particularly, informant father, mother, cousin are all vague, general and non specific on the point of ill treatment. He took this court though the evidence of all such witnesses and also pointed out to the cross faced by all these witnesses. According to him, there such testimony is firstly not consistent and secondly, there are variances and improvements. According to him, cruelty as contemplated under law is not shown to be meted out to deceased Vaishali. That, there are omnibus allegations without giving nature of ill treatment and without specifying instances of harassment.

5. He further submitted that though informant spoke about dowry amount fixed prior to marriage in presence of several persons and though they are named, none of them is examined. As such, according to him, there is no independent evidence to corroborate testimonies of family members, who have implicated accused out of annoyance.

6. It is his further submission that there is no clinching evidence that only because of dowry demand or cruelty deceased consumed

poison. He pointed to the testimonies of the Autopsy Doctor and C.A. Report and would submit that no poison was detected in the vomit and therefore, there is no convincing or legally acceptable evidence in support of case of suicidal consumption. He pointed out that family members attempted to foist postcard with deliberate intention to implicate accused and even learned trial court rightly discarded such evidence of prosecution. Consequently, it is his submission that when trial court acquitted accused from charge under Section 304-B read with Section 34 of IPC and Section 306 read with Section 34 of IPC, how charge of Section 498-A read with Section 34 of IPC can be fastened. Thus, he questions the findings, legality and sustainability of the impugned judgment and prays to allow the appeal by setting aside the same.

On behalf of the State:

7. Per contra, learned APP supported the judgment by submitting that for remaining dowry accused persons maltreated Vaishali. Barely after few days of marriage she reported demand and ill treatment to her parents and cousin. That witnesses categorically and consistently speak about visit of accused father in law putting demand of remaining dowry amount and even additionally demanding Rs.50,000/- for setting up grocery shop. That, in presence of mother there was ill treatment to

deceased Vaishali and thus according to the learned APP charges of Section 498-A read with Section 34 of IPC are squarely proved.

On behalf of the applicant in Criminal Revision Application:

8. Learned counsel for original complainant took exception to the acquittal of accused from charge under Section 304-B read with Section 34 of IPC and Section 306 read with Section 34 of IPC and would submit that learned trial court has failed to consider and appreciate the evidence in correct perspective and has not taken into account the fact that death has taken place due to harassment and ill treatment within 7 years of marriage. It was apparently a dowry death. There was no other reason for deceased to consume poison. Vaishali died while she was in the company and custody of accused. They have abated the suicide and, therefore, all accused ought to have been held responsible for charge of Section 304-B read with Section 34 of IPC as well as Section 306 read with Section 34 of IPC, however, learned trial court having failed, he prays to allow the Revision and hold the accused guilty for the above charges and punish them as per law.

JUDICIAL PRECEDENTS

9. 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.

ANALYSIS

10. Precise case of prosecution is that Vaishali was married to appellant Sambhaji and an amount of Rs.32,000/- was fixed as dowry. At the time of marriage cash of Rs.23,000/- was given and Rs.9,000/- had remained unpaid. For said amount and for additional Rs.50,000/- to set up grocery shop Vaishali was subjected to cruelty.

11. On carefully sifting the evidence of informant father at Exhibit 28, it is noticed that according to him after marriage Vaishali went for cohabitation and after 8 days he himself went to fetch her and after she was brought, she complained that all accused beat, ill treated her and did not provide sufficient food for remaining dowry of Rs.9,000/- as well as demand of Rs.50,000/-. That, such complaint was made in presence of Tulshiram, Vishram, Uttam Patil, Himmat Patil and Gangubai Patil. Thereafter, her father in law had come to fetch her and he demanded unpaid dowry and Rs.50,000/- and further allegedly said that if there is no money, then to give pair of bullocks. While taking his daughter he again said that if amount is not paid and bullocks are not

given, he would do whatever he want to. Therefore, he suspected and sent his wife along with his daughter and his wife stayed for 3 days at her matrimonial house. During such 3 days in his wife's presence accused husband beat her, ill treated her and rest of the accused abused her. Next day when he himself went, his daughter complained about above unpaid dowry, Rs.50,000/- for shop or a pair of bullocks and she reported cruelty. He further stated that his daughter said that if amount is not given accused persons would kill his daughter.

In cross he answered that he gave Rs.23,000/- at the time of marriage for clothes and for ornaments. He further admitted that it is the accused persons who had borne the expenses of marriage. In para 6 of cross he answered that accused no.3 has 25 Bigha land and that they have a bullock cart and their financial condition is sound, whereas his financial condition is not much sound. Again in cross at para 7 he answered that on the next day of marriage itself Vaishali had come to his place and had resided for 10 to 12 days and that time she did not made any complaint and accused no.3 had come to fetch her and 10 days thereafter he himself went and brought her. He admitted that he never lodged report with police.

Para 11 of the cross has following omissions, which are not finding place in Exhibit 33, "Giving Rs.23,000/- to accused no.3 towards dowry; accused persons not providing sufficient food to his daughter;

accused no.3 threatening that he will do anything if amount is not paid and bullocks is not given; daughter complaining that if the amount is not given accused persons would ill treat her”, these are material omissions.

12. PW-3 mother, stated about amount of Rs.32,000/- fixed as dowry and Rs.23,000/- paid and Rs.9,000/- remained unpaid. According to her, after 2 to 4 days of marriage Vaishali came to their place and stayed for 3 to 4 days. That, when accused no.3 came to fetch her he demanded unpaid dowry and Rs.50,000/- for shop. That, when he was told that her financial condition was poor accused no.3 said that if she has no money then give pair or bullocks and when the same was not given he said that he would do whatever he wanted to and, therefore, getting suspicious she accompanied her daughter to her matrimonial house, stayed for 2 days. In her presence all accused were ill treating her.

13. PW-7 cousin also stated about Rs.32,000/- dowry to be fixed at the time of marriage and Rs.9,000/- remained unpaid. When Vaishali came to maternal house, she told that there was ill treatment for Rs.9,000/- and Rs.50,000/- for grocery shop. Vaishali's father-in-law came to fetch her and he demanded unpaid dowry and Rs.50,000/- for shop.

14. What can be culled out from testimony of parents and cousin is that as pointed out, they are all though consistent on the point of Rs.32,000/- dowry being fixed and Rs.9,000/- remained unpaid, they are found to be not consistent as to when exactly Vaishali came back after marriage and reported ill treatment. According to informant father, after 8 days he himself went to fetch her after marriage. But in cross para 7, he is found to be deposing that on the very next day of marriage itself Vaishali came as per customs and at that time she spent 10 to 12 days and made no complaint of any sought.

His wife PW-3 is found to be deposing that after 2 to 4 days of marriage Vaishali came to their place. Whereas, cousin PW-7 testified that after marriage Vaishali stayed for 8 to 10 days at matrimonial house and, thereafter, her father went to fetch her. Therefore above material shows that when exactly Vaishali came after marriage to her parents' place is not clear. Witnesses are giving different period of arrival.

Further, they are all speaking about hearing from Vaishali that there was ill treatment. None of them has elaborated the nature and form of ill treatment. Cross of informant, para 11, exposed his testimony to be full of omissions and they are material omissions going to the very root of prosecution version about cruelty and ill treatment. It is surprising to note that in spite of PW-3 mother claiming regarding her daughter to be ill treated and beaten in her own presence, no further steps are taken

either to object or to give understanding or even lodge report. On what count there was ill treatment and beating is not elaborated. So called independent witnesses whose name are provided by PW-1 Father regarding demand by accused no.3, are not examined. Therefore, there is no supportive evidence from independent corner. General and omnibus allegations are raised that there was ill treatment without further elaboration.

15. Learned trial judge has already acquitted accused from charges under Sections 304-B read with Section 34 of IPC and Section 306 read with Section 34 of IPC . State had not preferred distinct appeal.

16. However, complainant has preferred Revision questioning the above acquittal of accused from above charges.

Again, for attracting Section 304-B of IPC it is incumbent upon prosecution to establish that soon before death there was cruelty and ill treatment on the backdrop of dowry. Unnatural death should have taken place within 7 years of marriage and such is the legal requirement. Here, above is the only evidence on record. Cross of very informant in para 11 shows that he had not reported about Rs.32,000/- dowry fixed. No distinct evidence in that regard has come on record. There is omission in FIR regarding payment of Rs.23,000/- being paid out of Rs.32,000/- and Rs.9,000/- remaining unpaid and for that there was ill treatment. As

discussed above, cruelty as contemplated under law has not been firmly and cogently established by prosecution. It has not been demonstrated by prosecution that only in backdrop of unpaid dowry demand there was maltreatment and further cruelty and harassment was continuous in nature and only therefore Vaishali committed suicide.

17. Here, at the outset , prosecution has not substantiated that Vaishali consumed poison. Though autopsy doctor has opined death due to poisoning, analysis of the vomit did not yield any poison and it is evident from the very C.A. report issued by the analyser.

Under such circumstances, what resulted death of Vaishali having remained unanswered, it cannot be said that death was unnatural or it was due to suicide in the backdrop of any dowry demand. What exactly happened on 31.03.2001 is not getting clear. For the above said reasons, no fault can be found in the conclusion drawn by the learned trial judge that prosecution failed to establish charge of Section 304-B read with Section 34 of IPC and / or Section 306 read with Section 34 of IPC.

18. To sum up, here, there are general, omnibus, vague allegations of ill treatment and harassment. None of the witness elaborated form or gave instances of ill treatment or beating. Testimony of very informant father apart from being full of material omissions, is

also not finding support from testimony of his own wife. Cousin's evidence is silent about accused no.3 putting demand of unpaid dowry or in leave asking bullocks which is narrated by informant and his wife. For above reasons, family members are themselves not lending support to each other on material count and so charges cannot be said to be proved beyond reasonable doubt.

19. After going through the judgment under challenge it is noticed that learned trial judge has acquitted all accused from charges of Section 304-B read with Section 34 of IPC and Section 306 read with Section 34 of IPC holding that said charges are not proved beyond reasonable doubt but at the same time, guilt has been fastened only for offence under Section 498-A of IPC by relying on above inconsistent testimonies, which are also full of material omissions. Therefore, there is apparent error on the part of the trial court in accepting such versions to record guilty under Section 498-A read with Section 34 of IPC and, hence, interference is called for. Hence, I proceed to pass following order:

ORDER

- I) Criminal Revision Application No.403 of 2003 is dismissed.
Rule discharged.
- II) Criminal Appeal No.717 of 2003 is allowed.

- III) The conviction awarded to appellants Sambhaji Chudaman Patil, Seetabai Chudaman Patil, Chudaman Raghunath Patil and Pintu alias Chintaman Chudaman Patil in Sessions Case No.119 of 2001 by the learned First Ad-hoc Additional Sessions Judge, Jalgaon, on 08.10.2003 for the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code, stands quashed and set aside.
- IV) The appellants stand acquitted of the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code.
- V) The bail bonds of appellants stand cancelled.
- VI) The fine amount deposited, if any, be refunded to the appellants after the statutory period.
- VII) 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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