



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 722 OF 2003

1. Kishor Vajesing Rajput,
Age : 27 Years,
2. Vajesing Devising Rajput,
Age : 52 Years,
3. Navalsing Vajesing Rajput,
Age : 29 Years,
4. Ramesh Vajesing Rajput,
Age : 24 years,
5. Smt. Satyabhama Vajesing Rajpur
**[Appeal is abated against appellant
no.5 vide order dated 23.08.2016]**

All are agriculturists and residents
of Shidwadi, Taluka Chalisgaon,
District Jalgaon.

... Appellants
[Ori. Accused]

Versus

The State of Maharashtra.

... Respondents

.....

Mr. Dhananjay B. Thoke, Advocate for the Appellants.

Mr. K. K. Naik, APP for the Respondent-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 19.06.2024

Pronounced on : 26.06.2024

JUDGMENT :

1. Instant appeal arises out of the judgment and order of conviction recorded by IInd Adhoc Additional Sessions Judge, Jalgaon

dated 20.10.2003 in Sessions Case No. 48 of 2001 convicting appellants for offence punishable under Sections 498-A and 306 of the Indian Penal Code [IPC].

FACTS LEADING TO TRIAL

2. Mehunbare Police Station entertained complaint lodged by Bhagwan, brother of deceased Tarabai, wherein it was reported that after marriage, his sister went to reside with accused husband and in-laws. After 8 to 15 days of marriage, she came and stayed for four to five days. When she came for festivals of Akshay Tritiya, Raksha Bandhan and Diwali, she informed that husband and in-laws were demanding Rs.25,000/- for purchasing vehicle. She was convinced that things would improve later on. On 28.11.2000, message was received that his sister suffered cardiac arrest and died. But when he reached her matrimonial house, he realized that she had consumed poison.

After last rituals, he lodged report resulting into registration of crime and on investigation, all accused persons being tried before the Additional Sessions Judge, who, on appreciating the oral and documentary evidence, accepted the case of prosecution as proved to

the extent of Section 498-A and 306 of IPC. However, all accused were acquitted from offence under Section 304-B of IPC.

Said judgment and order of conviction dated 20.10.2003 is now assailed before this Court by filing instant appeal.

SUBMISSIONS

On behalf of the appellants:

3. Learned counsel for the appellants would point out that apparently, there is false implication. According to him, prosecution miserably failed to establish the charges beyond reasonable doubt. He took this court through the testimony of prosecution witnesses, more particularly PW1 and PW2, and would submit that only two witnesses are examined. Their versions are not inspiring confidence. They are not lending support to each other on material count. According to learned counsel, both of them are silent about nature and mode of ill-treatment. He submitted that answers given in cross by prosecution witnesses are rendering the very case of prosecution doubtful. That, complaint is motivated and is at the instance of PW2. That, after the incident, there was demand of money to not to report and register complaint. On failure to meet such illegal demand, false and afterthought complaint has been filed. According to him, learned trial

court has not appreciated the evidence in correct perspective and has reached erroneous conclusion and hence, he prays to set aside the said judgment by allowing the appeal.

On behalf of the State:

4. In answer to above, learned APP would submit that prosecution has proved the charges beyond reasonable doubt. There was demand coupled with ill-treatment for non-compliance. Victim reported her brother and family members whenever she came home. PW1 brother and PW2 uncle are consistent about ill-treatment and demand. Only because of ill-treatment and cruelty meted out to deceased, she consumed poison in the house of accused. Deceased died within eight months of marriage. There was no other reason for her to end up her life except the maltreatment by accused. Therefore, learned trial court correctly appreciated the evidence and committed no error whatsoever in convicting accused persons for offence under Section 498-A and 306 of IPC and hence, he prays that such well reasoned judgment supported by sound reasons, need not be disturbed.

SUM AND SUBSTANCE OF THE PROSECUTION EVIDENCE

5. In order to prove the guilt of accused persons, prosecution has examined following five witnesses. Their role and status and sum and substance of their evidence is as under:

PW1 Informant Bhagwan deposed about marriage of his sister with accused no.1 on 29.03.2000. According to him, as per custom, after 8 to 10 days of marriage, she came and stayed for 4 to 5 days and returned back to cohabit with accused. However, when she came for festivals like Akshay Tritiya, Rakshabandhan and Diwali, she disclosed about demand of Rs.25,000/- for purchase of vehicle. According to him, she also disclosed that husband's relatives used to ill-treat her and humiliate her parents. On 28.11.2000, news of her death due to heard attack was received, but when they went, he noticed fluid oozing out of her nostrils and after last rituals, he approached Mehunbare Police Station.

PW2 Nawalsing, uncle of deceased, deposed that he resides at a distance of two houses from the house of father of deceased. According to him, whenever she came home, he used to ask her about married life and at that time, she used to tell about demand of Rs.25,000/- for purchasing vehicle. According to him, she also reported that there was abuse to her, humiliation of her parents and other relatives. Because of financial crisis, demand of money was not met. On 28.11.2000, they got the news and so they went to her matrimonial house. There was

smell of insecticide. After inquest and postmortem, last rituals were performed. According to him, because of non-fulfillment of demand, accused must have administered poison to deceased.

PW3 Pandurang, pancha to spot panchanama, has not supported prosecution.

PW4 Dr. Chavan, autopsy surgeon, opined that death was due to asphyxia due to organo-phosphorous compound i.e. Neuocron.

PW5 PSI Somvanshi was the Investigating Officer.

ANALYSIS

6. Re-analyzed the evidence. Out of 5 witnesses, case of prosecution rests on the testimony of brother PW1 and maternal uncle PW2. No other relative or neighbour is examined.

7. On carefully going through the PW1 brother's evidence, which is at Exhibit 37, according to him, marriage of his sister was performed on 29.03.2000 at village Shirwadi i.e. at husband's place. His evidence is that when his sister came for festivals like Akshay Tritiya, Rakshabandhan and Diwali, she disclosed that her both in-laws, husband and brother-in-law were demanding Rs.25,000/- for

purchase of vehicle. She also disclosed that husband's relatives used to ill-treat her and humiliate her parents.

While under Cross, in para 4 he has admitted that accused no.2 owned 25 to 30 acres irrigated land and they also have a tractor since prior to marriage of his sister. He admitted that before marriage itself, he had formed opinion that family of accused no.1 is financially well settled as compared to his own family and that, his sister was married in a well to do family. He merely claims that he used to inform his sister that they have incurred more expenses for marriage and they cannot afford to pay Rs.25,000/-. Therefore, according to the brother, there was demand of Rs.25,000/- and in that background, there was ill-treatment and humiliation of her parents. Which vehicle was intended to be purchased by accused no.1, is not coming on record. What was the ill-treatment and in what form is also not getting clear except version that her parents were being humiliated, but for what purpose they were humiliated is also not elaborated or clear.

8. PW2 uncle claims that whenever his niece came to her parents' house, at that time, on his query about her well being, she used to disclose that all accused were demanding Rs.25,000/- for purchasing vehicle. This witness, who resides in the very neighbourhood, has not

stated, as like PW1, that when she came for festivals of Akshay Tritiya, Rakshabandhan or Diwali, at that time she made above disclosure. Even according to him, she used to merely disclose that there was abuse to her and humiliation of her parents and other relatives. Such allegations are in fact general and omnibus in nature.

9. In all six accused are made to face trial. Who amongst them did what and who ill-treated her, in what form, and who amongst them abused her or humiliated her parents is even not stated by PW2. Therefore, with such quality of evidence, it cannot be said that victim was subjected to physical or mental cruelty so as to attract Section 498-A of IPC.

10. What law contemplates for attracting Section 498-A IPC is reiterated time and again in series of judgments 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.

11. In the considered opinion of this Court, on mere allegation of abuse for demand of Rs.25,000/- and humiliation of her parents, which is also non-specific, requirements of Section 498-A IPC cannot be said to be met. On the other hand, brother has admitted that financial condition of husband was sound and they had over 30 acres of irrigated land and even marriage was said to be performed at the house of accused. Question therefore arises is, why would accused demand Rs.25,000/- for vehicle.

12. There is charge of abetment to commit suicide. Again on that point, though PW1 and PW2 are attributing suicide only because of demand and ill-treatment, and even though Investigating Officer in his evidence stated that investigation revealed that deceased was ill-treated by her husband and relatives and she was compelled to consume poison, answers given by the Investigating Officer in cross, more particularly para 3, are worth taking note of, and hence relevant portion of para 3 is reproduced as under:

“....On 29.11.00 one Wansing Patil, whose statement was recorded, produced one suicidal note alleged to be written by deceased. It is true that contents of note were that deceased had committed suicide on her own, and she was not harassed by any one and no one is responsible for her death.....”

After answering above, Investigating Officer has volunteered that handwriting of the suicidal note was not of deceased as per say of maternal uncle and other relatives of deceased. He admitted that he did not feel it necessary to sent the suicidal note to handwriting expert to ascertain the author of the same.

Such answers in cross of the Investigating Officer create possibility of suppression of material. Investigating Officer has admitted about production of suicidal note by one Wansing, but he is not examined for the best reasons known to the Investigating Officer. Above material shows that surprisingly only on the alleged denial of suicidal note to be in handwriting of deceased, by uncle and relatives of deceased, the Investigating Officer has refrained from sending the suicidal note to the handwriting expert. Such conduct of very Investigating Officer creates doubt about fair investigation.

13. For attracting Section 306 IPC, law is fairly settled that there has to be abetment, inducement coupled with *mens rea*. In the instant case, there is nothing to show that husband and other in-laws were present in the house in the proximity to the time of alleged consumption of insecticides. Again, if we visit cross of the

Investigating Officer, more particularly para 3, we find him answering and admitting that during investigation, it did transpire that father-in-law of deceased had left house in the morning for attending duties at Chalisgaon. He further answered that he does not remember whether it also transpired that at the time of incident, husband of deceased was in his field. He also answered that he does not remember whether elder brother-in-law of deceased had been to Chalisgaon along with milk can. It is pertinent to note that he has not specifically denied presence of husband and brother-in-law, but has merely stated that he does not remember whether during his investigation it transpired that accused husband and brother-in-law were in the field and at Chalisgaon respectively.

Therefore, such answers from very Investigating Officer and when he has further candidly admitted in cross para 2 that statements of neighbours of matrimonial house of deceased, as were not favourable, he did not file it on record, categorically show that there is suppression of material evidence by prosecution.

14. Specific defence put forth by learned counsel for the appellants is that, to avoid filing complaint, complainant party has made demand of money and on denial to meet the same, false and

afterthought complaint has been lodged after delay of more than 24 hours. Cross of brother and uncle is apparently on such lines, though they have denied. However, in spite of occurrence coming to light and to the knowledge of complainant party on 28.11.2000 and in spite of presence of police party at the time of AD, inquest, spot panchanama till postmortem, there is no prompt complaint. Rather, complaint is lodged on 29.11.2000 i.e. on the next day afternoon.

15. Consequently, considering the omnibus and general allegations about ill-treatment for demand of Rs.25,000/- coupled with above answers given by very Investigating Officer while under Cross, case of prosecution itself comes under shadow of doubt as regards demand, ill-treatment and abetment. There is material suggesting probability of complaint being lodged on account of non-fulfillment of demand of money. Even otherwise, in the case in hand, necessary ingredients for attracting Sections 498-A and 306 IPC are missing and as such, benefit of doubt is required to be extended. Consequently, appellants succeed. Hence, I proceed to pass the following order.

ORDER

I. The appeal is allowed.

- II. The conviction awarded to the appellants Kishor Vajesing Rajput, Vajesing Devising Rajput, Navalsing Vajesing Rajput and Ramesh Vajesing Rajput, by learned IInd Adhoc Additional Sessions Judge, Jalgaon in Sessions Case No. 48 of 2001 under Sections 498-A and 306 of IPC on 20.10.2003 stands quashed and set aside.
- III. The appellants stand acquitted of the offence punishable under Sections 498-A and 306 of IPC.
- IV. The bail bonds of the appellants stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellants after the statutory period.
- VI. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]