



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 CRIMINAL APPEAL NO. 724 OF 2003

Santosh s/o Deoram Borse,
Age : 25 years, Occu : Agri.,
R/o : Takli-Kd., Tq. : Jamner,
District Jalgaon.

... Appellant
[Orig. Accused No.1]

Versus

The State of Maharashtra

... Respondent

.....
Advocate for Appellant : Mr. U. B. Bondar
APP for Respondent-State : Mrs. Uma S. Bhosale
.....

CORAM : ABHAY S. WAGHWASE, J.

DATED : 19 JUNE 2024

ORAL JUDGMENT :-

1. Conviction recorded by learned IIIrd Additional Sessions Judge, Jalgaon in Sessions Case No. 76 of 2003 for offence punishable under Section 498-A of the Indian Penal Code [IPC] vide judgment and order dated 01.10.2003 is taken exception to, by filing instant appeal.

FACTS LEADING TO TRIAL ARE AS UNDER

2. Deceased Jyoti was married to appellant Santosh on 01.05.2002. After marriage, she went to cohabit with her husband at Takli (kd.), Taluka Jamner, District Jalgaon. After one month, when

she returned home, she reported her family members that there was demand of money by all accused. That, she was beaten and ill-treated. Hearing her such complaint, she was not allowed to go back to cohabit for a period of six months. Only when husband and his sister came to fetch her, and on their assurance to treat her properly, she was allowed to go back. Again message was received from daughter Jyoti that she was not provided clothes in spite of her clothes to be torn and therefore, informant mother sent clothes for her daughter with her sisters. Such sisters, during their visit, met deceased Jyoti, who, while crying, reported that there was demand and ill-treatment. It was decided to bring her back, however, meanwhile message was received that Jyoti fell in the well and died. Therefore, on report of PW1 mother, crime was registered and on investigation, accused persons were chargesheeted and tried by learned Additional Sessions Judge, Jalgaon vide Sessions Case No. 76 of 2003.

3. In support of its case, prosecution adduced evidence of in all 7 witnesses. Learned trial court appreciated the oral and documentary evidence and by its judgment and order dated 01.10.2003, convicted appellant Santosh and accused no.3 Kasturabai for commission of offence punishable under Section 498-A of IPC. Accused husband was

sentenced to suffer imprisonment for one year, whereas accused no.3 was sentenced to suffer imprisonment till rising of the court. All accused stood acquitted from offence under Section 306 of IPC. Conviction of husband under Section 498-A of IPC is now taken exception to by filing instant appeal.

SUBMISSIONS

On behalf of the appellant :

4. Learned counsel for the appellant pointed out that there is no cogent, reliable and trustworthy evidence in support of charge under Section 498-A of IPC. He pointed out that there are general, omnibus and bald allegations of ill-treatment and demand. He pointed out that none of the witnesses have clarified, elaborated or specified nature or mode of ill-treatment. That, evidence of prosecution witnesses is also silent as to what was the demand and when such demand was raised and for what purpose. That, there was no convincing evidence. Therefore, according to him, prosecution had miserably failed to bring home the charge framed under Section 498-A IPC.

5. According to learned counsel, essential ingredients for attracting the charge are missing in the prosecution evidence. He pointed out that, stay of deceased at her matrimonial home was only

for one month or so. Remaining period was spent by her at her mother's house. That, prosecution had failed to establish suicidal death and therefore there was acquittal. However, in spite of no evidence in support of charge under Section 498-A IPC, husband alone has been convicted. According to him, such appreciation on the part of learned trial court is without any foundation or convincing evidence and so he prays to allow the appeal.

On behalf of the State :

6. Learned APP supported the conviction by pointing out that report was promptly lodged. That, deceased Jyoti used to inform ill-treatment and beating on account of demand. According to learned APP, there are several instances on the basis of which ill-treatment could be inferred. She pointed out that basic needs of deceased were not met. She was deprived of good clothing. She was also not provided sufficient food. Hence, according to learned APP, such instances clearly show that there was mental cruelty. That, mother and aunt, who are examined, have deposed to that extent. That, learned trial court has correctly appreciated the evidence and committed no error in returning the guilt for offence under Section 498-A IPC. Hence, she prays to dismiss the appeal for want of merits.

EVIDENCE BEFORE THE TRIAL COURT

7. Prosecution has adduced evidence of following witnesses to establish its case.

PW1 Nandabai, mother of deceased Jyoti, in her evidence at Exhibit 43 deposed that her daughter was married to appellant accused no.1. She went to reside and cohabit with her husband, parents-in-law and brother-in-law. She came back to the house after one month and that time she told that accused nos. 1 and 3, i.e. husband and mother-in-law beat her, ill-treated her and demanded money. She was not sent back to her matrimonial home for six months. Husband and his sister came to fetch her and only on assurance to treat her well, she was sent with them. However, they did not treat her properly. Two aunts of this witness, namely Sonabai and Kausabai were sent to her daughter's house. Her daughter told them too that ill-treatment was continued. No proper clothes were given to her. Aunts told that there used to be comments for not preparing good food. She then deposed that message was received that Jyoti died.

PW2 Gopal, Police Patil of village Takli stated that on 28.03.2003, he learnt that Jyoti fell in the well and he passed the information to police station i.e. *khobar* Exhibit 46.

PW3 Sonabai, aunt of informant Nandabai, deposed that daughter of Nandabai, namely, Jyoti was married to accuse no.1 and she went to reside with her husband and in-laws. That, one month

after marriage, Jyoti came and informed that there was ill-treatment to her at matrimonial house and accused no.3 commented and accused her for not preparing good food. That, this witness and Kausalyabai visited Jyoti when they had been to village Takli to attend a marriage. That time Jyoti told them that there was ill-treatment as earlier. Accused no.3 made complaint that Jyoti did not cook food properly. On third day, message was received that Jyoti fell in the well and died.

PW4 Parvatabai, grandmother of deceased, stated that there was severe ill-treatment by accused persons on account of demand of money. Accused no.1 and his sister came to fetch deceased when she was not sent for six months. However, after 15 days, her grandson Aakash went and he met Jyoti, who told him about she being subjected to ill-treatment. Her cloths were torn. Therefore clothes were sent to her by her mother. On the third day, message about Jyoti falling in well was received.

PW5 Bhimrao stated that on 28.03.2003, villagers told that Jyoti had been to fetch water and she fell in well. So he jumped and fetched out Jyoti from the bottom.

PW6 Police Head Constable Chhagan Pardhi is the PSO who noted the report and registered crime.

PW7 API Kendre is he Investigating Officer who deposed about all steps taken by him during investigation till filing chargesheet.

8. Here, initially charge was framed for offence under Sections 498-A and 306 of IPC. Learned Additional Sessions Judge, on appreciating the evidence, held that guilt for offence under Section 498-A IPC is proved only against appellant husband and mother-in-law. However, learned trial court sentenced appellant husband alone to suffer imprisonment for one year and mother-in-law was made to suffer sentence till raising of the court.

LEGAL POSITION

9. Law is fairly settled that, for attracting the charge under section 498A of IPC, prosecution is duty bound to prove following essential ingredients :-

- “(1) A woman was married;*
- (2) She was subjected to cruelty;*
- (3) Such cruelty consisted in -*
 - (i) any lawful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life, limb or health whether mental or physical;*
 - (ii) harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on account of failure of such woman or any of her relations to meet the lawful demand ;*
 - (iii) the woman was subjected to such cruelty by her husband or any relation of her husband.”*

JUDICIAL PRECEDENT :

10. As to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark case of ***Giridhar Shankar Tawade v. State of Maharashtra*** (2002) 5 SCC 177, where the Court dwelling upon the scope and purport of Section 498-A IPC has held as under:

“The basic purport of the statutory provision is to avoid ‘cruelty’ which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word ‘cruelty’ as is expressed by the legislatures : Whereas explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed in equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of ‘cruelty’ in terms of Section 498-A.” [emphasis added]

Similar views are echoed in ***Gurnaib Singh v. State of Punjab*** (2013) 7 SCC 108, wherein it is held as under:

“Clause (a) of the Explanation to the aforesaid provision defines “cruelty” to mean “any willful conduct which is of such a nature as is likely to drive the woman to commit suicide”. Clause (b) of the Explanation pertains to unlawful demand. Clause (a) can take in its ambit mental cruelty.”

In State of Andhra Pradesh v. M. Madhusudhan Rao (2008) 15 SCC 582, the Hon’ble Apex Court has 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”.*

In *Bhaskar Lal Sharma v. Monica* (2009) 10 SCC 604, the Hon’ble Apex court reiterated the essential ingredients for the said offence and pleadings which are necessary in that regard.

Very recently in the case of *K. Subba Rao v. The State of Telangana* (2018) 14 SCC 452, following observations are made:

“6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.”

11. Keeping above legal position in mind, evidence of prosecution is to be scrutinized.

ANALYSIS

12. On complete re-appreciation and critical analysis of the evidence, here, evidence of PW1 informant mother, PW3 aunt of informant and PW4 grandmother of deceased is only of relevance. On re-analyzing their evidence, it is seen that after one month of marriage, Jyoti came and she allegedly reported that there was ill-treatment to her coupled with demand. But neither informant Nandabai nor other relatives are categorical about nature and mode of ill-treatment or when such instances took place. They are found to be only deposing that there was demand. However, how much was the amount demanded and for what purpose, is not finding place in the testimony of any of the witnesses.

13. Learned APP, who supported the judgment, would strenuously submit that from the evidence of mother and other witnesses, it is evident that deceased was not provided good food. That, she was not allowed to go back and made to stay at maternal house for six months and only on assurance by accused husband, she was sent back. Again accused no.3 did not share food or gave sufficient food and even she

was made to wear torn clothes. Therefore, according to learned APP, such material indicates that there was ill-treatment.

There is no force in such submission. In spite of mother dispatching clothes, still PW3 aunt speaks about ill-treatment being continued to deceased. However, even at that point of time, what was the ill-treatment is not made clear. Evidence about cruelty is patently missing here.

14. Therefore, on taking overall view and on re-appreciation, there was no convincing evidence about ill-treatment or demand. There are general, omnibus and bald allegations about demand and ill-treatment without elaborating its mode and nature. With such weak and fragile evidence, in the considered opinion of this Court, trial court ought not to have recorded guilt of husband for offence under Section 498-A IPC. Essential ingredients for attracting Section 498-A IPC as contemplated in law, are not available in the evidence and therefore, interference in such judgment is called for. Hence, I proceed to pass the following order :

ORDER

I. The appeal is allowed.

- II. The conviction awarded to the appellant Santosh s/o Deoram Borse, by learned IIIrd Additional Sessions Judge, Jalgaon in Sessions Case No. 76 of 2003 under Section 498-A r/w 34 of IPC on 01.10.2003 stands quashed and set aside.
- III. The appellant stands acquitted of the offence punishable under Section 498-A r/w 34 of IPC.
- IV. The bail bond of the appellant stands cancelled.
- V. Fine amount deposited, if any, be refunded to the appellant after the statutory period.

[ABHAY S. WAGHWASE, J.]