



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

CRIMINAL APPEAL NO. 820 OF 2003

Balu Raghu Sasane
Age: 30 years, Occu.: Agricultural
Labourer, R/o. Karjod,
Taluka – Raver, District – Jalgaon.

....Appellant
(Ori. Accused No.1)

Versus

State of Maharashtra

.....Respondent

.....
Advocate for Appellant : Mr. Joydeep Chatterji
APP for Respondent : Mr. Rajdeep D. Raut
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 21 JUNE, 2024

PRONOUNCED ON : 01 JULY, 2024

JUDGMENT :-

1. Judgment and order passed by the learned II Ad-hoc Additional District Judge and Asstt. Sessions Judge, Jalgaon dated 09-12-2003 in Sessions Case No.105 of 2002, is taken exception to by appellant by filing instant appeal on account of his conviction for offence under Sections 498-A and 306 of the Indian Penal Code (IPC).

PROSECUTION CASE IN BRIEF

2. Crime was registered on the strength of report lodged by PW1 Chagan alleging that, his daughter Radhabai was married with accused no.1. For initial period of two years, everything was smooth,. Thereafter, husband used to get drunk and beat deceased. Because of the said treatment, deceased used to come and stay with father. She also reported about suspicion on her character by accused no.1. Accused nos.2 and 3 used to instigate accused no.1 husband to subject her to ill-treatment. Barely after 5-6 days from the date she was taken back by husband, she committed suicide by jumping in well.

Therefore, father lodged report, which was made basis of registration of crime and finally it was investigated by PW6 Zade (PSI, S.D.P.O.) and accused came to chargesheeted and tried before the learned II Ad-hoc Additional District Judge and Asstt. Sessions Judge, Jalgaon in Sessions Case No.105 of 2002.

3. During trial, prosecution has adduced evidence of in all six witnesses and also relied on documentary evidence like FIR, inquest panchanama, post mortem report etc. After appreciating oral and documentary evidence by the learned trial Court, case of prosecution

has been accepted as against accused no.1 husband for offence under Sections 498-A and 306 of the Indian Penal Code (IPC), whereas accused nos.2 and 3 stood acquitted.

Appellant husband, who alone stood convicted, has now preferred instant appeal on various grounds raised in the appeal.

SUBMISSIONS

On behalf of appellant :

4. Criticizing the impugned judgment, learned Advocate for the appellant pointed out that there are general and omnibus allegations about beating after consumption of liquor. According to learned Counsel, there is no convincing, cogent evidence in support of charge under Sections 498-A and 306 of the IPC. It is pointed out that testimony of child has been considered by the learned trial Court without appreciating the law regarding its evidentiary value. He took this Court through the evidence of child and submits that apparently child has been tutored. It is pointed out that on one hand, child spoke about he to be sleeping and at the same time, he also deposed about seeing his mother going towards well alongwith accused father. Thus, according to learned Counsel, testimony of child cannot be taken recourse to by prosecution. He pointed out that

circumstances at the scene of occurrence clearly suggests that deceased had been to fetch water. That the container and vessels taken for water are also found near the well. According to him, possibility of accidental fall, while leaning and fetching water from well, cannot be ruled out. That there is no evidence as regards any incident of ill-treatment before she left house. According to him, unfortunately learned trial Court has ignored such circumstances emanating from the prosecution evidence. That in absence of cogent, reliable evidence about ill-treatment and abetment, guilt has been recorded. According to him, such judgment is not sustainable in the eyes of law and therefore, he prays to interfere in the impugned judgment.

In support of his case, he seeks reliance on the judgment of this Court passed in Criminal Appeal No.112 of 2002 dated 19-06-2024 in the case of *Ijaj Ahmad Riyaz Ahmed Qureshi and others v. The State of Maharashtra*.

On behalf of State :

5. Per contra, learned APP for the State would submit that evidence of informant / father of deceased is itself worthy of credence. That he has deposed about continuous beating after

getting drunk. That there was physical cruelty and therefore, deceased repeatedly left company of the husband and went to stay with her father. It is pointed out that informant father deposed about giving understanding by indulging influential persons of the village and only thereafter, he sent his daughter with accused husband but barely a week there after, deceased died unnatural death.

Learned APP pointed out that testimony of very child of deceased and accused no.1 is also clear, cogent and convincing about ill-treatment given to his deceased mother. That child narrated about continuous beating by accused no.1 to deceased and that getting fed up with such beating, deceased committed suicide. That there was no other reason for deceased to commit suicide. Therefore, according to learned APP, learned trial Court committed no error in accepting case of prosecution as proved and thus, rightly convicted accused. Therefore, he prays to dismiss the appeal for want of merits.

EVIDENCE ON BEHALF OF PROSECUTION IN TRIAL COURT

6. In support of its case, prosecution has adduced evidence of in all six witnesses. Sum and substance of their evidence is as under:

PW1 Chagan Wana Tayade, informant is father of deceased

Radhabai. He deposed at exh.10 about marriage of his daughter with accused no.1 and accused nos.2 and 3 to be elder brother and sister-in-law of accused. He deposed that for two years, deceased Radhabai was treated properly. That thereafter, accused no.1 husband, after consuming liquor, beat his daughter. That because of it, she had come to stay with him for 10 to 12 occasions. She also informed about suspicion on her character by accused and that accused nos. 2 and 3 instigated husband. That attempt to give understanding was made by involving villagers. That thereafter, she was sent to cohabit with husband. That 5-6 days thereafter, message of her death was received. That he went to said village and come across dead body of Radhabai in the well. That after rituals, he lodged report.

PW2 Santosh Balu Sasane is son of deceased Radhabai and accused no.1 husband. He stated that accused no.1 is his father. That accused no.2 is brother of his father and accused no.3 is wife of brother of his father. He deposed that his father used to beat his mother. That he used to consume liquor. That on that day, in the morning, his father threw tea on the person of his mother, then she went to bring water and there she jumped in the well. He deposed

that after his father threw tea on the person of his mother, he threatened to beat her. Therefore, he himself, his younger brother and his mother went to village Atawada. There his father beat his mother and threatened to beat her. From Atawada, they went to village Nachankheda, his maternal uncle's village. That his father followed them there. That he again beat his mother. That after returning home, while he was sleeping, his father took his mother to the well. That the next day morning some women saw his mother. That his grandfather arrived in the evening and he claims that he told his grandfather that his father ran away after killing his mother.

PW3 Lalchand Lahanu Sasane is Pancha to inquest panchanama. He did not support prosecution.

PW4 Dr.Vijay Dinkar Gade is the Autopsy Doctor. After narrating the internal and external injuries noted by him, he opined that death was due to hemorrhagic shock due to laceration of the brain, lungs, spleen and kidney.

PW5 Waman Khandu Sasane is the Pancha to spot panchanama. He did not support prosecution.

PW6 Tanaji Karbhari Zade is the Investigating Officer, who narrated all the steps taken by him during investigation. That after investigation, he chargesheeted accused.

ANALYSIS

7. On careful re-appreciation of the evidence, here though as many as six witnesses are examined, crucial evidence is only of informant father PW1 Chagan and his son PW2 Santosh.

Sum and substance of **PW1** Chagan, informant's evidence is that after marriage of his daughter with accused no.1, everything was smooth for two years but thereafter, after consuming liquor, accused no.1 beat his daughter; on 10-12 occasions she came and informed him; shed told him that he suspected her character and therefore, before sending her, a meeting was conducted involving 4-5 influential persons of the village to give understanding to the accused.

However, in his initial **cross-examination**, he is unable to answer which all times and during which year out of nine years' cohabitation, she had come to stay with him because of beating. He is also found to be admitting that he has no personal knowledge about the matrimonial life lead by his daughter at Karjod. The above

evidence about consuming liquor and beating, 5-6 days before death she leaving father's house and going to stay with accused only on understanding being given in presence of influential persons, is apparently an omission. These are material omissions going to the root of the prosecution case.

8. Next crucial witness for prosecution is **PW2** Santosh and he is son of appellant and deceased and a child witness. It is worth noting that, while recording his evidence, learned trial Court does not seem to have followed the precedent of putting up preliminary questions to ascertain the competence of the child witness to understand the purport of his evidence in the Court and his capacity to answer the questions posed to him. Apparently, merely it is noted that child is intelligent to answer rationally and so no oath is administered. Be it so.

Before reanalyzing the child witness account, it would be profitable to reproduce the relevant provisions and also give a brief account of the settled legal position on the point of evidentiary value of a child witness account and manner of its appreciation.

9. Section 118 of the Indian Evidence Act deals with the

competence of child witness to adduce evidence. It is primarily expected of a Court recording child witness account to first get ascertained whether the child understands the questions put to him and give rational answers and it is also further expected of a Court to get satisfied that the child witness account is free from tutoring and is truthful and worthy of credence. This is the fundamental principle to be borne in mind while appreciating child witness account.

It is fairly established position that evidence of child witness must be evaluated with due care and caution. Though it is not a rule that Court should seek corroboration before relying on child testimony, but by way of prudence, supportive evidence should be looked upon. Child witnesses are susceptible and prone to tutoring and so their evidence has to be assessed with caution and circumspection. When there is material suggesting the child being tutored, the Court can reject his entire testimony or in part. It is also equally settled that if the child testimony inspires confidence, even sole testimony of the child can be taken recourse to to accept the case of prosecution. However, it all depends on the facts and circumstances of each case.

Legal propositions to the above extent has been enunciated in the following judgments:

Pradeep v. State of Haryana, 2023 SCC OnLine 777; *Hari Om Alias Hero v. State of Uttar Pradesh*, (2021) 4 SCC 345; *Pramila v. State of Uttar Pradesh*, (2021) 12 SCC 550; *State of Madhya Pradesh v. Rajaram Alias Raja*, (2019) 13 SCC 516; *State of Rajasthan v. Madan Alias Madaniya*, (2019) 13 SCC 653; *Bannareddy v. State of Karnataka*, (2018) 5 SCC 790; *Panchhi v. State of U.P.*, (1998) 7 SCC 177.

10. In above backdrop and legal requirements, evidence of **PW2** Santosh is re-appreciated and reevaluated. The substance of his testimony at exh.12 is that, at the time of incident, he was residing with his parents and younger brother at Karjod. In examination-in-chief, he gave the name of his mother and deposed that his father used to beat his mother. That his father used to consume liquor. On the day of incident, in the morning, his father threw tea on the person of his mother, and threatened to beat her. His mother, he himself and his brother went to village Atawada as his father beat his mother and threatened to beat her. From there, they went to village Nachankheda to his maternal uncle's place. His father reached there in a Tractor. His father beat his mother there also and they all returned back to Karjod. He deposed that while he was sleeping, his father took his mother to the well. Next day morning, some women saw his mother.

11. The child is extensively **cross-examined**. Only relevant cross-

examination is dealt and discussed here.

He answered that his mother died on Monday. He denied that on the day of death of his mother, he was in the school throughout day. He is unable to state what is meant by threat. He admitted that he used to obey his grandparents and maternal uncle. He further answered that none of his grandparents love him. He is unable to state how many years back he lost his mother. He answered that his grandmother accompanied him to attend the Court but answered that she said nothing.

In further cross-examination, he answered that he had been to well with his mother, which is a public well. He admitted that one has to fetch water by standing on the steps inside the well. He answered that water was discharged from other tube-well into the well and also admitted that unless one goes on the steps inside the well, water cannot be drawn. He admitted that on the day on which his mother died, she was fetching water from the well.

In further cross-examination, he denied that he falsely deposed that his father beat his mother after consuming liquor i.e. on the say of his maternal uncle. He also denied about he falsely deposing regarding his father throwing tea on the person of his mother. He further answered that when his grandfather arrived, he disclosed that

his father killed his mother.

12. On carefully re-appreciating and reevaluating the child witness testimony discussed above, it is noticed that child claims that his father used to consume liquor and beat his mother. It is noticed that his evidence suggests that one day prior to the incident, after his father allegedly threw tea on person of his mother and beat her, they all went to Atawada and then to Nachankheda at his maternal uncle's place. According to him, his father reached there also and beat his mother at maternal uncle's place and brought them back to Karjod. But surprisingly, there is no distinct evidence in this regard. The maternal uncle to whom they allegedly went that day, is not examined by investigating machinery and prosecution for the best reasons known to them so as to accept the version of child regarding father beating his mother prior to one day of death. He is put up with grandparents and grandmother brought him to Court.

Therefore, in the light of above material, it is unsafe to give credence to his testimony.

13. Here prosecution does not dispute that at the well there were utensils and vessels like pitcher and pot. Child admitted that his

mother went to fetch water on well. Investigating Officer has also admitted in cross-examination that one pitcher and small container was lying near the well. But surprisingly, Investigating Officer answered that he did not seize the same as according to him, it was not necessary.

Investigating Officer has also candidly admitted in cross-examination that there is scarcity of water in the village and water is required to be extracted from bore well and further let out in the well by the use of pipe from outside. He admitted that one has to lean to take water. Thus, such circumstances creates possibility of deceased leaning to fetch water and falling accidentally.

Spot panchanama exh.21 carries description of surroundings of the well as well as its length, breadth, depth till water. The well is said to be constructed to some extent and there is concrete and angles extending from all sides.

14. **PW4** Dr.Gade, Autopsy Doctor has enumerated as many as ten injuries, which are in the nature of CLW to right occipital part, lumbar region, right hand fingers, lower limbs, right foot, left foot ankle joint and several other abrasions over face, head, knees, right foot, left foot, grazing abrasions on chest, right hand, wrist, palm, left

upper arm, back, right scapular and on spinal column etc.

After narrating above injuries, Autopsy Doctor in examination-in-chief stated that cause of death was due to “hemorrhagic shock due to laceration of the brain, lungs, spleen and kidney”. In paragraph 4 of examination-in-chief itself, Autopsy Doctor has opined that external as well as internal injuries may be possible by fall from height on some hard and blunt object i.e. if a person fell in a fully constructed well having beams, iron angles, projecting outside from RCC.

15. Here as stated above, spot panchanama exh.21 carries description about existence of projections and angles. Autopsy Doctor further opined that sudden death may occur due to external and internal injuries i.e. before touching the water level. Here exh.21 indicates depth of water to be 8 to 10 feet only. According to Autopsy Doctor, water will not enter into body if death takes place due to external and internal injuries while falling. He also deposed in examination-in-chief itself that he did not find water in the abdominal cavity. Therefore, taking such material into consideration, the case does not appear to be of suicide by jumping. Number and nature of injuries noted by Autopsy Doctor, coupled with

circumstances inside the well could be responsible for the multiple injuries. If suicide is planned to be committed, then a person would throw himself into the water directly. Autopsy Doctor has not attributed death due to drowning.

Consequently, in the light of above discussion, there is reason to hold that Radhabai must have fallen accidentally while fetching water.

16. On complete re-appreciation of available evidence, more particularly that of PW1 Chagan and PW2 Santosh, material on record does not support prosecution version about deceased being beaten and only therefore, she getting fed up and deciding to end up her life by jumping in the well.

17. PW Zade, Investigating Officer has placed on record *Khabar* exh.20 i.e. the first information received by Police and the sum and substance of the same in translated version is as under.

“The informant reported that on 13.06.2002 at 16.15 hrs at the well at Karjat Grampanchayat, Krishna Manohar Varade, a water supplier, informed and personally verified that the above deceased person fell into the well and sunk while filling water”

(As translated by Sr. Translator, High Court, Aurangabad)

18. The person, who reported about a lady falling in the well while

fetching water, namely Krushna Manohar Warade, is also surprisingly neither examined by Investigating Officer nor made witness in the Court, for the best reasons known to the prosecution. It apparently seems an attempt to hold back material witness. It amounts to suppression of material evidence and therefore, adverse inference also deserves to be drawn against prosecution.

SUMMATION

19. To sum up, here prosecution has not established beyond reasonable doubt that there was consistent harassment or maltreatment to deceased and resultantly getting fed up of the incessant cruelty meted out to her, she committed suicide by jumping in the well.

The facts in the case *Ijaj Ahmad Riyaz Ahmed Qureshi and Others* (supra) relied on by the appellant and facts in the case in hand are quite distinguishable and cannot be applied to the present case.

20. Perused the judgment under challenge. Learned trial Judge has apparently relied only on the examination-in-chief of PW1 Chagan and PW2 Santosh. Answers given by informant PW1 Chagan in cross-examination does not seem to have been appreciated and

considered. Child's witness account has not been approached and appreciated cautiously and carefully. Even the settled law, while appreciating child witness testimony, has not been taken into account and findings seem to have been arrived at by the learned trial Court. Therefore, it is a fit case to interfere by allowing the appeal. Accordingly, I proceed to pass following order :

ORDER

- I) Criminal Appeal No.820 of 2003 is allowed.
- II) The conviction awarded to appellant Balu Raghu Sasane in Sessions Case No.105 of 2002 by the learned II Ad-hoc Additional District Judge and Asstt. Sessions Judge, Jalgaon on 09-12-2003 for the offence punishable under Sections 498-A and 306 of the Indian Penal Code, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under Sections 498-A and 306 of the Indian Penal Code.
- IV) **The bail bond of 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**)
JUDGE