



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 825 OF 2003

1. Pradip s/o Nabha Daga Nerpagare (Patil)
Age 30 yrs. Occ. Agri.
2. Nabha Daga Patil
age 59 yrs. Occ. Agri.
**[Appeal abated as against appellant no.2
vide order dated 16.06.2016]**
3. Lahyabai Nabha Patil,
Age 53 years, Occ. Household,
all above r/o Village Vadji,
Tq. Bhadgaon, Dist. Jalgaon. ... Appellants

Versus

1. The State of Maharashtra ... Respondent

.....
Mr. R. N. Dhorde, Senior Advocate a/w Mr. Sanjay S. Dudhane,
Advocate i/by Mr. A. R. Rathod, Advocate for the Appellants.
Mr. K. K. Naik, APP for the Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 09.07.2024

Pronounced on : 11.07.2024

JUDGMENT :

1. By this appeal, the appellants are taking exception to their conviction for offence under Section 306, 498-A r/w 34 of the Indian Penal Code [IPC] recorded by the 4th Adhoc Additional Sessions

Judge, Jalgaon by judgment and order dated 29.11.2003 passed in Sessions Case No. 139 of 2002.

FACTS IN BRIEF, LEADING TO TRIAL

2. Deceased Varsha was married to accused appellant no. 1 on 01.04.2002. After marriage, she went to reside with her husband and in-laws. After cohabiting for 15 days, when she came, she complained about demand of Rs.1,50,000/- made by accused persons for purchase of plot. In such background, there was ill-treatment and threat to kill. On 10.06.2002, deceased hanged herself while she was in the house of accused persons. Therefore, on report of PW1 father, crime was registered and after completion of investigation, in all four accused were chargesheeted and were tried by 4th Adhoc Additional Sessions Judge, Jalgaon vide Sessions Case No. 139 of 2002 for commission of offence under Sections 304-B, 306, 498-A r/w 34 of IPC. Trial concluded in conviction of appellants-accused nos. 1 to 3 for offence under Sections 306, 498-A r/w 34 of IPC, which is the subject matter of challenge in the instant appeal.

3. During pendency of the appeal, appellant no.2 Nabha Daga Patil died and appeal is abated as against him vide order dated

16.06.2016. Hence appeal of appellant nos. 1 and 3 only remains for consideration.

SUBMISSIONS

On behalf of the appellants:

4. Learned senior counsel Mr. R. N. Dhorde appraised this Court about the charge, status of the parties and nature of complaint against the accused persons. According to learned senior counsel, in this case, prosecution has miserably failed to establish any of the charges. He took this Court through the testimony of PW1 father, PW3 mother and PW5 uncle and would submit that these family members are not consistent or lending support to each other and are merely levelling general allegations of demand and ill-treatment, without specifying the instances or nature of ill-treatment. He invited attention of this Court even to the cross faced by these witnesses and would submit that there are material omissions and contradictions which are proved through the Investigating Officer. Thus, according to the learned senior counsel, there is no convincing and trustworthy evidence on the point of cruelty so as to attract Section 498-A IPC.

5. Learned senior counsel took this court through the testimony of PW2 Shevale, who was a Police Patil, and pointed out that his evidence clearly shows that deceased hanged herself after closing the room, for the best reasons known to her. Learned senior counsel further took this court through the cross faced by this witness and would submit that relatives of deceased had, at the earliest point, refused to lodge any complaint, and learned senior counsel further added that, his such testimony is indicative of the fact that there is concocted, false version at subsequent point of time, only upon due deliberation with relatives. Learned senior counsel emphasized that all relatives connived and got postmortem done at other place and not at the place where death has taken place. That, there, they had all decided to falsely implicate accused and as such, according to him, there is apparently deliberate implication.

6. Learned senior counsel pointed out that police did not record statement of mother of deceased and according to him, her cross shows that there was no demand. Learned senior counsel further pointed out that there is no convincing evidence to attribute abetment or inducement to commit suicide. He strongly submitted that defence taken by appellants in trial court was that deceased herself was not happy with the marriage and the marriage had been performed

against her will and wish and even parents as well as uncle have admitted in cross that she was reluctant to cohabit and was required to be forced to go to cohabit with husband. Therefore, it is his submission that, marriage was against her wish. That, her parents and relatives had forced her to go for cohabitation and probably out of annoyance and frustration, she might have ended up her life. That, accused are not at all concerned in any manner. However, according to learned senior counsel, all such aspects are not considered by learned trial court. That, learned trial court also did not appreciate the entire cross faced by prosecution witnesses. Thus, according to him, the findings recorded and conclusion drawn is apparently diametrically opposite to the evidence. That, it was a case of no evidence and so he prays to interfere by allowing the appeal.

On behalf of the State :

7. In answer to above, learned APP would submit that evidence of parents and uncle of deceased clearly show that barely after 15 days, deceased came and reported about demand and ill-treatment. There was no other reason for her to falsely implicate accused persons within a short span. According to him, there were clear threats to kill for non-fulfillment of demand. According to learned APP, accused had

created circumstances and subjected her to cruelty, which was of such degree that deceased was left with no other alternative but to end her life. That, finding convincing evidence, learned trial court correctly applied the law and finding all ingredients available, guilt has been recorded and as such, according to him, there is no reason to disturb the well reasoned judgment.

EVIDENCE ON RECORD

8. Prosecution has examined in all nine witness in support of their case. Their role and status and the sum and substance of their evidence can be summarized as under:

PW1 Dilip is the informant-father of deceased. According to him, after 15 days of marriage, when his daughter came, she complained that accused demanded Rs.1,50,000/- for purchasing plot and on such count, there was ill-treatment. On 10.06.2002, message was received about death of his daughter Varsha. Therefore, he lodged report Exhibit 26.

PW2 Shevale, Police Patil, stated that on 10.06.2002, he received information about incident taking place in the house of accused. So he visited the house of accused, which was closed from inside. He peeped through the window and saw a lady hanging. He informed police vide *khabar* Exhibit 28.

PW3 Mangalabai, mother of deceased, stated that 15 days after marriage, when her daughter came, she told about demand and ill-treatment. There was demand of Rs.1,50,000/- for purchase of plot and there was ill-treatment and threat by accused that if amount is not brought, she would be killed. Phone call was received about Varsha hanging herself.

PW4 Arun has acted as pancha to spot panchanama Exhibit 31.

PW5 Prithviraj is the uncle of deceased. He claims that at the time of festival of Akshay Tritiya, he learnt from deceased herself about demand of Rs.1,50,000/- for purchase of plot and that there were threats that if she failed, they would kill her. According to him, therefore, Varsha was not willing to go for cohabitation. Message was received about her death and therefore all relatives went. This witness has also acted as pacha to inquest panchanama Exhibit 33.

PW6 ASI Kumawat, who noted the complaint and registered crime bearing no. 41 of 2002.

PW7 Dr. Chavan was the autopsy doctor who opined death to be due to asphyxia due to hanging.

PW8 PSI Aher | are police officials who conducted investigation and | and AD inquiry, respectively.

PW9 PI Khillare |

ANALYSIS

Charge of Section 498-A IPC

9. 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.

10. On critical analysis of testimonies of father, mother and uncle i.e. PW1, PW3 and PW5, it is emerging that according to father PW1, after 15 days of cohabitation, when deceased came, she complained that all accused demanded Rs.1,50,000/- for purchase of plot. For said purpose, there was ill-treatment. According to him, she also told that accused threatened that if she did not bring money, they would kill her. She further told that accused gave abuses and beating to her. However, it is noticed that here, there are as many as four accused persons. Who amongst them abused and in what manner, and who

beat where, has not been stated by him. Therefore, allegations are general in nature. In his testimony, he has stated that his son Sahebrao went to drop her and he convinced accused and assured that they would arrange the money. But such son of this witness i.e. brother of deceased, is not examined. As pointed out, his cross para 4 shows that there are material omissions on the point of accused giving abuses and beating her, about son Sahebrao being told by accused to bring money and about Sahebrao convincing accused that he would arrange money. Para 5 of his cross, as pointed out, shows that father has admitted that accused persons have irrigated land, a big house in a prime locality and appellant husband is the sole son. His such answer, as rightly pointed out, does indicate that accused persons are financially well-off.

11. On careful scrutiny of mother's evidence, i.e. PW3 Mangalabai, on the point of cruelty, it is noticed that as like her husband, she has also deposed about deceased informing about demand of Rs.1,50,000/-. Even her cross shows that she did not give any statement to police, nor police made her inquiry and recorded her statement. In para 3 of the cross, mother has admitted that it was not ascertained from accused regarding the demand.

12. Likewise, PW5 uncle has not stated in his examination-in-chief regarding any ill-treatment. Rather, his testimony is about his niece informing that accused used to demand Rs.1,50,000/- for purchasing plot. Para 4 of his cross shows that there are omissions about accused threatening to kill if she fails to bring the amount, about his niece was reluctant to go for cohabitation with accused and about hearing from deceased regarding demand of Rs.1,50,000/-.

13. Therefore, the sum total of testimonies of parents and maternal uncle, clearly shows that firstly, there are general and vague allegations about ill-treatment. Secondly, there is omission on their part in the statements to police about threat to kill if demand is not met. Neither of the parents have specified the nature and manner of ill-treatment or when it took place.

14. Learned senior counsel was very categorical and emphatic in his submissions that deceased was not happy with the marriage itself since the beginning. That, marriage was against her will and wish. There is force in above submission, as father informant himself in cross para 6 has admitted that on 09.06.2002, i.e. one day prior to the alleged suicide, Varsha was reluctant to go to the house of accused

and she was required to be send by giving understanding and yet she went to accused reluctantly. Mother in para 2 of her cross, has admitted that when daughter came twice, she was required to give understanding that it is not good for a newly married woman to come to her parents frequently. Therefore, answers given by very parents of deceased, in a way support appellants' contention that deceased was not happy with the marriage and was reluctant to cohabit. Resultantly, there is weak evidence on the point of cruelty so as to attract Section 498-A IPC.

Charge of Section 306 of IPC :

15. As regards the charge under Section 306 of IPC is concerned, admittedly Varsha hanged herself. Police Patil PW2 and even parents of deceased speak about the room in which deceased hanged herself to be locked from inside. There is no independent evidence to show presence of accused at that point of time in the house so as to connect them with the alleged hanging. Unless there is evidence suggesting inducement, abetment or that there was harassment to such extent that deceased was left with no other alternative but to end up her life, it is unsafe to hold the charge of Section 306 IPC as proved.

16. Lastly, to sum up, here, there is no legally acceptable or convincing evidence on any of the charge. Complainant admits that there was deliberation amongst relatives at Bhadgaon, where all relatives came together and it was decided to lodge report. Even PW2 Police Patil in cross has admitted that there was no complaint and rather relatives had refused to lodge complaint i.e. on the day on which occurrence came to light. Therefore, there is material clearly suggesting and indicating that subsequently, only on due deliberation, an afterthought complaint has been lodged.

17. Perused the judgment. Learned trial court seems to have invoked Section 113-A of the Indian Evidence Act. However, before invoking said provision, prosecution is duty bound to first prove the foundational facts and prosecution is not discharged from the burden of proving the main charge. There are numerous citations of the Hon'ble Apex Court on this point that, only when prosecution clearly and cogently establishes the main charge and foundational facts, only then Section 113-A of the Evidence Act can be taken aid of.

18. Hence, here, for above discussed reasons, appellants succeed. Accordingly, I proceed to pass the following order:

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellants Pradip s/o Nabha Daga Nerpagare (Patil) and Lahyabai Nabha Patil, by learned 4th Adhoc Additional Sessions Judge, Jalgaon in Sessions Case No. 139 of 2002 under Sections 306 and 498-A r/w 34 of IPC on 29.11.2003 stands quashed and set aside.
- III. The appellants stand acquitted of the offence punishable under Sections 306 and 498-A r/w 34 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.]