



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 869 OF 2005

1. Bhausahab S/o Mahadeo Puri
Age: 59 years, Occu.: Agri.,
R/o. Kasara, Talulka : Parner,
District : Ahmednagar.
2. Ganesh S/o. Bhausahab Puri
Age: 23 years, Occu.: Agri.
R/o. As above.
3. Hausabai W/o Bhausahab Puri
Age: 51 years, Occu.: Household,
R/o. As above.

....Appellants
(Orig. Accused)

Versus

. The State of Maharashtra

.....Respondent

.....
Advocate for Appellants : Mr. S.S.Jadhavar
APP for Respondent : Mr.N.B.Patil

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 14 DECEMBER, 2024

PRONOUNCED ON : 19 DECEMBER, 2024

JUDGMENT :-

1. Original accused convicts in Sessions Case No.124 of 2005 are hereby assailing judgment and order dated 19-10-2005 passed by IIIrd Ad-hoc Additional Sessions Judge, Ahmednagar.

PROSECUTION CASE IN BRIEF

2. In nutshell, it is the case of prosecution that, parents-in-law and brother-in-law of deceased Vaishali were chargesheeted by Parner Police Station, Dist.Ahmednagar, on accusations that parents-in-law and brother-in-law of Vaishali, after one and half year of marriage, in backdrop of demand of Rs.20,000/- for purchasing field, subjected her to cruelty. Deceased Vaishali reported about demand and cruelty to her family members. Finally, getting fed up of maltreatment, prosecution claims that, she consumed poison and ended up her life.

On report of PW1 Ramdas, father of deceased, Parner Police Station registered crime, investigated it and chargesheeted accused for offence under Sections 498-A, 306, 323, 504, 506 read with 34 of the Indian Penal Code (IPC).

Accused faced trial vide Sessions Case No.124 of 2005 and on appreciation of oral and documentary evidence, learned trial Judge by judgment and order dated 19-10-2005, accepted prosecution case as proved and recorded guilt, which is now assailed here before this Court by filing instant appeal.

EVIDENCE IN TRIAL COURT

3. In support of its case, prosecution has adduced evidence of in

all six witnesses. Sum and substance of their evidence is as under :

PW1 Ramdas Nana Giri, informant, father of deceased deposed at exh.20 that his daughter was married to one Vikas on 11-02-2003 and she went to cohabit with him at Parner. That her husband was in service at Mumbai and she was staying with parents-in-law and brother-in-law. She was given good treatment for one and half year. That six months prior to the incident, all accused gave ill-treatment to his daughter by beating her. That they kept her starved. That his daughter told whenever she came to his house that accused were asking her to bring Rs.20,000/- for purchasing field. That fifteen days prior to the incident also when Vaishali came, she told that she was harassed and she said to father that he should give money for purchasing field.

On 11-02-2005 a news was received that Vaishali fell ill and when they all went, they learnt that she had died due to consumption of poison and hence, he lodged report.

PW2 Shankar Ravaba Ghanvat is pancha to inquest panchanama and he identified the same at exh.23.

PW3 Hanuman Ramdas Giri, brother of deceased, deposed at

exh.29 that initially for one and half year, accused gave good treatment to his sister. That six months prior to the incident, she was ill-treated by beating and by keeping her starved. That accused demanded Rs.20,000/- for purchasing field. That whenever his sister came home, she told about ill-treatment and cruelty. That even she reported cruelty when she came after Diwali. That fifteen days prior to incident, she came and demanded Rs.20,000/- to her father for purchasing land as she was physically tortured. That on 11-02-2005, a news was received that she was ill and when they went, they learnt that she died. According to him, because of cruelty at the hands of accused, his sister committed suicide by consuming poison.

PW4 Narmada Ramdas Giri, mother of deceased, in paragraph 2 of examination-in-chief stated that, after one and half year of marriage, accused demanded Rs.20,000/- for purchasing field. That they could not pay the amount. That accused beat her and did not provide her food. That she told whenever she came home. Even after Diwali, she reported about demand of Rs.20,000/-. That fifteen days prior to the incident, she came to their house and she told that accused demanded money to her. On 11-02-2005 information about daughter falling ill was received and when they all went, they noticed

injury to her chin and yellow liquid flowing out of nostril of Vaishali. That she consumed poison due to harassment and ill-treatment.

PW5 Dr.Pramod Prabhakar Pargaonkar, Autopsy Surgeon, who gave opinion as cause of death due to cardio respiratory failure due to organo phosphorous poisoning.

PW6 Ranjit Sakharam Dere (PSI) is the Investigating Officer, who deposed about steps taken by him during investigation till chargesheeting accused.

SUBMISSIONS

On behalf of appellant :

4. Learned Counsel for the appellants at the outset pointed out that during pendency of appeal, appellant no.1 – Bhausahab S/o Mahadeo Puri and appellant no.3 – Hausabai W/o Bhausahab Puri i.e. father-in-law and mother-in-law have expired and as such matter stands abated against them. Now, appeal survives only against accused no.2 Ganesh S/o Bhausahab Puri i.e. brother-in-law of deceased.

Pointing to the above evidence, learned Counsel for the appellants submits that there is false implication. He further pointed

out that there are general allegations of demand and ill-treatment. He pointed out that there was almost two years cohabitation but there was no previous complaint. According to him, omnibus allegations are levelled that there was demand of Rs.20,000/- for purchasing field, but there are no details as to who was intending to purchase field i.e. whether deceased father-in-law or present appellant i.e. brother-in-law. That there is no material to show even where such land was situated, which was proposed to be purchased and at what cost. He further submitted that sweeping allegations are made that there was harassment, beating and starvation but instances are not quoted and roles of accused persons are not defined by either father, mother, or brother of deceased.

He further submitted that allegation is that deceased consumed poison, however, according to learned Counsel, CA report does not support such prosecution version. He pointed out that Autopsy Surgeon, inspite of having preserved viscera at the time of autopsy itself, issued opinion that it was a case of organo phosphorous poisoning. Learned Counsel pointed out that his opinion is contrary to CA report and as such, it is his submission that even charge of Section 306 is not substantiated.

Lastly, he submitted that learned trial Court erred in accepting

Autopsy Surgeon's evidence and ignored CA report and further erred in accepting sweeping allegations of harassment and hence, he prays to allow the appeal by setting aside the impugned judgment.

On behalf of State :

5. In answer to above, learned APP would submit that parents and brother of deceased are consistent that after one and half year of marriage, in the backdrop of demand of Rs.20,000/- for purchasing field, deceased was subjected to cruelty. That there was beating and she was kept starved. That deceased reported it during her visits to her parents. That only because of failure to meet demand and due to ill-treatment, deceased consumed poison. Learned APP pointed out that Medical Officer, in his substantive evidence, gave reasons of drawing conclusion. Learned APP also took this Court through the observations of learned trial Court regarding death due to consumption of poison. Therefore, he supports the impugned judgment and prays to not to disturb the findings of the learned trial Court.

ANALYSIS

Charge of Section 498-A :

6. Though six witnesses are examined, crucial evidence is of

parents and brother of deceased Vaishali. The sum and substance of their evidence in witness box is already dealt with in aforesaid paragraphs.

On visiting evidence of **PW1** Ramdas, father and informant, it is noticed that according to him, six months prior to the incident, all accused started giving ill-treatment by beating Vaishali and she was kept starved. Accused were asking her to bring Rs.20,000/- for purchase of field. According to him, whenever she came, she reported about it. During festival of Diwali, she asked him to give money as accused in-laws demanded it. He stated that accused no.1 came to take her and he told him to give Rs.20,000/- for purchasing field and was assured that he would see later on. Again after 15 days, when his daughter came, she told him about harassment.

While under **cross-examination**, he answered that he is unable to state when was the first occasion when Vaishali was assaulted. **He is unable to give date of first visit of Vaishali.** He is unable to state which land accused no.1 was intending to purchase or its measurement.

7. **PW3** Hanuman, brother of deceased, in his evidence which is also discussed above, is found to have deposed that before six months

of the incident, accused started giving ill-treatment to his sister by beating and keeping her starved. Even according to him, whenever she came, she reported ill-treatment and cruelty. She demanded Rs.20,000/- after Diwali. Even according to him, 15 days prior to incident, his sister came and reported about demand of Rs.20,000/- for purchase of land as she was physically tortured.

While under **cross-examination**, omissions are brought regarding six months prior to incident, accused gave ill-treatment by beating her or keeping her starved, that 15 days prior to the incident, she came and told about ill-treatment and demand. These are material omissions in the evidence of brother of deceased. Even he does not remember date of first visit of his sister. The manner of answers given in cross-examination in paragraph 5 shows that accused were willing to purchase land of their brother, but whose brother is not clarified.

8. Likewise **PW3** Narmada, mother of deceased, also stated that accused were beating her daughter and not provided her food and she reported it whenever she came. That after Diwali, her daughter demanded Rs.20,000/- as demand was made by accused.

While under **cross-examination**, this witness is also unable to

state when her daughter first reported about ill-treatment and is unable to state date and number of visits of her daughter. According to her, at the time of Diwali, her daughter came alone but her own statement is contrary to that of her husband PW1 Ramdas, according to whom, their daughter came with accused no.1.

9. Therefore, to sum up on the point of Section 498-A of the IPC, parents and mother are merely speaking about accused ill-treating by way of beating and keeping starved. There are three accused. General and sweeping allegations are made against all accused. PW1 informant father has named only accused no.1 for demanding Rs.20,000/- for purchase of field. Such accused is not alive. None of the witnesses defined role of sole surviving appellant no.2 - Ganesh.

10. Law requires that for attracting Section 498-A, there has to be cogent, convincing, reliable evidence about continuous harassment.

There are series of judgments wherein Hon'ble Apex Court has repeatedly observed and held that in case of general, vague and omnibus allegations without specifying role or giving specific instances of cruelty, charge of Section 498-A would not automatically get attracted. Such observations are reflected in *Kans Raj v. State of*

Punjab and others [Appeal (crl.) 688-90 of 1993 decided by the Hon'ble Apex Court on 26.04.2000]; *State of Andhra Pradesh v. M. Madhusudhan Rao* (2008) 15 SCC 582; *Neelu Chopra and another v. Bharti* (2009) 10 SCC 184; *Geeta Mehrotra Vs. State of U.P.* (2012) 10 SCC 741; *Bhaskar Lal Sharma and Anr. v. Monica and Ors* AIR 2014 SC (Supp) 1310; *K. Subba Rao v. The State of Telangana* ; (2018) 14 SCC 452 wherein, as to what constitutes offence under Section 498-A and when it can be said to be made out has been dealt and discussed.

Even very recently, the Hon'ble Apex Court, in the case of *Naresh Kumar v. State of Haryana* (2024) 3 SCC 573 observed that, to constitute offence of cruelty, there has to be incessant or continuous form of cruelty.

Likewise, in the case of *Yashodeep Bisanrao Vadode v. State of Maharashtra* (2024) SCC Online SC 2989, the Hon'ble Apex Court observed that, by way of evidence, specific acts and role of accused has to be demonstrated for attracting Section 498-A IPC.

Again, in the most recent case of *Dara Lakshmi Narayana and*

others v. State of Telangana and another 2024 SCC Online SC 3682, the Hon'ble Apex Court observed, "mere reference to the names of family members in a criminal case arising out of matrimonial dispute, without specific allegation, indicating their active involvement should be nipped in the bud".

11. Here, as stated above allegations of demand of Rs.20,000/- are attributed by informant only against deceased accused no.1, Brother and mother of deceased are levelling sweeping allegations against all accused i.e. parents-in-law as well as present surviving appellant no.2 Ganesh. None of them have defined his specific role either in beating or raising demand or keeping her starved. Though there are allegations that deceased was kept starved, autopsy findings in column no.10 shows that body was well nourished. Resultantly, as regards to sole surviving appellant no.2 Ganesh is concerned, there is no iota of evidence, nor his role is specifically getting crystallized.

Charge of Section 306 :

12. As regards to offence under Section 306 of the IPC is concerned, it is the case of prosecution that, deceased died due to consumption of organo phosphorous poisoning. Record shows and

even PW6 Dere (PSI), Investigating Officer admits that *khobar* was at the instance of deceased accused no.1 Bhausahab, who reported that he and his son i.e. appellant no.2 Ganesh had gone out of house since morning of 11-02-2005 and only deceased accused no.3 Hausabai and deceased Vaishali were in the house. Therefore, it is clear that sole surviving appellant no.2 Ganesh was not present at the spot and even there is no distinct evidence demonstrating he to be present when alleged episode of consumption took place. Therefore, when prosecution's own documentary evidence shows that present sole surviving appellant no.2 Ganesh was not in the house and moreover, there is nothing to connect that on 11-02-2005, there was any cruelty inflicted to the deceased in the backdrop of above demand, offence of Section 306 does not get gravitated.

13. Here as pointed out by learned Counsel for the appellants, though Autopsy Surgeon opined about cause of death to be due to cardio respiratory failure due to organo phosphorous poisoning, very CA report of the viscera did not yield any positive finding about presence of such insecticide. On appreciating evidence of PW5 Dr.Pargaonkar. Autopsy Surgeon, it is emerging that on the date of

post mortem itself, Doctor has even opined and declared that consumption was of organo phosphorous poisoning i.e. even prior to chemical analysis. Though he stated in cross-examination that he was sure, opinions issued by Autopsy Surgeon are not conclusive proof and law is settled to that extent.

CONCLUSION

14. For all above reasons, there is nothing to connect above appellant no.2 to alleged consumption of insecticide, more particularly, when his presence in the house at the time of consumption is not conclusively proved by way of distinct evidence. Hence, charge of Section 306 of the IPC also cannot be said to be proved against him or even deceased appellants.

15. Perused judgment under challenge. Learned trial Court has failed to appreciate evidence in correct spirit and by applying settled legal position. Legal requirements are not applied while appreciating the evidence. Therefore, findings being erroneous, appellants succeed. Hence, following order :

ORDER

I) Criminal Appeal No.869 of 2005 is allowed.

II) The conviction awarded to appellants in Sessions Case No.124 of 2005 by the learned IIIrd Ad-hoc Additional Sessions Judge, Ahmednagar on 19-10-2005 for the offence punishable under Sections 306 r/w 34 and 498-A r/w 34 of the Indian Penal Code, stands quashed and set aside.

III) The appellants stand acquitted of the offence punishable under Sections 306 r/w 34 and 498-A r/w 34 of the Indian Penal Code.

IV) **The bail bonds of appellants stand cancelled.**

V) The fine amount deposited, if any, be refunded to appellant no.2 Ganesh Bhausaheb Puri 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