



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 879 OF 2004

1. Ayub Yusuf Shaikh,
Age : 38 years, Occu. Driver
2. Rabbana Ayub Shaikh,
Age : 35 years
3. Rabiya Daud Shaikh,
Age : 40 years
4. Zubeda Ismail Shaikh,
Age : 36 years

No. 2 to 4 occu. Household,
All R/o. Karjat, Tal. Karjat,
District Ahmednagar.

... Appellants

Versus

The State of Maharashtra
Through Police Sub-Inspector,
Karjat Police Station, Karjat,
District Ahmednagar.

... Respondent

.....

Mr. Joydeep Chatterji, Advocate for the Appellants.
Mr. K. K. Naik, APP for Respondent-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 19.09.2024

Pronounced on : 24.09.2024

JUDGMENT :

1. In this appeal, there is challenge to the judgment and order of conviction dated 16.12.2004 passed by learned IInd Additional Sessions Judge, Ahmednagar in Sessions Case No. 127 of 2002, for offence punishable under sections 498-A and 306 r/w 34 of the Indian Penal Code [IPC].

BRIEF BACKGROUND OF THE SESSIONS TRIAL

2. Deceased Bismilla, daughter of informant PW1 Ismail, was married to accused no.1 Ayub on 30.03.1999. Initially for four months, she was treated properly. Subsequently, husband, his first wife and two sisters-in-law subjected her to cruelty on the count of not bringing Rs.50,000/- for business of saw-mill and for not rendering assistance in running saw-mill. One and half years prior to the death, she reported beating and harassment. One year prior to the incident, because of assault, she lodged report with police and 4 to 5 months prior to the incident, she went back to reside with husband at Karjat but was driven out of the house. Two months prior to her death, husband came and took her by assuring to treat her well, but

both, harassment and beating, continued. On 24.06.2002, she consumed poison and committed suicide and therefore PW1 father lodged report Exhibit 30, on the basis of which, PW9 registered crime, investigated the case, gathered evidence and chargesheeted husband and in-laws for commission of offence under Sections 498-A and 306 r/w 34 of IPC.

3. After appreciating the oral and documentary evidence, learned IInd Additional Sessions Judge, Ahmednagar, by judgment dated 16.12.2004, convicted the appellants for both offences i.e. under Sections 498-A and 306 r/w 34 of IPC.

Above judgment is the subject matter of the instant appeal.

EVIDENCE ON RECORD

4. The role and status of the 10 witnesses examined by prosecution in support of its case, and the sum and substance of their evidence can be summarized as under :

PW1 Father deposed about marriage of his daughter with appellant no.1 on 30.03.1999. After four months, there was ill-treatment in the form of beating and harassment for not being given

Rs.50,000/- for saw-mill business and for not assisting in saw-mill work. He stated that about one and half year prior to her death, she had reported beating and harassment. On 24.06.2002 also, in presence of her sister Asma, she was assaulted, shortly after which, she consumed poisonous substance and died. So he lodged report Exhibit 30.

PW2 Ibrahim, brother also deposed that after five months, all accused beat and demanded Rs.50,000/- for saw-mill business and she reported such incidence. About one and half year prior to the incident, she had told about continuous harassment and beating. He also stated about instances of beating two months prior to the incident and on 24.06.2002 in presence of his sister Asma, after which Bismilla consumed poison.

PW3 Bapu acted as pancha to spot panchanama Exhibit 40.

PW4 Santosh, a rickshaw driver, whose rickshaw was used as conveyance to shift Bismilla to hospital.

PW5 Police Constable Dada Bhand, who noted *khavar* given by accused Ayub (Exhibit 43).

PW6 Pathan is the owner of the jeep which was used to shift Bismilla to Civil Hospital, Ahmednagar.

PW7 Police Head Constable Bhosale who recorded complaint by deceased Bismilla on 21.03.2001.

PW8 Dr. Tarte is the autopsy surgeon. In his evidence at Exhibit 53, he deposed about noticing four abrasions and one contusion injury on the person of deceased while conducting postmortem. According to this medical expert, the probable cause of death was cardio-respiratory failure due to organo-phosphorus poisoning.

PW9 Police Inspector Shinde is the Investigating Officer.

PW10 Dr. Rajashree Pagariya, Medical Officer attached to Karjat Rural Hospital, who had occasion to examine Bismilla on 24.06.2002, also noted four abrasions and one contusion injury, and she prepared MLC Exhibit 60.

SUBMISSIONS

On behalf of the appellants :

5. Pointing to the above evidence and criticizing the judgment and findings, learned counsel for the appellants pointed out that appellant no.1 is husband, appellant no.2 is his first legally married wife, whereas appellant nos. 3 and 4 are married sisters-in-law of deceased. He pointed out that except evidence of father and brother, there is no other independent convincing evidence. He would strenuously submit that these witnesses claim beating in presence of another daughter of

informant, namely Asma, but surprisingly she is not examined by prosecution. He pointed out that even otherwise, informant father and brother are making general allegations as they both are not clearly defining roles of the appellants. He pointed out that no specific instances of alleged beating are coming on record. He pointed out that accused had saw-mill business which was admittedly ancestral one. Husband alone was looking after the said business, and it being since forefathers, there was no question of putting up demand of Rs.50,000/- for running business.

6. As regards the alleged consumption of poison is concerned, learned counsel for the appellants submitted that allegations are of consumption of organophosphorus insecticide. But he pointed out that C.A. report itself is nil, as no such substance is detected in analysis. He pointed out that seized *muddemal* and viscera was not dispatched to the analyzer immediately. Even carrier of *muddemal* is not examined and therefore, there is also question about link evidence. Lastly he submitted that initially A.D. was registered, that too, on the information of appellant husband, and in spite of death taking place on 24.06.2002, FIR is lodged by father on the next day and as such, there is possibility of false, afterthought and concocted version being reported due to annoyance of losing Bismilla.

7. Concluding his argument, he submitted that learned trial court has not appreciated the answers given by witnesses in cross and also lost sight of settled legal position and as such, according to him, such judgment is required to be interfered with by setting aside the same.

On behalf of the respondent – State :

8. Countering the above submissions, learned APP pointed out that there is clear, convincing, cogent and reliable evidence. Father and brother are categorical about harassment and ill-treatment on account of demand of Rs.50,000/-. That, both of them have quoted specific period of beating and harassment. There was beating in proximity to consumption. Appellants were named by the witnesses. That, even deceased had previously lodged complaint about harassment and ill-treatment and therefore, according to him, there is more than convincing evidence. There being correct appreciation by learned trial court of such quality evidence, he prays to dismiss the appeal for want of merits.

ANALYSIS

9. Here, evidence of father, brother are heavily relied by prosecution in trial court. It would be apposite to reproduce in verbatim the relevant testimony which is as under:

Evidence of father PW1 Ismail :

“1. I reside along with my wife and daughter by name Asma. Bismilla was my daughter. Her marriage was performed with Ayub Yusuf Shaikh in the year 1999 on 30.03.1999. After the marriage she went to reside along with her husband at Karjat. She was residing there along with her husband and his first wife Rabbana. Near their house, her two sisters-in-law by name Rabu Daud Shaikh and Zubeda were residing. Her sisters-in-law were doing the business of saw-mill. Initially for 4 months, Bismilla was treated properly. Thereafter, her husband, his first wife and two sister-in-laws started beating her, on the count that she was not known how to do the work of saw-mill and also on the count that at the time of her marriage, nothing was given to her and she should bring amount of Rs.50,000/- from her parents for the business of saw-mill. After the beating she used to come to our house. At that time, she used to tell us about the harassment and beating and demand.

2. *About 1 ½ year prior to this incident, she has come to our house after such beating and harassment. She told us about harassment and beating therefore, I along with my four sons took her in the jeep to Karjat to the house of her husband. There, one meeting took place. At that time, her husband his first wife and two sisters-in-law demanded us amount of Rs.50,000/- for the purpose of business of saw-mill. We assured them when we will get the amount, we will give it to them. We left her in their house and returned. Thereafter also they were harassing and beating her.*

3. *About one year prior to the incident, all have assaulted her. Hence Bismilla has lodged complaint with Police. Then she came to our house. About four to five months prior to incident, she again came to Karjat to the house of her husband. Again she was driven out of the house. Therefore, she came and stayed with us.*

4. *Two months prior to this incidence, her husband came and took her giving her promises and assurances. He took her to Rashin and started residing there. However, her harassment and beating continued. She informed about it to me on phone. On 20.06.2002, Asma has gone to the house of her sister Bismilla at Rashin, to meet her.*

5. *On 24.6.2002, Asma came to our house at about 5.00 p.m. She told us that Bismilla's husband had not*

returned to house for four days, therefore, Bismilla has gone to Karjat to inquire about him. Asma has also gone along with her to Karjat. There in the presence of Asma, Bismilla's sisters-in-law held hands and legs of Bismilla and her husband and his first wife beat Bismilla with fist blows and stick. They threatened to her. Therefore, both Asma and Bismilla returned to Rashin. Due to the severe assault and beating, Bismilla was seriously injured. Then Asma went out of the house, Bismilla took some poisonous substance and started feeling giddiness. Therefore, Asma took her to Karjat. Asma also gave message to her husband and his family members about it. Then her husband came and took Bismilla to Civil Hospital. On the same night at about 8.00 p.m. we received phone call that Bismilla has died. Then all of us went to Karjat. There we found dead body of Bismilla lying in the house of her husband. We came to know that she has died on account of consumption of poisonous substance. She has consumed poisonous substance being fed of the harassment, demand and beating and ill-treatment, at the hands of her husband, his first wife and two sisters-in-law. We immediately informed to police however he recorded our complaint on the next day. The complaint is recorded as per my say. Now shown to me is same, it is signed by me. Contents are correct, it is marked as exh. 30. Accused No.1 before the court is her husband, No.2 Rabbana is his first wife, Nos. 3 and 4 are her sisters-in-law."

Evidence of brother PW2 Ibrahim :

“1. Bismilla was my younger sister. Her marriage was performed with the accused No.1 Ayub in the year 1999. After the marriage, she was residing along with at Karjat. The first wife of the accused No.1 Rabbana was also residing along with him whereas his two sisters, i.e. accused Nos. 3 and 4 were residing near their house. They were having the business of saw-mill.

2. After the marriage, initially for the period of 5 months only Bismilla was treated properly. Thereafter, all the four accused were beating her. They were demanding Rs.50,000/- for the business of saw-mill. Bismilla used to tell us whenever she used to our house and we were going to her house to meet her.

3. About one and half year prior to this incident Bismilla came to our house and told us that, she was continuously harassed and threatened with the demand of Rs.50,000/-. We took her in jeep to Karjat. There meeting took place. In that meeting, the accused persons demanded the amount of Rs.50,000/-. We assured them that we would give such amount to them as and when we get it. We kept her in their house and returned back.

4. Two months prior to this incident, Bismilla came to our house and told us that she was subjected to more beating and harassment for satisfying the amount of Rs.50,000/-. Therefore, she stayed in our house. Thereafter, one month, her husband came. He gave her assurance that he will take her to Rashin and stay with her. He also promised that he will not harass her. He took her with him.

5. Thereafter also her harassment and ill-treatment continued. She used to tell us about it on phone.

6. On 20.06.2001 our sister Asma went to meet Bismilla at Rashin. She stayed with Bismilla for four days and returned to our house on 24.06.2002 at 5 to 6.00 p.m. Asma told us that, accused No.1 Ayub had not returned to house of Rashin for four days hence, she and Bismilla went to his house at Karjat. There in the presence of Asma, Bismilla's sisters-in-law held her and the husband his first wife assaulted Bismilla, with fist blows, kicks and sticks. Then both of them returned to Rashin. When Asma went out of the house, Bismilla consumed some poisonous substance. Therefore, Asma took Bismilla in a bus to Karjat and told the accused No.1 about it. Thereafter Asma returned to our house. Thereafter on that day at about 8-00 p.m. we received phone call that Bismilla is dead. Then all of us went to Karjat at 8-30 p.m. Her dead body was lying in the house. We found the marks of injuries of

assault on her body. It is my say that being fed of her harassment and ill-treatment given to her by the accused persons, she has consumed poisonous substance to commit suicide. Police have recorded my statement on 25/6/02. Accused before the court are the same.”

10. Initial cross to father PW1 in para 6 and 7 pertains to financial condition of accused, his own service, family size and about marriage and desertion of daughter Asma and she to be turning of unsound mind. There are questions about accused Rabiya and Zubeda, about saw-mill business. He denied previous marriage of Bismilla with one Bapu and *talaq* between them. In para 8, all suggestions that, there was no demand; that, Bismilla came only once to the house i.e. on 21.03.2001; there to be minor dispute; about Bismilla meeting natural death; there to be quarrel between Asma and Bismilla on 24.06.2002, are all denied. He admitted that first wife of accused no.1 resided with him. Then there are questions about information of death being received, they coming to Karjat on 24.06.2002 but lodging report on 25.06.2002.

Witness is re-examined on marriage, agreement and its registration and son born to deceased Bismilla, namely, Irfan.

11. PW2 brother, while under cross, answered that he is unable to give exact date, month, year when she came and reported ill-treatment. He admitted that there was no complaint at his instance at any point of time or even on 24.06.2002. In para 8, suggestions about reporting by Asma to be false, Bismilla coming on 21.03.2001 and she being sent back to her husband are all denied, including suggestion of there to be no demand of Rs.50,000/-.

ANALYSIS OF EVIDENCE OF FATHER AND BROTHER

12. On carefully analyzing above evidence of father and brother, here, it is noticed that both are consistent about ill-treatment in the form of beating and harassment, more particularly in the backdrop of demand of Rs.50,000/-. Brother's testimony about meeting being conducted in that regard has not been disturbed. Father has specifically given the period of alleged beating i.e. one and half year prior to the incident, one year prior to the incident, and then 2 months prior to the incident. They both are categorical and consistent about hearing from Asma that there was beating to Bismilla on 24.06.2002. There are no material omissions, contradictions, or inconsistencies to disbelieve their versions.

EVIDENCE OF MEDICAL EXPERTS

13. In support of injury due to beating, prosecution has examined PW10, a Medical Officer and an independent witness, to whom Bismilla was allegedly taken. She has deposed at Exhibit 58 that around 4.00 p.m., Bismilla Ayub Saikh came to her hospital accompanied by husband and some female relatives. She stated that Bismilla was semiconscious. She stated that relatives gave history of poisoning. She has noted the vital parameters and has deposed about noticing abrasions on maxillary region, wrist joint, right forearm, left tow and contusion on left side of nose. Though cross-examined at length, above evidence of medical expert has not been shaken, except stating that age of injury in not mentioned by her in Exhibit 60.

14. Above discussion clearly shows that there is consistent evidence about beating being given to Bismilla. She had time and again reported it to father and brother. Father has specifically given the timeline as to when above incidents took place. His that testimony has not been challenged. Brother has also lent support to father's testimony. Medical expert PW10, who had occasion to examine Bismilla on 24.06.2002, has also noticed and noted marks which are

further reflected in Exhibit 60. Therefore there clear, convincing evidence on the point of beating amounting to physical cruelty.

15. As regards to offence of Section 306 IPC is concerned, it is a case of prosecution that only because of above harassment and maltreatment, Bismilla consumed poison. Though very specific case of prosecution is that such incident took place in presence of her sister Asma, she has not been examined. But there is reason assigned for non examination of such witness, as in the trial court, prosecution put forth that she being differently abled, i.e. being mentally deranged, she was not examined. But, father and brother both claim to have learnt from deceased regarding beating. When allegations of beating are supported by independent medical evidence discussed above, there is no reason to not to consider it.

16. Evidence of PW10 medical expert confirms that husband and female relatives had taken Bismilla to her and she has noticed abrasions and contusions on face. Inquest panchanama Exhibit 37 drawn on 25.06.2002 demonstrates injury marks. Therefore, there is material suggesting some incident taking place in the immediate proximity to alleged consumption. Though, as pointed out by learned counsel for appellants, there is no recovery of container of

poison/bottle of poison, it is to be noted that alleged consumption is of 24.06.2002 and spot panchanama Exhibit 40 is drawn on the next day at around noon time. Therefore, there is possibility of tampering with the evidence. It could be said to be a lapse on the part of investigating machinery and appellants cannot derive benefit out of it.

17. Autopsy surgeon who is examined as PW8, has noticed four abrasions and one contusion injury i.e. on the same location on which even PW10, the first medical expert, has initially noticed and noted such injuries. Even autopsy doctor branded the injuries to be *antemortem* in nature. He has issued opinion as “probable cause of death in my opinion was cardio-respiratory failure due to organo-phosphorus poisoning”. This autopsy surgeon is very categorical about fine froth emanating from nostrils and mouth and on its strength, he stated that he issued probable cause of death. This surgeon has denied injuries mentioned in column no. 17 to be due to fall from S.T. bus.

18. It is also strenuously submitted by learned counsel for appellants that CA report does not support prosecution as no poison was detected. He also pointed out that though viscera was preserved on 25.06.2002, it was dispatched on 12.09.2002. Therefore, he raised

doubt about chain of custody. It is true that in spite of autopsy being conducted on 25.06.2002, CA report Exhibit 64 does go to show that Chemical Analyzer has communicated to medical officer about receiving parcel on 12.09.2002 i.e. almost after three months. Resultantly, it is apparently a delayed dispatch.

19. However, in the considered opinion of this court, in the light of availability of evidence of two medical experts i.e. PW8 and PW10, here, the above lapses or nil report will not wash away testimonies of these independent expert witnesses. PW8 is very categorical about smell of organophosphorus from the froth which oozed out of mouth and nostrils. Consequently, such evidence will not get eclipsed by delayed analysis or negative report.

20. To sum up, here, there is convincing evidence in the form of testimony of father and brother regarding repeated beating. Here, in this case, immediately in proximity to death, there is convincing evidence about physical injuries on the person of deceased, which medical expert has denied to be due to fall. Therefore, the only inference that follows is that, the marks are due to beating. Accused husband and his sisters themselves had shifted Bismilla to the hospital of PW10 within short span of the incident, confirming their presence.

For such reasons, as ingredients of Section 306 IPC are very much available, suicide can be safely attributed to accused persons.

21. Perused the judgment under challenge. There is correct appreciation of both, oral account as well as medical account. Settled law has been applied. No infirmity or error, which is so patent to upset the findings, being brought to the notice, appeal fails. Hence, I proceed to pass the following order :

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

22. On pronouncement of this judgment, learned counsel for the appellants prays for six weeks time to surrender, so as to enable the appellants to approach the Hon'ble Apex Court.

23. Learned APP strongly opposes the same.

24. Considering the above request made by the learned counsel for the appellants, six weeks time is granted for the appellants to surrender.

[ABHAY S. WAGHWASE, J.]