



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 207 OF 2016

Balu S/o. Nagnath Shinde
Age : 33 years, Occu. : Labour,
R/o. Anand Nagar, Latur,
Tq. & Dist. Latur.

... Applicant
(Orig. Accused)

Versus

The State of Maharashtra

... Respondent.

.....
Mr. M. L. Dharashive, Advocate for Applicant.
Mr. K. K. Naik, APP for Respondent - State.
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 22 NOVEMBER 2024

PRONOUNCED ON : 27 NOVEMBER 2024

JUDGMENT :

1. In this revision, exception has been taken to the judgment and order dated 21.09.2016 passed by Additional Sessions Judge, Latur in Criminal Appeal No.144 of 2011 arising out of judgment and order dated 10.11.2011 passed by Assistant Sessions Judge-3, Latur in Sessions Case No. 11 of 2011 recording guilt of revisionist for offence punishable under section 498-A of Indian Penal Code (IPC).

2. Learned counsel for revisionist submitted that, revisionist was charge-sheeted by Gandhi Chowk Police Station,

Latur along with accused no.2 and both were tried for offence punishable under sections 306 and 498-A read with section 34 of IPC. Upon trial, accused no.2 was acquitted for both the charges, however, present revisionist was alone held guilty, but only for offence punishable under section 498-A of IPC.

3. He further took this court through the evidence and submitted that, the essence of 498-A is cruelty in the backdrop of demand. Here, there was no demand. That, there was cohabitation between revisionist and wife for almost 16 years and they also had two grown-up children. That, there was no previous complaint of any nature. That, subsequently, allegations were levelled about illicit relations and extra marital affair with accused no2, but same was not substantiated. Learned counsel submitted that, there is no independent witness and only interested witnesses are examined. That, there are omnibus allegations of demand of Rs.50,000/- for business, but there is no further clarification for what business there was demand. He pointed out that, even there is no evidence from the prosecution side about cruelty or ill treatment.

4. Learned counsel for revisionist further pointed out that FIR is by brother. That, there was said to be demand with parents, but neither of them are examined. That, there was weak evidence

and no corroboration to the evidence of brother. Therefore, according to him, there is erroneous appreciation and hence he prays to allow the revision by setting aside the impugned judgment.

5. In answer to above, learned APP would submit that, two brothers of deceased are examined by prosecution. That, they both are consistent and corroborating each other on material count i.e. on account of demand, ill treatment, beating and above all maintaining extra marital affair in spite of having two children. That, there is admission to that extent in statement under section 313 of Cr.P.C. That, evidence of both brothers have remained unshaken. Learned APP pointed out that, just before suicide, there was said to be beating. Therefore, necessary ingredients for attracting section 498-A of IPC being available in the evidence, it is submitted that, both, learned trial court as well as appellate court committed no error in recording the guilt and hence he prays to dismiss the revision.

6. Here, after hearing both sides and on going through the evidence, it is emerging that, prosecution was launched by Gandhi Chowk Police Station against present revisionist Balu and one Anjali for offence punishable under sections 306 and 498-A read with section 34 of IPC. Papers show that, on oral evidence of five witnesses and other documentary evidence, trial was conducted and by

judgment and order dated 10.11.2011 learned Assistant Sessions Judge-3, Latur acquitted present revisionist and accused no.2 from charge under section 306 read with section 34 of IPC. Accused no.2 Anjali was acquitted from charge under section 498-A of IPC also. Present revisionist, who is husband of deceased Vandana, was held guilty for offence punishable under section 498-A of IPC and accordingly sentenced to suffer three years imprisonment and to pay fine. Such judgment of Assistant Sessions Judge seems to be assailed by filing criminal appeal before Sessions Court, Latur bearing Criminal Appeal No. 144 of 2011 and the learned Additional Sessions Judge by judgment and order dated 21.09.2016 dismissed the appeal confirming the judgment and order of learned Assistant Sessions Judge for offence punishable under section 498-A of IPC.

Feeling aggrieved by the above, instant revision has been filed by invoking section 397 read with section 401 of Cr.P.C.

ANALYSIS

7. Prosecution has adduced evidence of five witnesses. Out of them, evidence of PW1 Ramesh and PW3 Mahesh is of significance and importance. Rest of the witnesses are pancha, Medical Officer and Investigating Officer.

PW1 Ramesh Subhash Jogdand is informant and brother of deceased. At Exh.23, he deposed as under :

“Deceased Vandana was my sister. She was given in marriage to accused No.1. Her marriage took place before 18 to 19 years. Vandana had two daughters and one sone. I and my parents reside at Renapur.

2. Till 16 years of marriage, there was no dispute accused No.1 and deceased Vandana. Thereafter, accused No.1 asked Vandana to bring Rs.50,000/- from her maternal house for business purpose. This was told by my sister Vandana to me when she had been to maternal house. We were not able to satisfy demand of accused No.1.

3. Accused No.2 is concubine of accused No.1. Accused No.1 was beating to deceased Vandana under the influence of liquor. On the prior day of incident, both accused came to the house of Vandana. They beat Vandana by fists and kick blows and chappals. They snatched ‘Mangalsutra’ from the neck of Vandana. Accused No.1 told deceased Vandana that, he is going to keep accused No.2 with him in the house. Due to beating by accused, Vandana came out of the house and gave a phone call to us. She told the incident on phone. Thereafter I myself, my father, my mother, came to Latur at the house of accused No.1 at Anand Nagar Latur. When we came to their house, both accused were not present there. Parents of accused No.1 were present in the house. Then my parents searched the accused from Jaggery Market, Latur and called him home. My parents persuaded accused No.1. Accused No.1 agreed to keep Vandana with him. Then we went to our village.

4. Deceased Vandana had filed complaint with Mahila Takrar Nivaran Kendra, S.P. Office, Latur. Accused No.1 and his mother were called by Samiti and convinced them to give proper treatment to Vandana. I can identify signature of deceased Vandana. Now complaint dated 31.03.2010 is shown to me. It bears signature of Vandana.

5. After we left the house of accused No.1 again accused No.1 beat Vandana. Again at about 8.00 p.m. I received call from my sister - Vandana wherein she informed me that accused No.1 again beat her. She also told me on phone that she is not going to live any more. She is leaving the world. Thereafter again at about 10.30 p.m. I received phone call from nephew of accused No.1 who informed me that Vandana committed suicide.

Immediately, I alongwith my parents, came to the house of accused at Anand Nagar. We saw Vandana hanging to the ring of roof slab. We were totally shocked. We started weeping. In the morning at about 7.30- a.m. I lodged complaint in Gandhi Chowk Police Station.”

PW3 Mahesh Subhash Jogdand is another brother of deceased. At Exh.27, he deposed as under :

“Accused No.1 is the husband of Vandana. Their marriage took place before 18 to 19 years. They have one son and two daughters. Since two years prior to incident, accused No.1 was giving physical and mental cruel treatment. He was beating her time and again. He was demanding amount from her parents. That amount was Rs.50,000/-. We do not satisfy his demand.

2. Accused No.2 is keep of accused No.1. Accused No.2 was instigating to accused No.1 to give cruel treatment to Vandana. She was also demanding one room out of the house of accused No.1 for cohabitation. All these facts were told by Vandana to me whenever she used to come to me. On the day of incident, at about 11.30 p.m. I received phone call from my elder sister who informed me about the suicide of Vandana. Immediately I left Aurangabad for Latur and reached at Latur in the morning at about 7.00 a.m. I went to the house of accused No.1. I saw there my sister hanging to the ceiling. The dead body was about one and half ft to 2 above the ground. My brother lodged a complaint. Due to harassment and cruel treatment given by accused persons to Vandana she committed suicide.”

In the cross of informant brother PW1 Ramesh omission is brought about snatching of *Mangalsutra*. Then questions are put regarding visits of Vandana to S.P. Office and regarding false implication of accused no.2. Rest is all denial.

Likewise, another brother PW3 Mahesh also faced cross and he denied that his sister was getting angry on account of non fulfillment of her demand. He admitted that there was no cruelty or harassment during first 16 years of marriage. He admitted that accused no.1 was a contractor. He claimed that he had seen accused no.2 in the house of accused no.1. He is unable to give dates when his sister told about harassment at the hands of accused nos.1 and 2. Omission is brought about receiving message from elder sister about suicide being committed by Vandana and he also admitted that, no complaint was filed against accused no.1 regarding ill treatment. Rest is all denial.

8. Studied the evidence of both brothers, informant PW1 Ramesh and another brother PW3 Mahesh. Their testimonies in the court are already reproduced in aforesaid paragraphs. Analysis of the same shows that out of these two brothers of deceased Vandana, PW1 informant Ramesh was staying with his parents and in paragraph no.1 of his examination-in-chief, he stated that he and his parents have resided at Renapur. He further stated that there was no dispute for initial 16 years of marriage, but then revisionist had demanded Rs.50,000/- for business and this was told to him by his sister Vandana when she had been to the maternal house. In

paragraph no.3, he stated that accused revisionist kept accused no.2 as his concubine. He categorically stated that, present revisionist beat her under the influence of liquor. He specifically deposed that one day prior to the incident, there was beating to his sister and on receiving phone call to this extent, he and his parents paid visit to her at Latur and accused was persuaded and he agreed to keep deceased with him. He also deposed about deceased lodging report against present revisionist before S.P. Office, Latur in March 2010. Thereafter, he has deposed that after they left the house of accused no.1 revisionist, again accused no.1 had beaten his sister. At around 8:00 p.m., deceased again called him and reported episode of beating to her and this witness claims that, she further disclosed that she is not going to live anymore and that she is leaving the world. Around 10:30 p.m., he learnt about his sister committing suicide. So much part of his testimony has not been touched in cross and as such it can be safely believed that there is no serious challenge to the above testimonies.

9. Another brother PW3 Mahesh, though resides at Aurangabad, has also lend support to PW1 Ramesh by deposing that, since two years prior to the incident, accused no.1 was giving physical and mental cruel treatment. He stated that he beat her again and again and he demanded Rs.50,000/- and further deposed about

accused no.2 instigating accused no.1 to give cruel treatment to deceased. He has learnt about suicide by his elder sister.

10. Though this witness PW3 Mahesh admitted in cross that there was no harassment or cruel treatment during previous 16 years of marriage and informant brother has also stated that there was no ill treatment for first 16 years, manner of suggestion to him, in cross that whether he can state on which dates his deceased sister told about demand and harassment, itself shows that, there is no serious dispute or challenge to the aspect of harassment in the backdrop of demand. PW3 Mahesh has categorically answered in cross that, 3 to 4 times he has tried to persuade accused no.1.

Consequently, evidence of real brothers of Vandana has remained intact as regards to conduct and behaviour of applicant revisionist towards Vandana is concerned. A day or so before the suicidal hanging, there was reporting by deceased regarding beating and in spite of giving understanding, when she was again beaten, she again call back and expressed her desire not to live further. Taking such evidence of informant into consideration, charge of 498-A of IPC does get attracted. Though accused no.2 is acquitted, as pointed out, accused no.1 has admitted regarding his relations with accused no.2 while answering in statement under section 313 of Cr.P.C..

Resultantly, conclusions by both, trial court and appellate court is infallible. Hence, there being no merits in the revision, I proceed to pass the following order :-

ORDER

The Revision Application is hereby dismissed.

(ABHAY S. WAGHWASE, J.)

11. After pronouncement of judgment, learned counsel for applicant seeks time to surrender as he is intending to approach the Hon'ble Apex Court.

12. Learned APP strongly opposes.

13. In view of above submissions, four (04) weeks time is granted to the applicant to surrender.

(ABHAY S. WAGHWASE, J.)