



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 472 OF 2004

1. Ankush Tulshiram Sudke,
Age : 38 years, Occu. : Agriculture,

2. Sunita Ankush Sudke,
Age : 29 years, Occu. : Labour.

Both R/o. Shirdhon, Tq. Kallam,
District Osmanabad.

... Appellants

Versus

State of Maharashtra

... Respondent.

.....
Mr. Joydeep Chatterji, Advocate for Appellants.
Mr. C. V. Bhadane, APP for Respondent - State.

.....

CORAM : ABHAY S. WAGHWASE, J.

DATED : 01 APRIL 2025

JUDGMENT :

1. Instant appeal arises out of judgment and order of conviction dated 03.07.2004 passed by learned 3rd Ad-hoc Additional Sessions Judge, Osmanabad in Sessions Case No.180 of 2000 convicting appellants for offence punishable under sections 498A read with section 34 of Indian Penal Code.

PROSECUTION STROY IN TRIAL COURT IS AS UNDER

2. Deceased Usha was married to appellant no.1 Ankush. Till giving birth to two daughters everything was smooth.

Subsequently, appellant no.1 developed intimacy with appellant no.2. It is alleged that, thereafter maltreatment began. It is alleged that both appellants put up demand of Rs.2,000/- for construction of house and on account of failure, they allegedly beat her. Getting fed up of the same, she allegedly committed suicide by jumping in the well. On report by uncle, crime was registered, investigated and both appellants are charge sheeted and tried.

Vide judgment and order dated 03.07.2004 both appellants came to be acquitted from charge under section 306 of IPC, but came to be convicted for offence under section 498A of IPC. Hence, instant appeal.

SUBMISSIONS

On behalf of Appellants :

3. Learned counsel for appellants pointed out that, there is false implication. That, evidence on behalf prosecution in support of both above charges is patently weak. He pointed out that, evidence of prosecution witnesses is general, omnibus and non specific. That, distinct roles are not crystallized or defined. That, except alleging beating, who beat her, when and where has not been stated by any of the witnesses. According to learned counsel, on same set up evidence, both appellants are acquitted for charge under section 306 of IPC. In spite of weak and fragile evidence on the point of 498A charges are

held to be proved. That, cruelty as contemplated under law has not been either demonstrated or substantiated. Conclusion drawn is based on conjunctures and surmises. Hence, learned counsel urges for setting aside the impugned judgment.

On behalf of Respondent - State :

4. Learned APP pointed out that, in spite of marriage with deceased and in spite of having two daughters, appellant husband maintained relations with appellant no.2. That, they both together subjected deceased to physical and mental cruelty. That, informant uncle, his wife and other relatives, who heard from deceased about demand and ill treatment have consistently deposed. That, their evidence to that extent has remained unshaken and hence according to learned APP, no error whatsoever is committed by learned trial Judge in recording guilt and hence prayers are raised for dismissing the appeal for want of merits.

EVIDENCE BEFORE THE TRIAL COURT

5. On re-appreciating the entire evidence, it is emerging that, prosecution case is rested on oral evidence of 08 witnesses.

For proper appreciation and comprehension, it would be fruitful to reproduce the very testimonies of relevant witnesses i.e. informant PW1 Bhimrao, uncle of deceased; PW2 Dr. Balasaheb

Medhe, Medical Officer; PW3 Chhaya wife of informant; PW4 Aashabai, sister of deceased in verbatim as has been stated in witness box in trial court.

6. **PW1** Bhimrao informant is the uncle of deceased.

Relevant portion of his evidence at Exhibit 37 is as under:-

“I have three real brothers namely Limbaji, Bhagwan and Dagadu. Deceased Usha is daughter of my elder brother Dagadu. Dagadu the father of Usha was four months old. The mother of Usha Kerabai after death of Dagadu celebrated her second marriage and went away. Since child hood I was looking after maintenance of deceased Usha.

2. *Deceased Usha 7 years prior to her death was married with accused No.1 Ankush. After marriage Usha went to accused No.1 to lead happy married life. Deceased Usha and accused No.1 have two daughters and till birth of both the daughters accused no. 1 treated properly to deceased Usha.*

3. *Three years prior to death of Usha the accused No.1 celebrated secretly his second marriage with accused No. 2. The accused No. 1 and 2 and deceased Usha were residing together. Both the accused were asking Usha to bring Rs.2000/- from uncle to construct the house, otherwise they will not allow her to lead married life. Usha stated us the said fact whenever she was coming for festival at our house. I work as a labourer. I could not pay Rs. 2000/- to Usha. I convinced her and sent her to the accused. Usha also stated us that the accused beat her for their said unlawful demand of Rs. 2000/-.*

4. Navanath is brother of accused No.1 Ankush, on 13.7.2000 Navnath had come to us to enquire whether Usha had seen to our house. Navnath stated us that Usha was not at the house of the accused from 12.7.2000. We took search but could not find Usha. On 15.7.2000 the accused gave message that dead body of Usha was noticed in the well of village Shiradhon. We went to Shiradhon and attended funeral ceremony and were noticed face of deceased Usha. We do not know panchanama and post-mortem. Said funeral of Usha took place at about 6.00 p.m. on 16.7.2000 I went to Shiradhon police station and lodged the complaint against the accused. The complaint now shown to me is the same, it bears my thumb mark and the contents there in are correct is at Exh.38. The accused No.1 before the court is husband of deceased Usha. The accused No.2 is second wife of accused No.1. I know both the accused before the Court.”

7. **PW2** Dr. Balasaheb Medhe is the Autopsy Doctor. In his testimony at Exh.41 he deposed as under :-

“1. On 15.7.2000 I was attached to P.H.C. Shiradhon. on 15.7.2000 myself and Dr.P.S .Rochakari conducted post mortem examination of the dead body of Usha Ankush Sudke between 4.00 p.m. to 5.30 p.m. Post mortem report Exh. 40 now shown to me is issued by myself and said Doctor, the contents therein are correct and it is signed by both of us. The probable of cause of death of Usha is mentioned “Asphyxia” from obstruction to air passages by inhalation of fluid water due to drowning. Exh. 39 is also issued by us and contents therein are correct and it is signed by we both medical officers.

2. *Any type of injury is possible if one fell in the water by slip of leg and that depends upon nature of fall and obstruction. There are no antimortum injuries on the said dead body."*

8. **PW3** Chhaya is the wife of informant. In her testimony at Exh.42, she deposed as under :-

"1. The complainant Bhimrao is my husband. Usha is daughter of deceased Dagadu the brother of complainant. The mother of Usha went away when Usha was small girl.

2. Usha married with accused No.1. After marriage Usha went to the accused No. 1 to lead married life. Accused No. 1 and Usha have two daughters. Up to birth of first daughter accused No.1 treated properly to Usha. Then accused No.1 married with accused No.2. Accused and Usha were residing jointly. Whenever Usha was coming to our house she was stating that the accused were demanding Rs.2000. We could not pay any amount to Usha due to poverty. The accused were not giving Bhakar to Usha. Moreover, accused did not give proper treatment to Usha.

3. Navnath the brother of accused No.1 came to us and stated that Usha was missing. We also stated that she did not come to us. We took search of Usha but she was not traced. On third day one person came to us and stated that Usha was found in the well. We went to Shiradhon. We reached Shiradhon at the time of funeral ceremony of Usha and we saw dead body of Usha on fuel wood. We came back to our house. On the next day myself, complainant and my cousin brother Uttam Saudagar went to Shiradhon police station. My husband lodged the complaint."

9. **PW4** Aashabai is the sister of deceased. In her testimony at Exh.43, she deposed as under :-

“1. The deceased Usha is my real younger sister. The accused No.1 married with Usha. The accused No.1 and Usha have two daughters and one of them is expired.

2. The complainant is my uncle. My father Dagadu is no more. In our child-hood our mother had went elsewhere. Upto birth of first daughter of Usha accused No.1 treated her properly. Thereafter both the accused were badly beating and not giving food properly to Usha. Whenever Usha was coming to the complainant, she was stating about the said cruelty. Both the accused were demanding Rs.2000/- and on that count they were subjecting cruelty to Usha. We could not pay the amount to Usha.

3. Navnath the brother of accused No.1 come to the complainant and stated that Usha was not in his house. The said fact was stated to me by complainant's wife Chhaya. Dead body of Usha was seen by us at grave yard. We saw face of Usha at grave yard. I identify both the accused before the court.”

Rest of the witnesses are panchas and Investigating Officers.

ANALYSIS

10. After appreciating the entire oral and documentary evidence, learned trial Judge has refused to accept prosecution story

on the charge of 306 of IPC, however, prosecution story is accepted as regards to offence of under section 498A of IPC is concerned.

11. Re-appreciated the entire evidence. On critical analysis it is noticed that, informant is paternal uncle of deceased Usha. His evidence at Exh.37 shows that deceased was married to appellant no.1 seven years prior to her death and she had two daughters. According to informant, till birth of two daughters, appellant husband treated Usha properly. However, three years prior to her death, appellant no.1 secretly performed second marriage with appellant no.2 and they too started residing together. He deposed that both were asking Usha to bring Rs.2,000/- from uncle to construct house. He further deposed that, they both said that they would not allow her to lead married life. She also reported that, accused beat her for their unlawful demand. So much is the only evidence. As submitted, allegations are general and omnibus in nature. Demand is attributed for construction of house, but details are not given where house was proposed to be constructed that too at the cost of only Rs.2000/-. Omnibus allegations are levelled for beating, but when such instances took place has not been stated. It was essential to give instances because their marriage was seven years old and when appellant no.1 married with appellant no.2 has not come on record. Since when they were residing together and

whether at such point of time deceased was also with them or not is not getting clear. Allegations are levelled that three years prior to death, there was demand and beating. Resultantly, instances are not coming on record. Cross of informant PW1 in paragraph 8 shows that about demand or beating he has not informed anyone nor has lodged report anywhere. Paragraph 9 of the cross shows there is omission regarding demand for construction of house. This is material omission.

12. PW3 Chhaya, wife of informant, also does not attribute demand for construction of house and she merely deposed about demand of Rs.2,000/-. She deposed that, Usha was not given food, but this is not coming from the mouth of informant. Therefore, witnesses are not consistent. Paragraph 7 of the cross of this witness shows that there is material omission about not giving food.

13. PW4 Aashabai seems to be sister of deceased, but even she stated that, both accused beat her and were not giving food properly. Even evidence is silent about demand for construction of house. Her evidence is also general and omnibus. In paragraph 4 of the cross, she admitted that, Usha died due to fall in the well. Therefore, her evidence inflicts severe dent to the prosecution story about suicide being committed.

14. Therefore, none of the witnesses specify which of the accused beat when and where. Marriage is of seven years old. There is no distinct or independent evidence on the point of marriage of appellant nos.1 and 2 and they both residing together and further putting up demand and beating deceased. For attracting section 498A of IPC there has to be evidence about cruelty being meted out which was of continuous in nature. Such requirement is not met in the available evidence. Above discussed evidence is general, omnibus and non specific and moreover full of material omissions and improvements. Therefore, with such weak evidence, charge of 498A of IPC cannot be said to be attracted.

15. Perused the judgment under challenge. Observations of learned trial Judge in paragraph 16 has no foundation and as submitted is based on conjectures and surmises and personal opinion. There is no foundation for drawing conclusion recorded in said paragraph. Learned trial Judge has not considered and appreciated the cross of informant and his wife as well as his sister. Hence, this appeal calls for interference. Hence, the following order is passed :

ORDER

(I) Criminal Appeal stands allowed.

- (II) The conviction awarded to appellants, namely (1) Ankush Tulshiram Sudke and (2) Sunita Ankush Sudke in Sessions Case No.180 of 2000 by the learned 3rd Ad-hoc Additional Sessions Judge, Osmanabad on 03.07.2004 for the offence punishable under section 498A of Indian Penal Code, stand quashed and set aside.
- (III) The appellants stands acquitted of the offence punishable under section 498A of Indian Penal Code.
- (IV) The bail bonds of the appellants stand cancelled.
- (V) The fine amount deposited, if any, be refunded to the appellants after the statutory period.

(ABHAY S. WAGHWASE, J.)