



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 814 OF 2003

Shrinivas Madhav Panchal
Age: 22 years, Occu.: Agril.,
R/o. Kaladgaon, Tq.Ardhapur,
Dist.Nanded.

....Appellant

Versus

The State of Maharashtra
through Ardhapur Police Station.

.....Respondent

.....
Advocate for Appellant : Mr.A.M.Gaikwad
APP for Respondent : Mr.V.M.Chate

.....
CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 17 FEBRUARY, 2025
PRONOUNCED ON : 12 MARCH, 2025**

JUDGMENT :-

1. Appellant convict in Sessions Case No.16 of 2001 hereby takes exception to judgment and order dated 02-12-2003 passed by learned Adhoc Additional Sessions Judge, Nanded, recording the guilt of the appellant for offence under Sections 498-A and 304-B of the Indian Penal Code (IPC).

PROSECUTION CASE IN BRIEF

2. In nutshell, case of prosecution in trial Court is that deceased Shakuntala, daughter of informant, was married to present appellant

six months prior to her death. Out of agreed Rs.30,000/- dowry, Rs.20,000/- was paid and Rs.10,000/- had remained. For remaining Rs.10,000/-, it is alleged that there was cruelty by husband and in-laws. Finally, Shakuntala committed suicide by jumping in the well. Holding husband and in-laws responsible, father PW1 Laxman lodged report in consequence to which crime was registered, investigated and on gathering sufficient evidence, PW7 Molvane, API, chargesheeted accused.

After committal of case, learned Adhoc Additional Sessions Judge, Nanded, conducted trial vide Sessions Case 16 of 2001 against six accused persons including present appellant. By judgment and order dated 02-12-2003, accused nos.2 to 6 were acquitted from all charges and accused no.1 husband (appellant) alone was held guilty for offence punishable under Sections 498-A and 304-B of the IPC, however, he was acquitted of charge under Section 306 of the IPC.

SUBMISSIONS

On behalf of appellant :

3. Learned counsel for appellant while criticizing the judgment, took this court through entire evidence of all seven prosecution witnesses. According to him, there are general, omnibus allegations

regarding demand and ill-treatment. According to him, there is no independent reliable evidence at the first count about dowry being agreed and part amount being paid. He further submitted that parents i.e. PW1 Laxman (father) and PW4 Godavaribai (mother) as well as PW6 Ramrao, brother of deceased, are not consistent or lending support to each other. He further pointed out that prosecution relying on independent witness, but he has hearsay information. That cross-examination of these witnesses renders their substantive evidence doubtful. According to learned counsel, going by circumstances at the well, there is possibility of accidental fall. That, in proximity to death, there is no allegation of demand, ill-treatment, harassment either physical or mental. He pointed out that initially AD was registered and subsequently, out of annoyance, there is belated false implication. Lastly, he submitted that on same set of evidence, accused nos.2 to 6 are acquitted, but surprisingly appellant husband alone is held guilty. Thus, according to him, this is against settled legal principles and on this court, he seeks reliance on the judgment of Hon'ble Apex Court in the case of *Javed Shaukat Ali v. State of Gujarat*, AIR 2023 SC 4444. Resultantly, he seeks indulgence by setting aside the impugned judgment by allowing the appeal.

On behalf of State :

4. While opposing the above submissions, learned APP submitted that barely after six months of marriage, on account of remaining Rs.10,000/- dowry, deceased was subjected to cruelty and harassment. That, when she came for festivals, she reported to her parents and brother. That, they have accordingly deposed to that extent. According to learned APP, apart from immediate relatives, there is evidence of PW5 Deorao, independent witness, who has supported prosecution version. That, learned trial Court has invoked presumptions available under law. According to him, findings and conclusion of the learned trial Court being in consonance with evidence, he prays to dismiss the appeal for want of merits.

In support of his submissions, learned APP placed reliance on the decisions in *Ranjit Singh v. State of Punjab*, (2013) 12 SCC 333; *Rajinder Singh v. State of Punjab*, (2015) 6 SCC 477.

EVIDENCE IN TRIAL COURT

5. In support of its case, prosecution has adduced evidence of in all seven witnesses. Sum and substance of their evidence is as under :

PW1 Laxman Namdeo Panchal is father of deceased. At

exh.40, he deposed as under :

“01. Madhav and Balaji are my sons. Vandana is my daughter. My daughter Shakuntala was married with accused Shrinivas of Kaladgaon about 6 months before her death. It was decided to pay Rs.30,000/- as dowry. The amount of Rs.20,000/- was paid and the remaining amount of Rs.10,000/- was to be paid. The marriage was celebrated at Ekdara. Shakuntala was living with her husband who was joint with his parents and brother.

02. I had gone to her house to bring her for Panchami. Shakuntala told me that her husband, parents-in law, brother, on Shivanand and Ananda harassed her over non-payment of remaining dowery amount. She told that she was beaten. She was taken back by her father-in-law after two days.

03. I had again gone to take her for Pitra. She did accompany me. She asked me to pay the remaining amount of dowery of Rs.10,000/- . She is being beaten. I told her husband and parents-in-law that time that I shall pay the amount.

They went back with Shakuntala after a day.

04. Bhojane from our village told me that he received a telephonic message from Kaladgaon by Ananda that your daughter fell in well. I along with my relations went to Kaladgaon that evening. We went to a well situated in the field of one Kokate. Bhojane informed me at 7.30 p.m. I could not see inside the well due to dark. I went to P.S. Ardhapur and lodged the report. The report was reduced into writing. It bears my signature, the contents are correct. It is Exhibit-41. We went back to our village Ekdara.

05. On next day at 7 a.m., I again went to vilage Kaladgaon, near

the well. The dead body was taken out of the well. She was cremated at our village Ekdara. Witness identified all the accused before Court.

06. On Tuesday a day before this incident I had taken my she buffalo to Basmat Bazar to raise the amount for dowry by selling it. It was not sold.”

PW2 Santoshi w/o Tukaram Panchal is cousin of deceased. At exh.42, she deposed as under :

“Shakuntala was my cousin. My father Narhari and uncle Laxman reside in same Wada at Ekdara. Shakuntala was married six months before her death to Shrinivas. I met Shakuntala at the time of Pitra at Ekdara. I had gone to Ekdara for delivery. On inquiry by me Shakuntala told me that her husband and parents-in-law ill-treat and beat her. She was weeping. She told that she was harassed for non-payment of remaining amount of Rs.10,000/- as a dowry.”

PW3 Marotrao Hanmantrao Bhojane is acquaintance of father of deceased. At exh.43, he deposed as under :

“I had a field at Ekdara. I know Laxman Panchal of Ekdara. Shakuntala was married to one Shrinivas of Kaladgaon. I have a telephone connection bearing no.78229 in my house at Ekdara. On 18-10-2001 I was present at my house in Ekdara during evening period. I received a telephone call from Kaladgaon to inform Laxman that his daughter went out at 10 a.m. and was found in a well at 5 p.m. The informant introduced him as the cousin-father-in-law. I informed Laxman about the message.

02. We went to Kaladgaon by jeep. We went to the well. We could not see anything inside it. Father of Shakuntala went to Ardhapur and we returned to village.

PW4 Godavaribai w/o Laxman Panchal is mother of deceased.

She deposed at exh.44 as under :

01. My daughter Shakuntala was married to Shrinivas of Kaladgaon six months before her death. We had agreed to pay Rs.30,000/- as dowry and had paid Rs 20,000/-. Rs.10,000/- has remained to be paid. Shakuntala was living with her husband, brother-in-law and parents-in-law.

02. Shakuntala had come after Aratani paratani at Panchami. Laxman had gone to bring her. Shakuntala told me that, her husband, brother-in-law, parents-in-law do not treat her properly. Her father-in-law had come to take her back. We told Madhav that we shall pay the amount and do not ill-treat her. She went back with Madhav.

03 Shakuntala was again brought by my husband for a Pitra. Shakuntala told me that her husband, brother--in-law, mother-in-law beat and ill-treat her. She told that she was ill-treated for remaining amount of dowry. Her husband and mother-in-law had then come to us. We told Shakuntala's husband and mother-in-law that we shall sell the she buffalo and make the payments. Shakuntala went back with her mother-in-law. We received a telephonic message after 25 days through Bhojane that Shakuntala fell in the well and died. We received the message at about 7 to 7.30 p.m.”

PW5 Deorao Sainaji Arsule is neighbour of father of deceased.

At exh.51, he deposed as under :

“01. House of Laxman Panchal is situated near to my house at village Ekdara. Shakuntala, daughter of Laxman, was married to Shrinivas about 2/3 months before her death. It was agreed to pay Rs.30,000/- by Laxman to Shrinivas. Rs.20,000/- were paid. I learnt through Laxman that his daughter was ill-treated for non-payment of remaining dowery amount. I asked Laxman to make some arrangement and make the payment as she is harassed, Laxman said that he shall sell the she buffalo with him to raise the amount. Laxman had taken the buffalo to Vasmata market a day before incident. Son of Laxman had accompanied him. The buffalo was not sold that day.

02. In response to the cries at the house of Laxman, I went to him and learnt that there was a message about death of Shakuntala. I had gone to village Kaladgaon with Laxman and others. We went to the well with the help of torch light. We did not see the dead body. I accompanied Laxman to Police Station from Bhokar Phata. Laxman went inside the Police Station and lodged the report. We went back to Ekdara.

03. We went to Kaladgaon next day morning. The dead body was taken out of the well. Panchanamas were drawn. The dead body was taken to Govt. Hospital, Nanded, and then therefrom to Ekdara for cremation.

04. I was present during the talks for settlement of the

marriage.”

PW6 Ramrao Namdeo Panchal is brother of informant. At exh.52, he deposed as under :

01. Laxman is my brother. We have houses in the same premises (Wada). Shakuntala daughter of Laxman was married to Shrinivas of Kaladgaon about 5 months before her death. It was agreed to pay Rs.30,000/- as dowry and the amount of Rs.20,000/- was paid by Laxman. Shakuntala had come to our village for Panchami after her marriage. Shakuntala told me that her husband, parents-in-law and brother-in-law harassed her. She told that she was beaten. The father-in-law of Shakuntala had come to take her back. We asked Madhav not to harass her and told that we would pay the amount.

02. She had again come for Pitra. She told that her husband, brother-in-law, father-in-law harassed her and beat her. She told that Anandrao and Shivanand during their visits to the field at Kaladgaon did harass her. Shrinivas and his mother had come for Pitra. I told Shrinivas and his mother that we shall pay the amount and do not harass her.

03. Three weeks after Pitra, Bhojane told us that Shakuntala died in the well as per the message received. It may be 7 to 7.30 P.M. We went to Kaladgaon near the well. We could not see the dead body inside the well. It was dark. We went back to Ekdara. I know accused Shivanand and Anand. I know all the accused persons.”

ANALYSIS**Charge under Section 498-A IPC :**

6. As regards charge under Section 498-A is concerned, as to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark cases of *State of West Bengal v. Orilal Jaiswal* [(1994) 1 SCC 73], *Giridhar Shankar Tawade v. State of Maharashtra* (2002) 5 SCC 177; *State of Andhra Pradesh v. M. Madhusudhan Rao* (2008) 15 SCC 582/[2008] 14 S.C. R. 1170; *Bhaskar Lal Sharma v. Monica* (2009) 10 SCC 604 *G. V. Siddaramesh v. State of Karnataka* (2010) 3 SCC 152 and *Gurnaib Singh v. State of Punjab* (2013) 7 SCC 108; *K. Subba Rao v. The State of Telangana* (2018) 14 SCC 452. Relevant observations of the Hon'ble Supreme Court in the case of *Manju Ram Kalita v. State of Assam* (2009) SCC 330 are borrowed and quoted below :

“13. The provisions of Section 498A IPC read as under :

"498A. Husband or relative of husband of a woman subjecting her to cruelty. - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation. - For the purposes of this section 'cruelty' means -

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman;

(b) harassment of the woman where such harassment is with a view to coercing her to any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

Cruelty has been defined by the explanation added to the Section itself. The basic ingredients of Section 498A I.P.C. are cruelty and harassment.

14. In the instant case, as the allegation of demand of dowry is not there, we are not concerned with clause (b) of the explanation. The elements of cruelty so far as clause (a) is concerned, have been classified as follows :

(i) any 'wilful' conduct which is of such a nature as is likely to drive the woman to commit suicide; or

(ii) any 'wilful' conduct which is likely to cause grave injury to the woman; or

(iii) any 'wilful' act which is likely to cause danger to life, limb or health, whether physical or mental of the woman.

*15. In **S. Hanumantha Rao v. S. Ramani**, AIR 1999 SC 1318, this Court considered the meaning of cruelty in the context of the provisions under Section 13 of the Hindu Marriage Act, 1955 and observed that :*

"8. mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between the wife and husband and as a result of which it

becomes impossible for the party who has suffered to live with the other party. In other words, the party who has committed wrong is not expected to live with the other party."

16. In **V. Bhagat v. Mrs. D. Bhagat**, AIR 1994 SC 710, this court, while dealing with the issue of cruelty in the context of Section 13 of the Hindu Marriage Act, observed as under :

"16.It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

17.

18. The context and the set up in which the word 'cruelty' has been used in the section seems to us, that intention is not necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty."

17. In **Mohd. Hoshan v. State of A.P.**; (2002) 7 SCC 414, this Court while dealing with the similar issue held that

mental or physical torture should be "continuously" practiced by the accused on the wife. The Court further observed as under :

"6. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impart of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not."

*18. In **Raj Rani v. State (Delhi Administration)**; AIR 2000 SC 3559, this Court held that while considering the case of cruelty in the context to the provisions of Section 498A I.P.C., the court must examine that allegations/ accusations must be of a very grave nature and should be proved beyond reasonable doubt.*

*19. In **Sushil Kumar Sharma vs. Union of India**, AIR 2005 SC 3100, this Court explained the distinction of cruelty as provided under Section 306 and 498A IPC observing that under Section 498A cruelty committed by the husband or his relation drive woman to commit suicide etc. while under Section 306 IPC, suicide is abated and intended. Therefore, there is a basic difference of the intention in application of the said provisions.*

20. In *Girdhar Shankar Tawade v. State of Maharashtra*, AIR 2002 SC 2078; this Court held that "cruelty" has to be understood having a specific statutory meaning provided in Section 498A I.P.C. and there should be a case of continuous state of affairs of torture by one to another.

21. "Cruelty" for the purpose of Section 498-A I.P.C. is to be established in the context of S. 498-A IPC as it may be a different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty."

7. Here though there are seven witnesses, precisely prosecution is placing heavy reliance on evidence of parents i.e. PW1 Laxman (father) PW4 Godavaribai (mother), PW5 Deorao (neighbour of informant) and PW Ramrao (brother of informant). Consequently, there evidence is put to minute re-appreciation.

On doing so, it is noticed that informant father PW1 Laxman, his wife PW4 Godavaribai and PW6 Ramrao (brother of informant) are only consistent on the point of Rs.30,000/- dowry to be decided

and Rs.20,000/- being paid. But there is no evidence as to when exactly said part amount was paid.

It is pertinent to note that **PW1** Laxman, informant father merely speaks that when his daughter came for panchami festival and pitra, she allegedly told that her husband, parents-in-law, brother-in-law Brahmanand, cousin father-in-law Shivanand and Anandrao harassing for remaining amount of dowry. Who amongst six played what role has not been stated. What was the form of harassment and by whom is also not stated.

In **cross-examination**, informant PW1 father has admitted that accused Anandrao and Shivanand resided at Nanded whereas his daughter Shakuntala and her husband were residing at Kaladgaon, Tq.Ardhapur, Dist.Nanded. He is unable to state how portion marked "A" and "B" mentioned below, is appearing in his statement.

Portion "A" – "आज दिनांक १८.१०.२००० सायंकाळी सहा वाजता गावातच आसताना

आमचे गावातील मारोती s/o हणमंतराव भोजने यांनी येवून सांगितले."

Portion "B" – "पण आमचे नवीनच सोईरपण असल्याने मी, मुलीचे सासू, सासरा यांना

व जावयाला काही बोललो नाही."

In paragraph 12 material omissions are brought about he informing Police about his daughter living with his parents-in-law

and brother-in-law; he admitted that his statement is silent about demand and ill treatment at the hands of accused; he admitted that he did not report that accused Madhav had come to take Shakuntala two days back and he informing him about paying amount later on; he also admitted about not stating that he had taken his buffalo to sale and raise amount to pay remaining dowry.

Therefore, his such answers in cross-examination creates doubt about veracity of his substantive evidence on the point of harassment and demand.

PW2 Santoshi, cousin of deceased, merely stated that when she came for delivery, on her enquiry, Shakuntala stated that her husband, parents-in-law ill-treat and beat her for not paying remaining amount of Rs.10,000/-.

Informant father has not stated about his daughter reporting demand and ill treatment to PW2 Santoshi.

In **cross-examination** PW2 Santoshi admitted that her statement is silent regarding specifically naming husband and in-laws.

PW4 Godavaribai deposed that her daughter was residing with parents-in-law, brother-in-law, but as stated above, informant has admitted that his daughter and husband resided separately. Mother

merely speaks that her daughter told that she was not treated properly. She does not speak of any sort of harassment nor has specified who amongst six did what. She speaks of mother-in-law beating and ill-treating Shakuntala, but to this extent, her husband's evidence i.e. informant's evidence is silent.

Paragraph 6 of **cross-examination** of this witness also shows that there are material omissions about in-laws living in same house and brother-in-law also ill-treating deceased.

PW6 Ramrao, uncle of deceased and brother of informant also deposed about his niece telling him about husband and in-laws harassing and beating her. His evidence is conspicuously silent about alleged ill-treatment for remaining amount of Rs.10,000/-. He has attributed beating to all, but has not given instances nor defined roles. Even his evidence in paragraph 4 carries material omissions.

CONCLUSION

8. Therefore, on taking survey of above discussed evidence, as submitted there are general allegations and specific instances, form of ill-treatment, by which of the accused amongst six did what and when has not come on record. Deceased allegedly paid visit to maternal home only on two festivals. She was found dead in the well on 18-10-2000. In proximity to her death, there is nothing to suggest

any sort of harassment ill-treatment, which made her life so miserable that she was constrained to end up her life.

9. It is noticed that learned trial judge has already acquitted accused nos.2 to 6 from all charges by analyzing same set of evidence. Appellant husband is also acquitted of offence under Section 306 of the IPC, but he is convicted for offence under Sections 498-A and 304-B of the IPC. There is no distinct material to single him out to hold him responsible for death.

10. The facts in the cases relied by the learned APP and the facts in the present case are quite distinguishable and hence, cannot be applied to the case in hand.

11. Learned trial judge has invoked presumptions under Section 113-B of the Evidence Act, but learned trial Judge has not considered that prior to applying this presumptions, foundational facts are required to be proved by the prosecution. Here, this court did not notice said primary burden discharged by the prosecution. Therefore, case being made out for interference, appeal deserves to be allowed. Accordingly, I proceed to pass following order :

ORDER

I) Criminal Appeal No.814 of 2003 is allowed.

II) The conviction awarded to appellant in Sessions Case No.16 of 2001 by the learned Ad-hoc Additional Sessions Judge, Nanded on 02-12-2003 for the offence punishable under Sections 498-A and 304-B of the Indian Penal Code, stands quashed and set aside.

III) The appellant stand acquitted of the offence punishable under Sections 498-A and 304-B of the Indian Penal Code.

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

V) The fine amount deposited, if any, be refunded to appellant 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