

2024:BHC-AUG:25325



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Cri.Appeal.258.2004

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 258 OF 2004

1.	[REDACTED]	
2.	[REDACTED]	
3.	[REDACTED]	... Abated.
4.	[REDACTED]	... Appellants (Orig. Accused Nos.1 to 4)
Versus		
State of Maharashtra		... Respondent

...
Mr. Joydeep Chatterji, Advocate for Appellants.
Mr. K. K. Naik, APP for Respondent - State.
Mr. R. P.Kahale h/f. Mr. Vinod P. Patil, Asstt. to APP for complainant.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 09 OCTOBER 2024

PRONOUNCED ON : 17 OCTOBER 2024

JUDGMENT :

1. In instant appeal, there is challenge to the judgment and order dated 15.04.2004 passed by learned IIIrd Additional Sessions Judge, Jalgaon in Sessions Case No.121 of 2003 holding appellants guilty for offence punishable under sections 498-A and 306 read with section 34 of Indian Penal Code (IPC).

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IN BRIEF PROSECUTION VERSION IS THAT

2. Deceased [REDACTED] was married with appellant on 24.12.2002. After marriage she came to reside with her husband and in-laws. After barely 2 months, she reported ill treatment. Even during her visit at the time of Holi festival on 23.03.2003, she reported ill treatment and taunting on various counts like not preparing meals, giving her humiliating treatment, not allowing her to watch T.V. In spite of she suffering from Typhoid she was asked to do the domestic work and even she was prevented from talking with neighbours. All this was reported during her stay at the time of Holi festival. On 01.05.2003 news of suicide was received by phone call from one [REDACTED] and therefore, PW1 mother lodged report Exh.36, on the basis of which crime was registered.

3. PW6 API Saste carried out investigation and after gathering evidence, charge-sheeted accused. All four accused were made to face trial before III Additional Sessions Judge, who on appreciating the evidence of in all six witnesses, by judgment and order dated 15.04.2004 husband [REDACTED], brother-in-law [REDACTED], father-in-law [REDACTED], mother-in-law [REDACTED] were held guilty for offence punishable under sections 498-A and 306 read with section 34 IPC.

Feeling aggrieved by the above judgment and order of conviction, instant appeal has been preferred.

STATUS AND ROLE OF PROSECUTION WITNESSES

4. The prosecution has examined following 06 witnesses in support of its case. Their role, status and sum and substance of evidence is as under :

PW1 [REDACTED], informant and mother of deceased, stated that, her daughter married with accused no.1 on 24.12.2002. She went to cohabit with husband and in-laws at Varangaon. During visit of her daughter on 06.02.2003, she deposed about receiving complaints of ill-treatment. She also claims that similar complaints were raised by her daughter during her visit on 23.03.2003. On 01.05.2003 information was received by one Sankar about [REDACTED] committing suicide by hanging. Therefore, after funeral, she lodged report.

PW2 Baban, paternal uncle, stated that after marriage accused resided jointly. When his niece came to attend the marriage ceremony on 06.02.2003, she reported ill treatment at the hands of accused. Even during visit of 23.03.2003, she reported taunting and harassment. According to him, there was demand of car and for non fulfillment of the same, there was

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harassment. He also deposed about receiving news on 01.05.2003 regarding ████████ hanged herself.

PW3 Minakshi, aunt claims that on 06.02.2003, ████████ told her that there was taunting, accused asked her to fetch the water after taking a bath when the tap open at 1:30 a.m., prohibiting her from watching T.V., taunting for not preparing good meal. During Holi festival also she reported ill treatment and cruelty.

PW4 Suresh, spot pancha, who identified spot panchanama vide Exh.25.

PW5 Dr. Aabid, autopsy surgeon, who after conducting post mortem issued opinion about death due to asphyxia due to hanging and according to him it was a suicidal case by hanging.

PW6 API Saste is the Investigating Officer.

SUBMISSIONS

On behalf of Appellants :

5. Here, there is evidence of mother informant PW1 Sangita, paternal uncle PW2 Baban and aunt PW3 Minakshi. Precise case of appellant is that, allegations are general and vague in nature. That, allegations are directed against all accused without specifying role and according to learned counsel, cruelty has not

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been proved as is contemplated under law so as to attract section 498-A IPC. Submissions are also advanced that, there is nothing to indicate that there was abetment, inducement or incitement to commit suicide and therefore learned counsel questions the legality and maintainability of judgment.

On behalf of Respondent - State :-

6. On the other hand, learned APP strongly supported the judgment on the ground that mother, paternal uncle and aunt are all consistent. That, barely after a month also deceased reported ill-treatment at the hands of husband and in-laws. That, similar complaint was made by her in marriage also. That, there is evidence to that extent which is not been disturbed and only because of above treatment ██████████ committed suicide. That, there was no other reason and hence, learned APP justifying the conviction and prays to dismiss the appeal for want of merits.

7. During pendency of appeal, appellant no.3 ██████████ was reported to be dead and therefore, out of four appellants, appeal as regards to appellant no.3 ██████████ father-in-law stood abated by order dated 24.09.2024.

8. For proper appreciation and comprehension, it would

be fruitful to reproduce the testimonies of above three witnesses in verbatim as has been stated in witness box in trial court.

9. PW1 Sangita, mother, after stating about marriage of deceased and naming articles given in the marriage, in paragraph nos.2, 3 and 5, deposed as under :-

“2. On 06.02.2003 my daughter [REDACTED] came to my house along with the accused No.1 to attend a marriage ceremony at the house of my sister. When we enquired with [REDACTED] about the behavior of accused persons with her to her matrimonial home, she made a complaint of ill-treatment at the hands of accused persons. She told me that, the financial position of accused persons is sound than us, therefor, they give her a humilitative treatment. The accused were asking her to fetch the water after taking the bath in the night at about 1:00 to 2:00 a.m. She was not allowed to watch the T.V. along with other family members and she was asked to sleep on a carpet. The accused were commenting on the meals prepared by her and she was required to take the meals whenever asked by the accused.

3. On 23.03.2003, myself and my husband went to the house of accused to fetch back my daughter for Holi festival, but the accused refused to send her on the ground that if she left the house who will prepare the meal. However, on our request they agreed to

send her but with a condition that we should bring her back to their house. Then my daughter stayed with me for about 7/8 days and during that period she again made complaint with me regarding the ill-treatment at the hands of accused persons. She told me that as one of the relative of the accused got a car in the marriage and, therefore, asked my daughter to bring a car. They further told that in case if her parents were not having capacity but her uncle is having the capacity to give a car and asked her to bring a car.

5. She was not allowed to see any neighbourer or to throw away the dust or to go alone to the temple. However, I advised her that after getting an issue there would be change in the behaviour of accused and thereafter sent her along with her uncle Babanrao. Whenever we tried to contact my daughter on phone, the accused persons used to keep the receiver by saying a wrong number. She was not allowed to contact her on phone. The accused were subjecting the deceased [REDACTED] to physical and mental cruelty.”



In paragraph no.6, she reported receiving message initially about [REDACTED] sustained an electric shock, but later on message being received that [REDACTED] committed suicide.

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There is extensive cross of mother. However, only relevant cross of the mother is reproduced as under :-

In paragraph no.7, she has admitted that marriage was settled through Babanrao. She admitted that accused was in the business of manufacturing brick and they have doubled storied house comprising of seven rooms. In paragraph no.9, there are questions about reception post marriage and in paragraph no.10 she answered that neither she nor husband visited Jalgaon in the month of February 2003. She admitted that, when her daughter and husband came for marriage ceremony at Nagpur, they stayed for two days. She admitted that, there was no written communication by deceased at any point of time. In paragraph no.11 she is questioned about visit of her daughter for Holi festival and she answered that she stayed for 6 to 7 days. She answered that, they do not possess any telephone and rather such facilities at the house of her brother-in-law Babanrao. She denied knowing whether accused no.1 had made any phone call to deceased  at the house of Babanrao. She answered that, after Holi festival,  readily went back with accused husband.


In paragraph no.12, she admitted that there is police station near the compound of the hospital at Varangaon and admitted that nobody went to police from their side in the entire

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night; that accused has also visited hospital; again police visited in the morning also. She admitted that, dead body was taken to the house of accused where all relatives were gathered and funeral was conducted from the house of accused. She fairly admitted that they made no complaint against accused at the police station at that point of time.

Omission is brought in paragraph no.13 about she asking daughter regarding behavior of accused, deceased telling her regarding the ill-treatment at the hands of accused. Remaining cross is pertaining to her husband's wages, education of  and article given in the marriage.

10. PW2 Baban, paternal uncle, after stating about marriage of deceased and naming articles given in the marriage, in paragraph nos.2 and 3 deposed as under :-

"2. After the marriage  ant to the house of accused at Varangaon. All the accused were residing jointly she had been to Nagpur along with her husband to attend a marriage ceremony on 06.02.2003. She had been to my house and told about her ill-treatment at the hands of accused. She told that accused persons gave her a humiliating treatment to her because of less financial position of her parents than the accused. In Varangaon the tap

water come in the mid-night at about 1:30 a.m. and she was required to wake up to fetch the water. The accused used to ask her to fetch the water only after taking the bath. The accused were disliking the meals prepared by her. They were taunting her. She was required to take her meal only if provided by the accused. She was not allowed to watch T.V. along with other accused. All these facts were told by her during her visit to my house. Thereafter we advised her and she went away along with her husband.

3. On 23.03.2003 she came to Nagpur alongwith her parents and at that time she had been to my house. The parents of [REDACTED] as well as [REDACTED] told us that the accused were not ready to send her on the grounds that who will prepare the meal in her absence, but on their request they agreed to send her on a condition that they would bring her back to Varangao."

In paragraph no. 4, he deposed about demand of car, to do domestic work during her Typhoid, prevented from talking to neighbours and that she was also prevented from telephone conversation with him.

PW2 uncle in paragraph no.7 of cross admitted that, he did not come to Varangaon before marriage of accused no.1 and that he had not seen about the job of accused no.1 or not seen any

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truck with him. He admitted that accused no.1 had accompanied deceased when she came her parents house and she had visited his house on her own accord with husband and that she visited only once and for the first time. That he and his wife were not aware about ailment of typhoid of deceased [REDACTED]. He also admitted in paragraph no.9 that there was police station adjoining to the compound of hospital, but nobody go to the police station from there side to lodge complaint. He admitted presence of police at the time of receiving dead body. Omissions are brought in paragraph no. 10 to the extent that, Shankar told him about the incident. In paragraph no.11 he admitted that he met Shankar only once at the time of reception and that Shankar was Mediator. Omission is brought in paragraph no.11 regarding deceased [REDACTED] committing suicide because of ill treatment.

11. PW3 Minakshi, aunt, deposed as under :-

"1. She came to Nagpur for the first time to attend a marriage ceremony at my house on 06.02.2003 along with accused no.1. At that time she told me that the financial position of accused persons was sound than her parents, therefore, they used to taunt her. She further told that accused asked her to fetch the water after taking a bath when the tap open at 1:30 a.m. She was asked to sleep on a carpet and not on bed. She was prohibiting from

watching the T.V. along with them. The accused taunted her on preparation of a meal and she used to get her meal only if provided by the accused. The accused were not tolerating of mixing her clothes with their clothes while washing.

2. The complainant and her husband brought the deceased for Holi festival. At that time she came to my house on one day. She told me that accused persons were subjecting her to cruelty. She further told me that in the marriage of one of the relative of accused a car was given. Therefore, the accused asked the deceased to bring a car from her parents. If not possible, from her uncle. She was not allowed to see any neighbourer. She was not allowed to go out of the house for throwing dust. She was not allowed to go alone for worship. The accused no.1 asked to serve his parents otherwise he would left her. However, I gave her better understanding.”

PW3 Minakshi aunt, while under cross in paragraph no.7 carries omission regarding deceased coming to their house at the time of Holi festival and about she informing police that  had committed suicide due to ill treatment by accused.

ANALYSIS

12. On re-appreciation and meticulous scrutiny of evidence of informant PW1 Sangita, uncle PW2 Baban and aunt PW3

Minakshi, what is emerging that, after marriage of appellant no.1 with [REDACTED] with [REDACTED] dated 24.12.2002, she went to reside with in-laws at Varangaon. Allegations are that, after marriage, her first visit to the house of complainant was of 06.02.2003 and that time on inquiry, she reported about behaviour of accused and complaints of ill-treatment at the hands of accused are as follows :

Firstly, accused gave her humiliating treatment.

Secondly, they made her to fetch water after taking bath in the night at around 1:00 to 2:00 a.m.

Thirdly, she was not allowed to watch T.V..

Fourthly, made to sleep on the carpet;

Fifthly, taunting on the quality of meals prepared and made to do domestic work in spite of she suffering from Typhoid.

Sixthly, not allowed to visit neighbours and not allowed to go alone to the temple.

Informant levelled general allegations that, her deceased daughter was subjected to physical and mental cruelty. Similar allegations are also levelled by uncle regarding humiliation, making her fetch water at 1:30 a.m., disliking meals, taunting, not allowing to watch T.V. along with others. Even aunt PW3 Minakshi deposed about above behavior. In the testimony of uncle and aunt, more particularly in the cross, which is discussed above, it is revealed that, in the testimonies of these two witnesses,

there are material omissions about accused subjecting [REDACTED] to cruelty and she committing suicide due to it. It is admitted by witnesses that, in Varangaon, water supply is made at late night and therefore when the entire village is required to fetch water after 1:00 a.m., there is nothing unusual to expect deceased to fetch water at 1:30 a.m. or 1:00 a.m.. They are all levelling allegations of taunting, not allowing to watch T.V., not allowing to go alone temple, but in the considered opinion of this court, none of the allegations has any severity or such nature of allegations would not constitute physical and mental cruelty as almost allegations are pertaining to domestic affairs of the house of accused.

JUDICIAL PRECEDENT :

Section 498A IPC -

13. As to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark cases of *Giridhar Shankar Tawade v. State of Maharashtra* (2002) 5 SCC 177, *Gurnaib Singh v. State of Punjab* (2013) 7 SCC 108, *State of Andhra Pradesh v. M. Madhusudhan Rao* (2008) 15 SCC 582, *Bhaskar Lal Sharma v. Monica* (2009) 10 SCC 604 and *K. Subba Rao v. The State of Telangana* (2018) 14 SCC 452.

14. In the light of above settled legal position, in the considered opinion of this court, above reproduced allegations would not constitute offence of 498A IPC. Humiliation in what form, is not clarified. Merely sleeping on carpet also would not amount to cruelty. Similarly, what sort of taunting was made and by which accused is not getting clear. Likewise, preventing her to mix with neighbour also cannot be termed as harassment.

15. The above instances could be termed as “Harassment”. But, every harassment does not amount to “cruelty” and law to such extent has been expounded in the case of *State of Andhra Pradesh v. M. Madhusudhan Rao*, (2008) 15 SCC 582.

16. Admittedly, cruelty can be either mental or physical. It is difficult to straitjacket the term cruelty by means of a definition because cruelty is a relative term. What constitutes cruelty for one person may not constitute cruelty for another person. Law to this extent is clearly settled in the case of *G.V. Siddaramesh v. State of Karnataka*, (2010) 3 SCC 152.

Section 306 IPC -

17. There is charge under section 306 IPC. In order to attract the said charge, it is incumbent upon prosecution to

establish incitement, instigation, aiding or abetment to commit suicide. Law to this extent has been fairly settled in series of cases. Such legal requirements are expounded by Hon'ble Apex Court in the case of *Gurucharan Singh v. State of Punjab*, (2020) 10 SCC 200; *Amalendu Pal v. State of W.B.*, (2010) 1 SCC 707; *S.S. Chheena v. Vijay Kumar Mahajan*, (2010) 12 SCC 190; *Ramesh Kumar v. State of Chhattisgarh*, (2001) 9 SCC 618.

Similar views are echoed in *Netai Datta v. State of West Bengal*, (2005) 2 SCC 659; *Geo Varghese v. State of Rajasthan and another*, (2021) 19 SCC 144; *M. Arjuna v. State, represented by its Inspector of Police*, (2019) 3 SCC 315; *Ude Singh & Others v. State of Haryana*, (2019) 17 SCC 301; *Mariano Anto Bruno & Another v. The Inspector of Police*, 2022 SCC OnLine SC 1387.

18. Here, what is emerging on scrutiny of evidence of mother, uncle and aunt is that, visit of [REDACTED] to them was at the time of Holi festival, which falls in March. Incident of suicide is of 01.05.2003. There is a gap of almost two months since deceased, complainant and witnesses met each other. They have admitted that, there was no communication from [REDACTED] either written or oral, she has not conveyed that there was any instances of cruelty in proximity to suicide. Spot panchanama shows that, glass window was required to break open. There is no evidence to show

that at that relevant point or any proximity to the suicide, there was any demand, cruelty or mal-treatment so as to connect them with the suicidal death. What triggered the suicide has remained a mystery.

19. For applying section 306 IPC, it is expected of prosecution to demonstrate that there is live link or active role played by appellant in instigating the suicide.

20. As pointed out learned trial Court in its judgment from paragraph nos. 15 of judgment has observed as under :-

“It is significant to note that, the accused have not denied the fact that they asked deceased to fetch tap water at about 2:00 a.m. only after taking bath and according to them, these are the good ‘sanskars’ to fetch the water after taking bath. Assuming for a moment that it may be a good ‘sanskars’ to fetch water after taking bath only, but those sanskars are emerged from the minds of orthodox people, which are not generally followed now-a-days and they deserve to be changed according to prevailing circumstances from time to time. It is further observed that, had it been a good sanskar, then why they allowed [REDACTED] alone to fetch the water after taking bath only, when they were quite aware that she was newly married. It means that said act of accused was deliberate and intentional with a view to harass the deceased and thus caused physical and mental cruelty to deceased.”

Above observations clearly show that, learned trial Judge has tried to impose his own reflection on how newly bribe should be treated and that such act of accused making her fetch water at odd hours amounts to physical and mental cruelty. When prosecution witnesses have admitted that, in Varangaon, there was usual practice of letting off water supply at such hours, when others in the village also fetch water during night time, in the considered opinion of this court, the above observations in paragraph no.15 of the judgment were unwarranted.

21. Similarly, the observations in paragraph no.16 of judgment, it is observed that, deceased was asked to take meal after it was served to others and that she was not allowed to watch T.V. and made to go alone to throw garbage and allowed to talk on phone, are held by learned trial Judge to be petty affairs of daily routine life, but learned trial Judge has thereafter observed that cumulative effect of all such conduct amounts to mental harassment. Even the observations subsequent to paragraph no.16 regarding tolerance of human being to certain extent, for mental and physical cruelty are also unwarranted and personal observations of trial Judge. Even when there was no evidence that conduct of accused towards deceased was incessant or consistent,

learned trial Judge appears to have noted that ill treatment became intolerable to her and therefore she committed suicide. Such observations are out of place and are not based on strong foundation. In fact it is contrary to observations in paragraph no.17 that there is no cogent and convincing evidence on record to show that accused persons subjected deceased to cruelty to meet their unlawful demand. On the point of demand of car also, learned trial Judge has held that, merely because relative got a car in marriage, doesn't mean that they have subjected deceased to cruelty. If such views are explicitly expressed, then the conclusion drawn is contrary to such observations in paragraph no.17 of judgment. Resultantly, it is axiomatic that there is erroneous appreciation and erroneous conclusion.

22. If guilt is recorded on above evidence, then it is doubtful as to what prompted learned trial Judge hold that offence of suicide is attributable to accused. Consequently, findings of trial court are patently erroneous. Here, as submitted allegations are non specific, general or petty in nature, essential ingredients for 306 IPC are also not available, and therefore, such judgment cannot be allowed to be sustained. Accordingly, I proceed to pass the following order: -

ORDER

- I) The criminal appeal is allowed.
- II) The conviction awarded to appellants, namely, (i) [REDACTED]
[REDACTED], (ii) [REDACTED]
[REDACTED], and (iii) [REDACTED] in Sessions Case No.121 of 2003 by learned IIIrd Additional Sessions Judge, Jalgaon on 15.04.2004 for the offence punishable under sections 498-A and 306 read with section 34 of Indian Penal Code, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under sections 498-A and 306 read with section 34 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.]