

(2018) 05 BOM CK 0050
In the Bombay High Court
Case No : CRIMINAL APPEAL NO. 14 OF 2002

BRAHMAJI NAMDEO PATIL

APPELLANT

Vs

STATE OF MAHARASHTRA S.

RESPONDENT

Date of Decision : 04-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 498A, 304B, 34, 306
Criminal Procedure Code, 1973 — Section 374(2), 313(1)(b)

Citation : (2018) 05 BOM CK 0050

Hon'ble Judges : K.K. SONAWANE

Bench : Single Bench

Advocate : Vijay Sharma, S. P. Sonpawale

Final Decision : Disposed Of

Judgement

K.K. SONAWANE, J.

1. Being dissatisfied with the impugned judgment and order of conviction under section 498-A of Indian Penal Code (for short "IPC") and

resultant sentence of rigorous imprisonment for three years and to pay a fine of Rs. 1000/- imposed by the Additional Sessions Judge, Nanded, in

Sessions Case No. 217 of 1999 dated 29-12-2001, the appellant-accused, taking recourse of remedy under section 374(2) of Criminal Procedure Code

(for short "Cr.P.C."), preferred the present appeal to redress his grievance.

2. It has been alleged on behalf of prosecution that the ill-fated deceased Sunita was the daughter of first informant Shri. Yadavrao Nagorao Lokhande

resident of Janapur, Taluka Loha, District Nanded. The marriage of Sunita was solemnized with the appellant-accused Brahmaji on 22-05-1998. The

dowry amount of Rs. 17,000/- and five gram golden ring was agreed to be given to the bride-groom in the marriage. Accordingly, dowry amount of

Rs. 15,000/- and a gold ring was given to the accused-appellant. The balance amount of Rs. 2000/- towards dowry was agreed to be paid within a period of couple of months of the marriage. The deceased Sunita after marriage joined the company of husband for cohabitation at her matrimonial home. There were in-laws, brother-in-law and sister-in-law in the joint family of husband of deceased Sunita. It has been contended that, initially all the things were normal for about two months after the marriage. The inmates of matrimonial home including husband behaved with the Sunita in proper manner. But, it had something different in store for newly wedded wife-Sunita. After about two months of the marriage, the husband and his relatives started maltreatment and harassment to the deceased Sunita on account of unpaid dowry amount of Rs. 2000/- by her parents. They used to tease and beaten up her on trifle reasons. They insisted the deceased Sunita to bring balance amount of dowry from parents.

3. According to prosecution, the victim Sunita had been to the parents' house on the occasion of Sankrat Festival. The victim - Sunita divulged about her maltreatment and cruelty at the hands of husband and inmates of her matrimonial home to the parents. They gave understanding to the daughter Sunita. After about one and half months of Sankrat festival, father Shri. Yadavrao Lokhande visited to the matrimonial home of daughter Sunita. But, at that time also she disclosed about her ordeals and asked the father to pay the balance amount of Rs. 2000/- towards dowry. She was being maltreated by the husband and her in-laws. They used to give threats that they will not allow her for cohabitation. Eventually, on 26-01-1999 the complainant â?" Yadavrao Lokhande received the message about sudden death of his daughter victim- Sunita. He rushed to village Limbgaon. He saw the dead body of Sunita in the Police Station. He suspected about foul play on the part of husband and inmates of matrimonial home of deceased Sunita. Thereafter, he lodged First Information Report (for short â??FIRâ?) and blamed the husband and inmates of matrimonial home of deceased Sunita for her death. Pursuant to FIR, the Police of Limbgaon Police Station registered the crime No. 03 of 1999 under section 304-B read with section 34 of the IPC and set the penal law in motion.

4. Meanwhile, appellant-accused-husband Brahmaji passed on information about the incident to Limbgaon Police Station. The Accidental Death (AD)

No. 2 of 1999 came to be registered and inquiry was initiated to ascertain cause of death of deceased Sunita. The Police rushed to the scene of offence and drawn inquest panchnama as well as spot panchnama. The dead body was escorted to the Government Hospital for post-mortem to determine exact cause of death of deceased Sunita. The medical expert carried out post-mortem and opined that the deceased died due to Cardio respiratory arrest following drowning. The Investigating Officer recorded statements of witnesses acquainted with facts of the case. The accused-appellant and inmates of matrimonial home came to be apprehended in this case for the sake of investigation. I.O. collected relevant documents of postmortem report, viscera report etc. After completion of procedural formalities of investigation, I.O. preferred the charge-sheet against in all five accused persons including appellant-husband of Sunita. The rest of the accused were arraigned being relatives of the husband of deceased Sunita for allegation of cruelty and torture for demand of dowry, resulting into her unnatural death. The charges pitted against accused were exclusively triable by the Court of Sessions. Therefore, the learned Judicial Magistrate, First Class, Nanded wisely transmitted the proceedings to concerned Sessions Court for trial of the accused within ambit of law.

5. The learned Additional Sessions Judge after compliance of requisite formalities, framed the charges against all five accused in this case. The accused pleaded not guilty and claimed for trial. In order to bring home guilt of the accused prosecution adduced evidence of six witnesses in this case including parents and uncle of deceased Sunita. The learned Additional Sessions Judge recorded statements of the accused prescribed under section 313(1)(b) of Cr.P.C. They denied the charges and claimed their innocence for allegations nurtured against them. The learned Sessions Judge appreciated entire oral and circumstantial evidence adduced on record and arrived at the conclusion that prosecution miserably failed to prove the charges of dowry death or suicidal death of deceased Sunita and its abetment against all the accused. Therefore, the learned trial Court exonerated all the accused persons from the charges under section 304-B and 306 read with section 34 of IPC. Moreover, learned trial Court found reluctant to draw adverse inference against in-laws, brother-in-law and sister in law for the allegation of cruelty to victim-Sunita as envisaged under section 498-A

of IPC. Therefore, except the appellant-husband, the learned trial Court absolved rest of the accused for the charges of cruelty contemplated under

section 498-A of IPC. However, learned Additional Sessions Judge held the appellant-husband guilty for the offence of maltreatment and harassment

to the wife Sunita. In the result, the learned trial Court convicted the appellant-accused under section 498-A of IPC and imposed the resultant

sentence as mentioned above and passed the impugned judgment or order, the validity and propriety of which is agitated in this appeal.

6.Mr. Sharma, learned counsel for appellant-accused assailed that the impugned judgment and order of conviction and resultant sentence passed by

learned trial Court is totally illegal, erroneous and against principles of law. Learned Sessions Judge did not appreciate the evidence on record in its

proper perspective. The finding of conviction expressed by the learned trial Court is perverse and not within purview of law. He submits that the

evidence of parents and uncle P.W. 4 Janardhan was not sufficient to prove the guilt of the accused for the charge under section 498-A of IPC. They

made allegation vague and general in nature pertains to maltreatment meted out to the victim Sunita. According to learned counsel, the span of martial

life of deceased Sunita was near-about 8/9 months only in the company of appellant-accused, it would unjust and improper to visualize that there

would be cruelty to the deceased Sunita, which would cause grave injury or danger to her life, limb or health. There were no harassment of such

nature which would likely to commit suicide. The learned counsel gave much more emphasis on the circumstances that the trial Court after

appreciation of all evidence, concluded that the death of deceased Sunita was not unnatural or suicidal one, but she died accidentally due to drowning.

There were no harassment to the deceased Sunita for bringing unpaid dowry amount from her parents. Learned counsel Shri Sharma pointed out

discrepancies material in nature in the evidence of prosecution witnesses and submits that the adverse inference drawn by learned trial Court for

cruelty to the deceased Sunita on the part of appellant-accused is totally erroneous and unjustifiable. He urged to exonerate the appellant-accused

from the charge of cruelty nurtured against him by the prosecution. Learned counsel in support of his arguments relied upon judicial precedents in the

case of Altaf Hussain Allauddin Shaikh & another Vs. State of Maharashtra reported in 2015(2) LJSOFT 1 and the State of Maharashtra vs.

Rajendra S/o Kashirao Bhujade reported in 2017 All MR (Cri.) 2256, wherein it has been held that in absence of details about harassment to deceased

Sunita, vague and general statements of witnesses in regard to maltreatment would not itself made out offence under section 498-A of IPC.

7. Admittedly, in this case the appellant-accused was exonerated by the learned Sessions Judge from the charges punishable under section 304-B and

306 read with section 34 of IPC. However, he has been held guilty for the offence punishable under section 498-A of IPC on the accusation that

appellant being husband of the deceased Sunita subjected her to cruelty for demand of unpaid dowry amount of Rs.2000/-. The evidence of

prosecution witnesses on record reveals that the entire prosecution case was primarily rests on the evidence of P.W 2-Shri Yadavrao Lokhande and

P.W.3-Mahananda Lokhande, the parents as well as P.W. 4-Janardhan, the uncle of deceased Sunita. The learned trial Court delved into the evidence

of these key witnesses of the prosecution and held the appellant - accused guilty for the offence punishable under section 498-A of the IPC.

8. At this juncture, it is imperative to take into consideration the provisions of section 498-A of IPC for assessment of guilt of the appellant-accused as

alleged by the prosecution. The provision of Section 498-A of IPC would be reproduced as under: "Section 498-A of IPC. "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

purpose of this section, "Cruelty" means-

(a) any wilful conduct which is of such a nature 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; or

(b) harassment of the woman where such harassment is with a view to coercing her or 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."

9. It is worth to mention that no any matrimonial or other statute has anywhere defined "cruelty", but for the first time the nature of "cruelty"

has been defined under section 498-A of IPC. The definition of cruelty mentioned

above consists two parts, namely, (a) and (b). It is necessary for the prosecution to prove that its case falls under any of the two categories mentioned above though in some cases clauses (a) and (b) of explanation may overlap. The clause (b) of explanation to section 498-A of IPC itself concerns with the harassment on account of dowry demand while clause (a) takes care of cruelty for reasons other than dowry demand. It has been prescribed that any wilful conduct which is of such nature as is like to drive the woman to commit suicide or to cause grave injury or danger to life, limb or mental or physical health of the woman, would be termed as 'cruelty' under definition of section 498-A of IPC. The clause (b) denotes harassment of the woman as cruelty where such harassment is caused with a view to coercing her or 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 meet such demand.

10. At this juncture, it is to be noted that word 'harassment' used in clause (b) of the explanation of section 498-A of IPC again has nowhere been defined in this section or anywhere in the Penal Code or any other statute. Therefore, in view of dictionary meaning, it appears that the word 'harassment' implies some continuous course, though not necessarily on a large number of occasions, but it may not take within its fold only one such solitary incident of harassment. This of course will depend upon the facts and circumstances of each case. Therefore, it must be borne in mind that mere harassment is not enough to prove charges under Section 498-A of IPC, it must be with a view to coercing the wife or any person related to her to meet any unlawful demand for any property or valuable security or it should be on account of failure by her or any person related to her to meet such demand. It is evident from the clause (b) of Explanation under Section 498-A of IPC that all types of harassment of a woman are not covered by the definition of cruelty. This Court in the case of *Ujwalabai Balsekar Vs. State of Maharashtra* reported in 1987 Mh.L.R. 58 laid down the principle that only the harassment which is within a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security etc. would attract section 498-A of the IPC.

11. The Hon'ble Supreme Court in the case of *Wazir Chand Vs. State of Haryana* reported in AIR 1989 SC 378 held that the repeated demands for

dowry articles and money on newly wedded wife and her parents and the consequent harassment of the wife and her parents by the husband or his

relatives amounts to cruelty under section 498-A of IPC. In the backdrop of such settled legal parlance, it would be justifiable to explore the evidence of

prosecution witnesses to determine the guilt of the accused.

12. As referred supra, the prosecution case primarily rests on evidence of P.W. 2 â€" Yadav, P.W. 3 â€" Mahananda and P.W. 4 â€" Janardhan.

The P.W. 2 â€" Yadav Lokhande was the first informant and father of the deceased Sunita. He deposed that the marriage of his daughter Sunita

was solemnized with appellant-accused on 22-05-1998. The amount of Rs.17,000/- and gold ring of five grams was agreed to be given in marriage to

the bridegroom as dowry. Accordingly, he paid Rs. 15,000/- and gold ring of five grams to the appellant-accused. The balance amount of Rs.2000/-

towards dowry was to be paid within couple of months of marriage. P.W. 2- Yadav further stated that after marriage his daughter Sunita joined the

company of appellant-accused for cohabitation at matrimonial home. Initially, for about 2/3 months appellant-accused behaved with the wife Sunita in

proper manner. But, thereafter, there was ill-treatment and harassment to the deceased Sunita on account of unpaid dowry amount of Rs.2000/-. The

P.W. 2 â€" Yadav Lokhande testified that his daughter Sunita had been to his house for Diwali festival and at that time she disclosed that the

appellant-accused and inmates of her matrimonial home were harassing her for balance amount of Rs.2000/- towards dowry. The appellant-accused

used to close the doors of the room and beaten up deceased Sunita. They were teasing and abusing his daughter Sunita. P.W. 2 Yadav Lokhande

added that when his daughter Sunita visited to his house at the time of Sankranti festival that time also she divulged that there was severe ill-treatment

to her. The accused were beating her for unpaid dowry amount of Rs. 2000/-. She requested her father to give amount of Rs. 2000/- to the accused.

P.W. 2 Yadav Lokhande gave understanding to his daughter and sent her back to matrimonial home for cohabitation. According to P.W. 2 Yadav

Lokhande, prior to one month of the incident of death of his daughter Sunita, he had been to the house of accused and met with appellant Brhamaji and

his parents. He requested them not to ill-treat his daughter and given assurance that the unpaid amount of dowry of Rs. 2000/- would be paid within

short period, but they expressed displeasure. Thereafter, P.W.2-Yadav Lokhande on 26-01-1999 received message about the death of his daughter

Sunita.

13.The prosecution examined P.W. 3 Mahananda Lokhande, mother of deceased Sunita. She stepped into the shoe of husband P.W 2- Yadav

Lokhande. She stated that at the time of Diwali festival Sunita had been to her house. The deceased Sunita requested her to give amount of

Rs.2000/- to the accused. The deceased Sunita further disclosed that her husband accusedâ?" Brahmaji used to beat her by closing the doors of the

room. The accused persons used to tease her. The mother P.W. 3 Mahananda Lokhande convinced the daughter Sunita and sent her back for

cohabitation. According to P.W. 3 Mahananda, her daughter Sunita again came to her house on the occasion of Sankrat festival, that time also she

disclosed about her ordeals and requested to make payment of dowry amount.

14.The prosecution adduced evidence of P.W. 4 Janardhan Birade uncle of deceased Sunita. He deposed that in the first week of December, he had

been to matrimonial home of deceased Sunita at Limbgaon. He saw that deceased Sunita was weeping. She disclosed that the balance amount of Rs.

2000/- towards dowry was yet to be paid. She was subjected to ill-treatment by the accused for unpaid dowry amount. The accused used to keep

deceased Sunita unfed. She requested uncle P.W. 4-Janardhan to convey the message to her father for payment of Rs.2000/- to the accused. P.W. 4

Janardhan added that as per request of deceased Sunita, he had been to house of P.W. 2 Yadav Lokhande, his brother-in-law and advised him to pay

amount of Rs.2000/- to the appellant - accused.

15.The intense scrutiny of aforesaid evidence of star-witnesses of the prosecution reflects that these witnesses cast allegations against accused in a

very vague and in general nature. They did not describe the particulars of the maltreatment meted out to the deceased Sunita. It would be reiterated

that the span of marital life of deceased Sunita in the company of appellant - husband was hardly for about 7/8 months and out of these 7/8 months

period of marital life, initial 2/3 months she received proper treatment from accused person. Thereafter, she was subjected to maltreatment during

rest of 4/5 months of her married life. In such short period, it would hard to conceive that there were cruelty to victim Sunita of such a grave nature

as defined under Section 498-A of IPC.

16. Moreover, it has been alleged that during such short span of marital life, she had visited twice to the parental home on the occasion of Diwali and

Sankrat festivals. The P.W. 2-Yadav did not disclose about the visit of deceased Sunita for Diwali festival in his first information report (Exhibit-29)

before police. But, he has stated about the visit of daughter Sunita on the occasion of Diwali festival for the first point of time in the Court. The

omission to state material fact in the statement before the police at the earliest caused serious flaw about the trustworthiness of his evidence. The

P.W.3â?"Mahananda Lokhande, in her cross-examination conceded that at the time of Diwali festival daughter Sunita stayed at her house for about

six days, and thereafter, returned to matrimonial home for cohabitation. It is strange to appreciate that when newly wedded daughter -Sunita visited to

the house of parents for Diwali Festival and stayed for about six days, even thereafter, P.W.2 Yadav Lokhande failed to make reference about her

visit at the time of Diwali festival in his first information report (Exhibit-29). The omission to state this material facts in first information report

(Exhibit-29) at the earliest, devastated the gravity of allegations nurtured on behalf of prosecution.

17. The P.W. 3 Mahananda did not state before the police in her statement that the amount of Rs. 2000/- was agreed to be paid within two months of

the marriage. The evidence of parents of deceased Sunita adumbrates that at the time of Sankrat festival the appellanthusband brought the daughter

Sunita to the house of parents. But, there were no endeavour on the part of parents to have conversation with the son-in-law or to persuade him not

to harass their daughter for unpaid dowry amount. They did not think it necessary to give understanding to son-in-law to behave properly with their

daughter. It is also worth to mention that P.W. 4 Janardhan stated about his visit to matrimonial house of deceased Sunita. He saw that deceased

Sunita was weeping. These circumstances indicate that there were hostile atmosphere for Sunita. Despite the same, he remained in the house of

Sunita for about 2 to 4 hours and enjoyed the tea as well as lunch. This conduct of P.W. 4 Janardhan seems to be against the normal human

behaviour. Therefore, his evidence does appear incredulous and not free from blemish. It has brought on record that as per request of Sunita, he

came to P.W. 2 Yadav and advised him to pay amount of Rs.2000/- to the accused. But, P.W.2-Yadav Lokhande and P.W.3 - Mahanada Lokhande

maintained silence about the visit of P.W. 4 - Janardhan to matrimonial home of Sunita and his advice for payment of Rs. 2000/- to the accused at the

earliest. The discrepancies in the evidence of parents and uncle of deceased Sunita found detrimental for prosecution to prove charges of cruelty

against appellant-accused. There was no any other sort of corroboration available on record to facilitate for adverse inference against the appellant-

accused in regard to allegation of cruelty to the deceased Sunita on the part of appellant-husband.

18.In contrast, P.W. 5- Imambbee, the adjoining land owner stated about the happy married life of deceased Sunita. It cannot be overlooked that

where a woman is subjected to cruelty or harassment, the independent evidence regarding the same can hardly be available for appreciation.

Therefore, in view of particular circumstances, only the relative witnesses of a victim could be the natural witnesses. But, the possibility of false

involvement, or the exaggeration on the part of such relatives could not be ruled out due to possible prejudice. Hence, their evidence needs to be

examined with great care and caution.

19.In the instant case, the parents and uncle ventured to make general nature of allegations about maltreatment to the deceased Sunita. It would be

reiterated that the aforesaid prosecution witnesses did not take efforts to elaborate nature of ill-treatment or harassment meted out to the deceased at

the hands of accused. The stray statement of prosecution witnesses about beating, teasing and maltreatment in absence of its detail particulars would

not prop-up the weak edifice of the prosecution case. There are no cogent or persuasive circumstance on record to enable the Court to arrive at the

conclusion that prosecution proved the essential ingredients of 'cruelty' as contemplated under Section 498-A of IPC. As referred above, there are

material discrepancies in the evidence of prosecution witnesses. The learned trial Court on appreciation of entire evidence on record drawn the

inference that death of deceased Sunita was not unnatural or suicidal but accidental one. It would fallacious to appreciate that the alleged willful

conduct of appellant-accused was of such a nature that would likely to drive deceased Sunita to commit suicide.

20.The circumstances constrain to ponder over that the statements of prosecution witnesses about maltreatment of deceased Sunita would be

necessarily to be viewed that such statements are only the opinion of these witnesses. They did not bring on record the details of the acts or

particulars of deeds committed or performed on the part of accused so that it would conveniently arrive at a certain conclusion against the accused.

But, the vague and general nature of allegations made against accused do not permit to believe that, the appellant-accused committed offence of

cruelty within the purview of section 498-A of IPC. The learned defence counsel rightly relied upon the judicial precedent of this Court in case of

Altaf Hussain Allauddin Shaikh's case and Rajendra Bhujade's case referred above.

21.In the light of aforesaid discussion, there is no impediment to arrive at the conclusion that the findings of conviction expressed by the learned trial

Court in regard to guilt of the appellant-accused appears to be imperfect, perverse and against the principle of law. The prosecution has miserably

failed to prove the charge under section 498-A of IPC beyond reasonable doubt. Therefore, appellant cannot be held guilty for the offence of cruelty

on the basis of such vague and general nature of allegations made on behalf of prosecution witnesses. The impugned findings of conviction and

resultant sentence imposed by learned Additional Sessions Judge, Nanded are required to be upset, and accordingly, quashed and set aside.

22.In sequel, the appeal stands allowed. The impugned finding of conviction and resultant sentence imposed by learned Additional Sessions Judge,

Nanded under judgment and order dated 29-12-2001 in Sessions Case No. 217 of 1999, is hereby quashed and set aside. The appellant-accused is

hereby absolved from the charge pitted against him under section 498-A of the IPC. His bail bond is hereby cancelled.

23.Accordingly, appeal stands allowed and disposed of in aforesaid terms.