



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

CRIMINAL REVISION APPLICATION NO.344 OF 2004

Namdeo s/o. Laxman Bansode,
Age 24 years, Occu. Labourer,
R/o. Shendra (Kamangar),
Taluka and District Aurangabad

.. Applicant
(Original Accused)

Versus

1. The State of Maharashtra
through P.I. Police Station
Chikalthana Gramin
2. Kaduba Dhanaji Kolhe,
Age 45 years, Occu. Labour,
R/o. Somthana, Tq. Badnapur,
District Jalna

.. Respondents

Mr. Arun S. Shejwal, Advocate for Applicant;
Mr. S. B. Narwade, A.P.P. for Respondent No.1

CORAM : S. G. MEHARE, J.
Reserved on: 08-08-2024
Pronounced on: 23-09-2024

JUDGMENT:-

1. The applicant/convict preferred this revision against the judgment and order of conviction of the learned 5th Ad-hoc Assistant Sessions Judge, Aurangabad, in Sessions Case No.21 of 2004 dated 28.04.2004 and the learned 4th Additional Sessions Judge, Aurangabad, in Criminal Appeal No.80 of 2004, dated 30.06.2004. The appellate Court maintained the conviction against the applicant/husband and acquitted his parents.

2. The learned counsel for the applicant has vehemently argued that both Courts erred in law in not commenting upon the contradictory opinions of the Medical Officer performing the postmortem report and Chemical Analyzer about the cause of death. Considering the chemical analysis report, the prosecution failed to prove the exact cause of death. Since the cause of death is not proven, the applicant cannot be blamed for the alleged offences. The conviction is based only upon the partisan witnesses. The neighbours were not examined. The evidence has not been appreciated properly. The prosecution case was based on hearsay evidence. The contradiction and omissions have not been correctly appreciated. The findings of the trial Court are self-contradictory. There was no evidence of abetment to commit suicide. The abetment, as defined under Section 107 of the Indian Penal Code ("IPC") has not been established. The learned trial Court erred in exhibiting the statement of the witnesses under Section 164 of the Code of Criminal Procedure without giving an opportunity to cross-examine the Special Executive Magistrate.

3. To bolster his arguments, he relied on the case of - (i) ***Naresh Kumar vs. State of Haryana, Criminal Appeal (No.) 1722 of 2010 (@ Special Leave Petition (Criminal) No.8873 of 2008, SC, dated 22 February, 2024***, and (ii) ***Kashibai and Ors. vs. The State of Karnataka, Criminal Appeal No. of 2023 (Arising out of SLP (Crl.) No.8584 of 2022, dated***

28.02.2023 :: 2023 LiveLaw (SC) 149.

4. Per contra, the learned A.P.P. submits that there are concurrent judgments of conviction imposed on the applicant. The Revision Court cannot re-appreciate the evidence. Both Courts have correctly appreciated the evidence and recorded the conviction against the applicant. The difference of opinion between the Medical Officer and the Chemical Analyzer does not vitiate the prosecution. In such a case, circumstantial evidence is to be considered. Both Courts have correctly considered the circumstances. The applicant had a false defense of snake biting. There is no error of law in the impugned judgment.

5. To bolster his arguments, he relied on the case of **State of Kerala: Managing Director, Western India Plywoods vs Puttumana Illath Jathavedan Namboodiri, 1999 AIR (SC) 981.**

6. The Hon'ble Supreme Court, in the case of **State of Kerala** (*supra*), has laid down the law that the revisional powers cannot be equated with the power of an Appellate Court, nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal unless any

glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

7. The first legal question is whether contradictory opinions as regards the cause of death vitiate the trial.

8. The Medical Officer who performed the postmortem, has opined that the cause of death was insecticidal poisoning. His opinion was based upon the postmortem signs that the brain was congested oedematous, right and left lungs congested oedematous, paritoneum was congested, imparting abnormal smell, the stomach contained 20 cc., dark reddish liquid imparting abnormal smell, mucosa congested, eroded with defused submucosal haemorrhage. Other contents of the stomach, pancreas, spleen, and kidney were congested. She had conceived a child.

9. The Assistant Chemical Analyzer, Regional Forensic Laboratory, Aurangabad, found results of the analysis that the central and specific chemical testing did not reveal any poison in the stomach and pieces small of the intestine with contents, pieces of the liver spleen, and kidney and the blood of the deceased.

10. In ***Modi's Medical Jurisprudence & Toxicology***, Twenty-third Edition, Editors- K. Mathiharan and Amrit K. Patmail,

LexisNexis Butterworths, in Section 2 - Toxicology at page No.26, Modi opined that cases in which there were definite signs of death from poisoning, although the Chemical Examiner failed to detect the poison in the viscera preserved for chemical analysis. It has, therefore, been wisely held by Christison that in cases where the poison has not been detected on chemical analysis, the Judge, in deciding a charge of the poisoning, should weigh in evidence the symptoms, postmortem appearance, and the moral evidence.

11. In the case in hand, the evidence of the Medical Officer performing the postmortem on the deceased was based upon the signs and the postmortem appearances. He noticed the signs and the postmortem appearances immediately after the death. **Modi** further observed that it is possible that a person may die from the effects of poison, and yet none may be found in the body after death if the whole of the poison disappeared from the lungs by evaporation or has been removed from the stomach and intestine by vomiting and purging, and after absorption has been detoxified, conjugated and eliminated from the system by the kidneys and other channels.

12. In the facts and circumstances, evidence of the medical officer performing postmortem would prevail over the opinion of the Chemical analyser. Therefore, the objection of the learned counsel for the petitioner/accused that the prosecution could not

establish the cause of death has no force of law.

13. The next legal question raised by the learned counsel for the applicant is that without establishing abatement, both courts illegally convicted the accused/applicant for the offence punishable under Section 306 of the IPC.

14. In **Naresh Kumar** (supra), the Hon'ble Supreme Court, in paragraph No.16, referred to the case of **Ude Singh & Others v. State of Haryana, (2019) 17 SCC 301**. It was held in that case that to convict an accused under Section 306 IPC, the state of mind to commit a particular crime must be visible with regard to determining the culpability. It was observed as under:-

"16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behavior and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action

ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case."

15. In paragraph No.16.1 of **Ude Singh** (supra), it has been observed that;

"For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the

acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide."

16. To complete the offence under Section 306 of the IPC, the prosecution must establish that the accused has directly or indirectly incited the deceased by his acts or omissions to commit suicide.

17. The acts of the accused are such an offending action that compelled another person to comment on the life or commit suicide. The accused should provoke the deceased with the intention that she should commit suicide. There should be intentional instigation or aiding by any act or illegal omissions. There should be clear *mens rea* to commit the offence punishable under Section 306 of the IPC. Mere suicide of a woman within seven years of her marriage, Section 113A of the Indian Evidence Act would not automatically apply. To apply Section 113A of the Evidence Act, the prosecution has to establish the abetment to commit the suicide and subjecting the deceased to cruelty. However, such facts are to be considered having regard to the other circumstances of the case.

18. The Hon'ble Supreme Court in **Kashibai** (supra), discussing the various case laws on Section 107 and 307 of the IPC, laid down the law that “in order to bring the case within the purview of “Abetment” under Section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused. For the purpose of proving the charge under Section 306 IPC, also there has to be evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.”

19. To ascertain whether the acts of the applicant were instigating or he was aiding the deceased to drive her to commit suicide or was there abetment to commit suicide, a few facts relevant to the allegations need to be considered.

20. Admittedly, the deceased died after two years of her marriage. The defence of the accused was that since she did not conceive, she was depressed. She was going frequently to her parents. She stayed with her father for a year and seven months and then sent back to the applicant. Thereafter, one and a half months before the incident, she went to her parents. At that time, she complained that the applicant was harassing her for golden ornaments. Then the applicant went to fetch her back, he was given the understanding that he would not illtreat her. Considering the allegations of her last stay and fetching her by the

accused/applicant, she joined the company in mid-August 2003. She committed suicide on 23.10.2003. In the intervening period of one and half months, she never complained to anybody that she was again harassed and ill-treated for the golden ornaments. One fine morning, she consumed the pesticides. The applicant and his father admitted her to the hospital. However, the admission of the witness shows that she was residing with the applicant for five to six months back from the date of the incident, and then she committed suicide. The material fact on record is that in the morning on the day of the incident, her brother Devidas had been to the house of the applicant. He did not send the deceased with him. Thereafter, she consumed the insecticides. During her last stay with the applicant, there were absolutely no complaints. Since she was not permitted to go to her parents, she might have been angered and committed suicide.

21. It has been argued for the applicant that the prosecution did not establish that the applicant had provoked, incited, or encouraged the deceased to commit suicide. It was not established that the offending action of the accused was proximate to the time of the occurrence. He went to fetch her back when she was residing with her parents. Therefore, the legal aspect of applying Section 107 of the IPC also appears missing in the case. There is an apparent error of law in holding the applicant abetted the deceased to commit suicide.

22. It is apparent that the death of the deceased was not proximate to the alleged harassment, and the prosecution could not establish from the other circumstances that the applicant abetted the deceased to commit suicide. Therefore, the presumption under Section 113A of the Evidence Act does not attract, though the death was within seven years of the marriage. There was nothing to show that the applicant instigated the deceased with the intention of forcing her to commit suicide.

23. The learned counsel for the applicant submits that the prosecution did not prove the charge under Section 498A of the Indian Penal Code. There was absolutely no evidence of coercion to the deceased for unlawful demand. The conviction of the accused for the said offence is bad in law.

24. To prove the charge of Section 498A of the Indian Penal Code, the prosecution has to establish that the husband or his relative subjects such woman to cruelty. The term “cruelty” is explained in two parts in the said Section. The first part speaks of willful conduct of a nature that is likely to drive the woman to commit suicide or to cause grave injury or danger to the life, limb or health, either physical or mental, of such woman. The second part provides for harassment of a woman with a view to coercing her or any person related to her to meet unlawful demand for any property or valuable security on account of these failure, or any

person related to her to meet such demand.

25. The allegations reveal that the accused caused cruelty to the deceased by persistent demand for money for the golden ornaments. She was caused physical as well as mental cruelty. The parents could not satisfy the demands of the accused as they were financially poor. The prosecution case reveals that the accused husband went to fetch her back when she used to stay with her parents. When he assured he would not ill-treat her, she went to cohabit with him. It has been pointed out that there was no cogent and reliable evidence of her last visit to her parents. However, both Courts missed this material fact. The prosecution also had no case that soon after the incident or on the day of the incident, the deceased and the accused had a quarrel about the unlawful demand of ornaments.

26. Section 498A of the IPC does not attract every harassment or every type of cruelty. The prosecution has to establish that the beating and harassment of the deceased were with a view to force her to commit suicide or to fulfil the illegal demand of dowry. Mere harassment for dowry or causing grave injury to her life or limb or health is not cruelty, as explained in Section 498-A of IPC. To constitute the offence under this Section, it is to be established that the harassment was caused by coercing the woman to meet unlawful demands.

27. In ***Smt. Raj Rani vs. State (Delhi Administration)* AIR 2000 SC 3559**, the Hon'ble Supreme Court held that when considering the case of cruelty with the context to the provision of Section 498A of IPC, the Court, must examine that the allegations/accusations must be of a very grave nature and should be proved beyond a reasonable doubt.

28. To hold the accused guilty for the offence punishable under Section 498A of the IPC, there should be a case of continuous state of affairs of torture by one to another.

29. The record reveals that there was no continuous state of affairs of torture by the husband to the deceased wife. It has been established that her parents-in-law were residing separately. The learned counsel for the petitioner succeeded in pointing out that there was no sufficient evidence to establish that the petitioner/accused willfully drove the deceased by his conduct to commit suicide nor the harassment as alleged prove that she was harassed with a view to coerce her or to her relatives to meet any unlawful demand of golden ornaments. There were general allegations of cruelty to the deceased or the demand for ornaments. The allegations were leveled for the first time after the funeral was over. The defence of the accused was that he did not allow her to go to her parent's home with her brother. Hence, she took a drastic step to end her life, appears probable from the

material produced on record. The deceased was not harassed physically or mentally soon before the suicide. The record shows that both Courts did not appreciate the evidence in consonance with the elements of Section 498A of the Indian Penal Code.

30. Bare exhibiting the statement under Section 164 of the Cr.P.C. does not affect the rights of the accused. Such a statement is used for contradiction and omission. Barely exhibiting such a statement is not admissible in evidence. Therefore, the arguments of the learned counsel of the applicant that he had lost his right to cross-examine the witness was affected materially has no foundation.

31. For the above reasons, this Court is satisfied that the applicant/accused has been incorrectly held guilty without sufficient evidence or establishing the charges. Hence, criminal revision deserves to be allowed.

ORDER

- i) The Criminal Revision Application is allowed.
- ii) The judgment and order of conviction of the learned 5th Ad-hoc Assistant Sessions Judge, Aurangabad, in Sessions Case No.21 of 2004, dated 28.04.2004 and the learned 4th Additional Sessions Judge, Aurangabad in Criminal Appeal No.80 of 2004, dated 30.06.2004, stand quashed and set aside.

- iii) Applicant / accused - Namdeo s/o. Laxman Bansode is acquitted of the offences punishable under Sections 306 and 498A of the Indian Penal Code.
- iv) The fine amount, if any, deposited by the petitioner/accused be returned to him within a month by the trial Court.
- v) The bail bonds of the accused stand cancelled. The surety stands discharged.
- vi) Rule made absolute in the above terms.
- vii) R & P be returned to the Court of learned 5th Ad-hoc Assistant Sessions Judge, Aurangabad.

**(S. G. MEHARE)
JUDGE**

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