ABC 2019 (III) 322 BOM
ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(Sandeep K. Shinde, J.)

Criminal Appeal No 1267 of 2003

Decided on 13 September 2019

STATE OF MAHARASHTRA - Appellant(s).

Versus

IBRAHIM RUKNUDDIN BAGKARI & ORS. - Respondent(s).

Law Covered:- *(A) Code of Criminal Procedure, 1973 — Section 378(1) — Appeal against acquittal — Indian Penal Code, 1860— Sections 34, 306 & 498-A — Acquittal under — Quarrel between the deceased & accused no.2 — injury by deceased to accused no.2 — report by accused party at police station — in the interregnum, the deceased set herself on fire — no evidence of physically harassment or tortured — no dependable evidence of mental torture — disputes & quarrels between the deceased & accused on account of shortage of water and supply of electricity — no willful act constituted which drove the deceased to commit suicide — Acquittal upheld.(Para 9, 10 & 12)*

(B) Interpretation of Statute — Indian Penal Code, 1860— Section 498-A — Cruelty u/s 498A — Interpretation of — any "willful conduct" which is of such a nature as is likely to drive a women to commit suicide — or to cause grave injury — or danger to life, limb or health (whether mental or physical) of the woman — or 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. (Para 4)

(C) Indian Penal Code, 1860— Sections 34, 306 & 498-A — General allegations — no specification as to what kind of ill-treatment or harassment was meted out to the deceased which led her to commit suicide— Acquittal upheld. (Para 8)

(D) Interpretation of Statute — Indian Penal Code, 1860— Section 498-A — "cruelty" for the offence u/s 498A — need not be physical — even mental torture or abnormal behaviour — may amount to cruelty or harassment. (Para 11)

Facts:- *The deceased woman suffered suicidal death due to 100% burns at her matrimonial house. Her brother lodged the complaint against her brother-in-law, his wife and sister-in-law for ill-treating his sister and for abetting to commit suicide. On his complaint, crime u/s 498-A and 306 r/w 34, IPC was registered. The learned Sessions Court acquitted all accused and against this order, State has preferred the present Appeal. The honorable High Court upheld the acquittal.*

Law of relief:- ***Not specifying the kind of ill-treatment or harassment which led the woman to commit suicide is fatal to prosecution.***

Held:- It is settled law that, cruelty for the purpose of Section 498A Indian Penal Code means any "willful conduct" which is of such a nature as is likely to drive a women to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman or 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. (Para-4)

Ashraf (complainant), brother-in-law of deceased, in his report informed the police that there were recurring disputes between the deceased and her in-laws on account of supply of electricity and water. In evidence, he said and deposed that husband of deceased was serving at Kuwait and was taking her due care by sending money. He deposed nothing more. Thus, upon assessing the evidence of Ashraf, it cannot be said that "willful conduct" of the accused amounts to cruelty and such alleged conduct drove her to commit suicide. The prosecution witnesses have only made general allegations against the accused and there is no specification as to what kind of ill-treatment or harassment was meted out to the deceased which led her to commit suicide. (Para-8)

The chronology of the events in this case show that, on the morning of 21st May, 2002, in the course of quarrel which arose between the deceased and the accused no.2, deceased inflicted injury on the forehead of accused no.2 as evident from Exhibit- 58, a Medico Legal Certificate. The evidence on record, also shows when husband of the accused no.2 went to Police Station to report the incident of inflicting injury on the wife of accused no.1, in the interregnum, the deceased set herself on fire. (Para-9)

The learned Counsel for the respondent, thus rightly pointed out the deceased set herself on fire in the fit of rage soon after the incident of quarrel with accused no.2. He therefore correctly contended that the evidence does not disclose and/or establish a fact or a bundle of facts together constitute a willful act which drove the deceased to commit suicide. (Para-10)

It may be stated that "cruelty" for the purpose to constitute the offence under Section 498A, need not be physical and even mental torture or abnormal behaviour may amount to cruelty or harassment in the case. (Para-11)

In the case in hand, there is no evidence or rather, it is not the case of the prosecution that the deceased was physically harassed or tortured by the accused. Equally, there is no dependable evidence to hold that, accused were mentally torturing the deceased. The allegations were that, there were disputes and quarrels between the deceased and accused on account of shortage of water and supply of electricity, in as much as, it appears deceased was sharing part of the matrimonial house with accused. (Para-12)

Cases Referred:-

1. *Pawan Kalyan and others v. State of Haryana, (1998) 3 SCC 309, (Para-13)*
2. *Mohd. Hoshan and another v. State of A.P., (2002) 7 SCC page 414, (Para-14)*
3. *Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618, (Para-15)*

JUDGMENT

SANDEEP K. SHINDE, J.: - 1. Heard Mr. Sait, learned APP for the State.

2. The State has preferred this Appeal under Section 378(1) of the Criminal Procedure Code, 1973 against the order of acquittal in Sessions Case No. 46 of 2003 passed by the Additional Sessions Judge, Khed, District-Ratnagiri.

3. **PROSECUTION CASE** :

Shaheeda Syed Bagkari suffered suicidal death due to acute cardio respiratory arrest due to asphyxia due to 100% burns at her matrimonial house at Village-Panchnadi Lakhadtarwadi, Taluka-Dapoli. The incident as alleged had occurred on 21st May, 2002. Shaheeda's (deceased) brother, Ashraf lodged the complaint against Shaheeda's brother-in-law (accused no.1). Razia (accused no.2), wife of accused no.1 and Hashmat (accused no.3) sister-in-law for ill-treating his sister and for abetting to commit suicide. On his complaint, crime

under Section 498-A and 306 read with Section 34 of the Indian Penal Code ("IPC" for short) was registered. After investigation, the case was committed to the Court of Sessions at Dapoli.

3. The learned Sessions Court acquitted all accused by judgment and order dated 16th July, 2003. It is against this order, State has preferred this Appeal.

4. It is unfold in evidence that, Shaheeda's husband, Sayed at the relevant time was serving in Kuwait. The deceased was married to Sayed in 1998. She suffered unnatural death within a period of seven years from the date of her marriage. The trial Court acquitted the accused, having found the prosecution could not establish that the accused ill-treated and thereby caused cruelty to deceased within the meaning of Explanation Clause-a to Section 498-A of the Indian Penal Code.

4. It is settled law that, cruelty for the purpose of Section 498A Indian Penal Code means any "willful conduct" which is of such a nature as is likely to drive a women to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman or 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.

5. In the case in hand, the allegations are not that of unlawful demand. The question is, "Whether prosecution has established that the "willful conduct" of the accused was of such a nature which drove Shaheeda to commit suicide ?".

6. It is unfolded in evidence that, on the date of the incident, a quarrel ensued between the deceased and accused no.2 and in the course of it, the deceased inflicted injury on the forehead of accused no.2 by a stick (normally used in rural areas for washing clothes), and thus complaint was registered bearing no.17/2002 (Exhibit-24). It appears, the accused no.2 was examined in the Rural Hospital, Dapoli and Medico Legal Certificate shows she had sustained injury on her forehead (frontal region of scalp). These facts are not in dispute.

7. It is disclosed in evidence that, when the accused no.1 (husband of accused no.2) had been to Police Patil to report the incident of assault by deceased on his wife, he was informed, that the deceased set herself on fire. Immediately, he rushed back to the house, but could not succeed to open the door. Later he found, the

deceased had suffered extensive burn injuries. She was removed to the Hospital but by the time she had succumbed to burn injuries.

8. Ashraf (complainant), brother-in-law of deceased, in his report informed the police that there were recurring disputes between the deceased and her in-laws on account of supply of electricity and water. In evidence, he said and deposed that husband of deceased was serving at Kuwait and was taking her due care by sending money. He deposed nothing more. Thus, upon assessing the evidence of Ashraf, it cannot be said that "willful conduct" of the accused amounts to cruelty and such alleged conduct drove her to commit suicide. The prosecution witnesses have only made general allegations against the accused and there is no specification as to what kind of ill-treatment or harassment was meted out to the deceased which led her to commit suicide.

9. The chronology of the events in this case show that, on the morning of 21st May, 2002, in the course of quarrel which arose between the deceased and the accused no.2, deceased inflicted injury on the forehead of accused no.2 as evident from Exhibit- 58, a Medico Legal Certificate. The evidence on record, also shows when husband of the accused no.2 went to Police Station to report the incident of inflicting injury on the wife of accused no.1, in the interregnum, the deceased set herself on fire.

10. The learned Counsel for the respondent, thus rightly pointed out the deceased set herself on fire in the fit of rage soon after the incident of quarrel with accused no.2. He therefore correctly contended that the evidence does not disclose and/or establish a fact or a bundle of facts together constitute a willful act which drove the deceased to commit suicide.

11. It may be stated that "cruelty" for the purpose to constitute the offence under Section 498A, need not be physical and even mental torture or abnormal behaviour may amount to cruelty or harassment in the case.

12. In the case in hand, there is no evidence or rather, it is not the case of the prosecution that the deceased was physically harassed or tortured by the accused. Equally, there is no dependable evidence to hold that, accused were mentally torturing the deceased. The allegations were that, there were disputes and quarrels between the deceased and accused on account of shortage of water and supply of

electricity, in as much as, it appears deceased was sharing part of the matrimonial house with accused.

13. In ***Pawan Kalyan and others v. State of Haryana, reported in (1998) 3 SCC 309***, the Apex Court has held :

> "Cruelty" for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case."

14. In ***Mohd. Hoshan and another v. State of A.P.*** reported in ***(2002) 7 SCC page 414*** the Apex Court has held :

> "The impact 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...."

15. In ***Ramesh Kumar v. State of Chhattisgarh,*** reported in ***(2001) 9 SCC 618*** the Apex Court has held in para-15 as under :

> "Sections 498-A and 306, IPC are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498-A and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide..."

16. Thus, taking into consideration the evidence on record and the authoritative pronouncement of the Hon'ble Supreme Court in the aforesaid judgments, the findings recorded by the trial Court is consistent with the evidence which cannot be faulted with and hence no interference is called for. Besides, it may also be stated that the brother of the deceased, P.W.1 has not supported the prosecution on material facts.

17. The Appeal therefore fails and is dismissed.

Result:- Appeal dismissed.