

A GIRDHAR SHANKAR TAWADE
v.
STATE OF MAHARASHTRA

APRIL 24, 2002

B [UMESH C. BANERJEE AND Y.K. SABHARWAL, JJ.]

C *Penal Code, 1860—Sections 306, 498-A—Charges under—Conviction under Section 498-A—Acquittal under Section 306 by Courts below—On appeal held, evidence not sufficient to bring home charge under Section 498-A—Acquittal under Section 306 though not by itself a ground for acquittal under Section 498-A, but some cogent evidence is required to bring home the charge under Section 498-A.*

D *Constitution of India, 1950—Article 136—Petition—Appreciation of evidence under—Held, normally not permissible, but permissible in case of misappreciation of evidence leading to utter perversity.*

E *Evidence Act, 1872—Section 32—Dying declaration—Corroboration of—Held, though not essential but is otherwise expedient to strength the evidentiary value thereof.*

Accused-appellant was charged under Sections 306 and 498-A. Prosecution relied on the oral evidence of the brother and cousin of the deceased, on the 3 letters written by deceased, and on dying declaration of the deceased. However, there was inter se contradiction in the oral evidence.

F **Trial Court on appreciation of the evidence held the death as accidental and convicted the accused under Section 306 IPC. However, it convicted him under Section 498-A. Judgment of trial court was upheld by High Court. Hence the present appeals.**

G **Allowing the appeal, the Court**

HELD: 1.1. Inherent contradiction interse in the evidence of the brother and cousin of the deceased leads to the term of credibility of the oral evidence and it is in this perspective that reliance thereon by both the Trial Court and the High Court stands totally misplaced resulting in utter perversity. [382-D]

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1.2. Dying declarations shall have to be dealt with due care and upon proper circumspection. Though corroboration thereof is not essential as such, but its introduction is otherwise expedient to strengthen the evidential value of the declaration. Independent witnesses may not be available but there should be proper care and caution in the matter of acceptance of the dying declaration as a trustworthy piece of evidence. In the instant case the dying declaration does not lend any assistance in the matter in issue. [382-E, F]

1.3. If suicide is ruled out then in that event applicability of Section 498-A can be had only in terms of explanation (b) thereto which in no uncertain terms records harassment of the woman and the Statute itself thereafter clarifies it to the effect that it is not every such harassment but only in the event of such a harassment being with a view to coerce 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-there is total absence of any of the requirements of the Statute in terms of Section 498-A. The three letters said to have been written cannot possibly lend any credence to the requirement of the Statute or even a simple demand for dowry. [383-C, D]

1.4. In order to justify a conviction under Section 498-A there must be available on record some material and cogent evidence. In the instant case, no credence can be attributed on the two inconsistent versions of the brother and cousin-the documentary evidence (namely, those three letters), falls short of the requirement of the Statute: Even on an assumption of the fact that there is no contradiction in the oral testimony available on record would not bring home the charge under Section 498-A. Demand for dowry has not seen the light of the day. [377-E]

1.5. Acquittal of a charge under Section 306, though not by itself a ground for acquittal under Section 498-A, but some cogent evidence is required to bring home the charge of Section 498-A as well, without which the charge cannot be said to be maintained. In the instant case, there is no such evidence available on record. Conviction as recorded by the Trial Judge as also by the High Court cannot be sustained. If suicide is left out, then in that event question of applicability of explanation (a) to Section 498-A would not arise-neither the second limb to cause injury and danger to life or limb or health would be attracted. To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge under Section 498-A. The legislative intent is clear enough to indicate in particular reference

A to explanation (b) that there shall have to be a series of acts in order to be a harassment within the meaning of explanation (b). The letters by itself though may depict a reprehensible conduct, would not, however, bring home the charge of Section 498-A against the accused. [384-C, D]

B 2. In the normal course of events, appreciation of evidence cannot be had under Article 136 but it would be travesty of justice in justice delivery system if such a bar is to linger on, even on total misappreciation of evidence leading to utter perversity. [382-C]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 463 of 1996.

From the Judgment and Order dated 13.7.95 of the Mumbai High Court in CrI. A. No. 583 of 1989.

Shivaji M. Jadhav for the Appellant.

D S.S. Shinde for S.V. Deshpande, Adv. for the Respondent.

The Judgment of the Court was delivered by

E **BANERJEE, J.** Maintainability of a charge under Section 498-A of the Code by reason of an order of acquittal under Section 306 of the Code, is the core question to be decided in the appeal against the judgement of the High Court at Bombay.

F Before, however, advertng to the factual score, it is to be noticed at this juncture that Section 498-A has been engrafted on to the statute book by way of a separate Chapter in terms of the provisions of Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983). The above amendment stands incorporated by reason of present trend in the society and to meet the requirement of the society, the legislature thought it fit to incorporate a new Chapter being Chapter XXA in the statute book consisting of Section 498 A in the Indian Penal Code. For convenience sake, Section 498 A is set out
G herein below:-

H “ 498 A 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 willful 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; 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.

The basic purport of the statutory provision is to avoid 'cruelty' which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word 'cruelty' as is expressed by the legislatures : Whereas explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of 'cruelty' in terms of Section 498-A.

At this juncture, it would also be profitable to notice the other statutory provision (Section 306) relevant in the present context. Section 306 of the Code reads as below:

"306 Abetment of suicide—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

The provision seems to be clear enough to indicate the abetment to commit suicide is statutorily recognised to be an offence punishable with an imprisonment for a term which may extend to 10 years together with liability to fine.

On the factual score, it appears that the accused, Girdhar Shankar Tawade has a son and two daughters from his first wife, who is no more, was married

A to deceased Shobha in the month of February 1984 and the couple, along with the son and two daughters of the accused, was staying jointly at Undagaon. It appears that Shobha had no parents and one Chandrakant Katkar is her younger brother : Whereas the complainant Vishnu Katkar is her cousin brother. Vishnu and Chandrakant are residing at Buldhana and their houses are opposite to each other.

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D The complaint (Exh. 11) lodged by Vishnu Katkar on 12.8.1988 reveals that while Shobha was treated well by her husband for about six months after the marriage, but conduct thereafter of the latter towards Shobha became reprehensible and went on to the extent of assault on flimsy grounds. On occasions when Shobha used to visit the complainant, the sordid takes of her plight were made known to the complainant and on occasions Shobha used to write to the complainant and Chandrakant, younger brother as well. On one occasion upon coming to know of a bleeding injury being inflicted, the complainant himself with one Abarao Ingle had been to the residence of the accused so that similar treatment be not meted out to her at any future point of time.

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F On the further factual score it appears that on 12.8.1988 at 6 P.M. one Kondiba Dudhe, came to the complainant and informed that Shobha got burnt and was admitted in the Ghati hospital and in the morning she died. It was also informed by Kondiba that her husband has performed funeral on the dead body of Shobha and the complaint by cousin brother Vishnu followed suit. The complaint reads that Girdhar had not informed to the complainant and his brother about the burn injuries to Shobha or of her admission in the hospital and without waiting for the near relations, her funeral was also conducted. It also appears from the complaint that Shobha has committed suicide due to the ill-treatment of her husband.

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H It is on the basis of the complaint (Ex. 11) and upon compliance to the required formalities the offence was registered bearing No. 67/88 and one Syed Shaukar Hussain took over the charge of investigation on 13.8.1988. Subsequently the latter however registered the offence under Sections 306 and 498-A IPC against the accused. The scene of offence was then visited and under the panchanama (Ext 14) the stove (article No. 1) came to be attached. The clothes of the victim were also attached. The inquest panchanama (Ext. 16) was made and the dead body was sent to the hospital where the post mortem was effected as per report (Exh. 17). PW 4 Sharad Ugale (Exh. 21) then took over the investigation and on recording the statement of the brothers

of the deceased, attaching the letters (Exhs. 9,10 and 13) under panchanama and on completion other necessary investigation and on arresting the accused on 11.1.1989 the PW 3 Syed Shaukat submitted the charge-sheet against the accused for the aforesaid offences. And the accused stood his trial in sessions case No. 118 of 1989 before the Additional Sessions Judge, Aurangabad. On appreciation of the evidence on record, the trial Judge held the death of Shobha as accidental and further negatived the story of the prosecution in respect of offence of abatement to commit suicide punishable under Section 306 IPC. Relying on the evidence of the prosecution witnesses together with the letters of the deceased the trial court, however, held the accused guilty of an offence under Section 498-A IPC and by the impugned order dated 21.10.1989 convicted and sentenced the accused to suffer rigorous imprisonment for two year and a fine of Rs. 1000.

The matter was taken to the High Court in appeal wherein the point under consideration was whether evidence on record was sufficient to hold the accused guilty of an offence of cruelty as provided under section 498A of the Code.

We have had the opportunity to look at the statutory provisions earlier but before elaborating thereon, some further basic facts together with its ramifications ought to be noticed at this juncture.

There is on record available oral evidence of the brother as also of the cousin, but both the trial Court and the High Court placed much greater reliance on to the letters said to have been written by the deceased to the cousin and the brother. The contents of the letters, however if read together with the oral evidence lead to a situations which cannot but be termed to be incredible. It is the younger brother's evidence that immediately after receipt of the letter dated 1.7.1986, wherein the deceased complained of her head injury, the deponent sent his cousin brother Vishnu and Abarao, the husband of the cousin sister to the village of the accused to request the accused not to ill-treat the deceased and *it is 2-3 months thereafter Dudhe, the messenger, came to inform about the serious conditions of the deceased in the hospital* (Emphasis Supplied). In contrast to this piece of evidence, there is a letter written to Vishnu by the deceased in August, 1987 and more or less a similar letter in May, 1988 and the evidence of Vishnu is that after receipt of the letter in May, 1988, the latter along with Abarao went to the accused whereupon they have requested the accused to treat the deceased well enough so as not to make her unhappy. This witness Vishnu also stated unhesitatingly

A that 2-3 months after their visit at the deceased's husband place, Dudhe, the messenger, came and informed him about the death of Shobha and of the subsequent funeral at Aurangabad and it is immediately thereafter that the written complaint was lodged about the ill-treatment of the deceased and her subsequent death. Incidentally, the intimation to Vishnu by Dudhe was on the same day as that to Chandrakant. One further redeeming feature of available evidence on record is the factum of only one visit by Vishnu and Abarao to deceased's place: whereas PW-1 states that the visit was in July, 1986, Vishnu states in May, 1988 but both confirm that letters were received just 2-3 months before the death of the deceased.

C In the normal course of events, we are aware that appreciation of evidence cannot be had under Article 136 but it would be travesty of justice in our justice delivery system if such a bar is to linger on even on total misappreciation of evidence leading to utter perversity. The younger brother sent his cousin along with the cousin's husband (brother-in-law) to his sister's house so as to appreciate the situation in 1986, whereas cousin's evidence on record that the only visit taken place to Shobha's house was in 1988. Thus as inherent contradiction interse leading to the leading to the term of credibility of the oral evidence and it is in this perspective that reliance thereon by both the Trial Court and the High Court stands totally misplaced resulting in utter perversity. Another piece of evidence available on record is the dying declaration of the deceased. It is well settled that dying declarations shall have to be dealt with due care and upon proper circumspection. Though corroboration thereof not essential as such, but its introduction is otherwise expedient to strengthen the evidential value of the declaration. Independent witnesses may not be available but there should be proper care and caution in the matter of acceptance of the dying declaration as a trustworthy piece of evidence.

F Presently, we have on record a statement before the Executive Magistrate by was of a declaration which however does not lend any assistance in the matter in issue and as such we need not dilate thereon further.

G The only other piece of evidence available are the three letters written by the deceased to the cousin and to the brother. These letters are of the years 1986, 1987 and 1988 and 1988 apparently it seems an yearly event, but does it go some way to record a state of affairs prevalent at the deceased's place of residence : it is stated to be undoubtedly depicting so!! The prosecution alleged that there exists no natural variation by reason of the lapse of time

H as regards the conduct of the accused person and the true reading of the

letter, without mixing words, depicts a continuous state of affairs of torture by one to the other. It is on these letters that reliance has been placed by the learned Sessions Judge as also the High Court in order to come to a finding as regards the guilt under Section 498-A of the Code. A

We have already noted Section 498-A herein before in this judgment and as such we need not delve upon the same in greater detail herein excepting recording that the same stands attributed only in the event of proof of cruelty by the husband or the relatives of the husband of the woman. Admittedly, the finding of the trial Court as regards the death negated suicide with a positive finding of accidental death. If suicide is rule out then in that event applicability of Section 498-A can be had only in terms of explanation (b) thereto which in no uncertain terms records harassment of the woman and the Statute itself thereafter clarifies it to the effect that it is not every such harassment but only in the event of such a harassment being with a view to coerce 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—there is total absence of any of the requirements of the Statute in terms of Section 498-A. The three letters said to have been written and as noticed earlier cannot possibly lend any credence to the requirement of the Statute or even a simple demand for dowry. B C D

As regards the core issue as to whether charges under Sections 306 and 498-A of the Indian Penal Code are independent of each other and acquittal of one does not lead to acquittal on the other, as noticed earlier, there appears to be a long catena of cases in affirmation thereto and as such further dilation is not necessary neither we are included to do so, but in order to justify a conviction under the later provision there must be available on record some material and cogent evidence. Presently, we have on record two inconsistent versions of the brother and the cousin, as such no credence can be attributed thereon - the documentary evidence (namely, those three letters), in our view, falls short of the requirement of the Statute : Even on an assumption of the fact that there is no contradiction in the oral testimony available on record, the cousin goes to the unfortunate girl's in-laws place and requests the husband to treat her well-at best some torture and a request to treat her well. This by itself would not bring home the charge under Section 498-A. Demand for dowry has not seen the light of the day. E F G

A faint attempt has been made during the course of submissions that explanation (a) to the Section stands attracted and as such no fault can be H

- A attributed to the judgment. This, in our view, is a wholly fallacious approach to the matter by reason of the specific finding of the trial Court and the High Court concurred therewith that the death unfortunately was an accidental death and not suicide. If suicide is left out, then in that event question of applicability of explanation (a) would not arise - neither the second limb to cause injury and danger to life or limb or health would be attracted. In any event the willful act or conduct ought to be the proximate cause in order to bring home the charge under Section 498-A and not de-hors the same. To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge under Section 498-A. The legislative intent is clear enough to indicate in particular reference to explanation (b) that there shall
- B have to be a series of acts in order to be a harassment within the meaning of explanation (b). The letters by itself though may depict a reprehensible conduct, would not, however, bring home the charge of Section 498-A against the accused. Acquittal of a charge under Section 306, as noticed hereinbefore, though not by itself a ground for acquittal under Section 498-A, but some cogent evidence is required to bring home the charge of Section 498-A as well, without which the charge cannot be said to be maintained. Presently, we have no such evidence available on record.
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E On the wake of the aforesaid, conviction as recorded by the trial Judge as also by the High Court cannot be sustained. The appeal, therefore, is allowed. The impugned orders stand set aside and quashed. The accused stands acquitted of the charge under Section 498-A of the Code.

K.K.T.

Appeal allowed.