

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 636 OF 1994

Mahadeo Sandipan Kadam,)
age yrs. R/o. Ghatne, Tal. Madha,)
Dist. Solapur.)Appellant /Accused No.1
vs.
The State of Maharashtra ... Respondent

Mr.Dilip Bodake, Advocate for the appellant.
Ms. A.A.Mane, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 26th November, 2015.

ORAL JUDGMENT :

Heard.

2. The appellant herein is original accused No.1 in Sessions Case No.174 of 1994. The learned Addl. Sessions Judge, Solapur vide judgment and order dated 9.12.1994 has convicted the accused for the offence punishable under Sections 498A and 306 of Indian Penal Code and sentenced to undergo R.I. for one year and five years respectively. Hence, this appeal.

3. Such of the facts necessary for the decision of this appeal are as under :-

On 24.5.1994, Bhibhishan Ramling Mukhe, resident of Nimgaon, lodged a report at Kurduwadi Police Station, alleging therein that his sister Kusum was married to the present appellant five years prior to 24.5.1994. That at the time of marriage, Rs.15,000/- was paid to the appellant as dowry. Half tola of golden ring was given and the complainant's parents had also given other domestic utensils. That one year after the marriage, his sister was being ill-treated on the ground that the utensils given at the time of marriage were of low quality. There was demand of money for laying down the pipeline. She was harassed and ill-treated. She was abused, assaulted and similarly she was also being ill-treated on the ground that she had a squint in her eye. She was being taunted as blind. That three years prior to 24.5.1994, his sister Kusum had jumped into the well as she could not take the ill-treatment any more. She was able to swim and, therefore, she did not get drowned. She reported to her maternal house. Her parents had informed about it to the relatives. The complainant had then taken his sister Kusum to her matrimonial house and had requested them to take care of his sister. That for a period of three years, she had not conceived pregnancy and therefore she was being taunted on the said ground as being a barren woman. She was made to starve. She was assaulted on trifling ground. Two years thereafter, she

became intolerant with all the cruelty meted out to her and had therefore consumed poison. She was admitted in the hospital of Dr. Wagle. At that time, she had informed the police that pesticides was being sprayed on the agricultural crops and she has inhaled it. Thereafter, Sandipan brought her home. She resided in her maternal house for a period of 5 – 6 months. The appellant had sent three notices to her. She had not accepted the said notices. Thereafter, there was mediation and she was sent to her matrimonial house on the assurance that she would be treated well. His second sister Rekha was to get married. At that time, the appellant was gifted with 5 gram of a golden ring. On 12.5.1994, the elder brother of the complainant was to get married and, therefore, the members of the family of the appellant were invited. They were honoured by giving gifts. The appellant had insisted that they should gift him a golden ring. On denial, he insisted upon Kusum to return to the matrimonial house along with him forthwith. She refused to accompany him. He had threatened her of dire consequences. 8 days after the marriage, the complainant had brought Kusum to her matrimonial house. Two days prior to 23.5.1994, she had been to the hospital of Dr. Shah for treatment. The paternal uncle of the complainant i.e. Nivrutti had met her at Madha. She had informed him that she had colic pain. In spite of it the members of the matrimonial family

were asking her to do hard work. She had also informed that she was made to lift stones. She insisted upon Nivrutti to take her to the maternal house. The appellant had refused to send her to her maternal house. On 23.5.1994, Ashok Patil had informed the complainant that his sister Kusum has died in the hospital. The reason of death was not disclosed to the complainant. All the relatives had been to the hospital. After performing the post-mortem, funeral was performed upon her and thereafter he had lodged the report at the police station. On the basis of his report, Crime No.25 of 1994 was registered against the accused for the offences punishable under Sections 498A, 304B read with Section 34 of IPC. The appellant was arrested on 23.5.1994. After completion of investigation, charge-sheet was filed. The case was committed to the Court of Sessions and registered as Sessions Case No.174 of 1994. The prosecution has examined as many as eight witnesses to bring home the guilt of the accused.

4. PW-1 Bhibhishan Mukhe happens to be the complainant i.e. brother of the deceased. She has deposed before the Court in consonance with the first information report. That his testimony before the Court in the form of examination-in-chief could not be shattered by the prosecution in the cross-examination. He has deposed before the Court that she had

attempted to commit suicide on two occasions. All that is elicited in the cross-examination is that she was married about 7 years prior to her death. It is pertinent to note that it is specifically elicited in the cross-examination that at the time of death, she was pregnant. The said fact is corroborated by the post-mortem notes which is at Exhibit 32 which shows that the deceased was about 16 weeks pregnant and was carrying a male foetus. It is further elicited in the cross-examination that the neighbours of the accused had told PW-1 about the ill-treatment to Kusum. As far as the earlier incident of attempt to commit suicide is concerned, the complainant PW-1 has specifically stated that in the hospital at Kurduwadi, she had told the police that at the time of spraying insecticides some drops were inhaled by her. This happens to be the reason for not filing the complaint against the accused persons. PW-1 has also stated that his sister intended to cohabit with the appellant and, therefore, no report was lodged. The witness PW-1 has denied the rest of the suggestions. In fact, he has stated in the first information report itself that his sister had a squint in her eye and therefore she was disliked by the accused persons.

5. PW-2 Nivrutti Mukhe happens to be the cousin of the father of deceased. He has also deposed before the Court that 7 years prior to the

incident, Kusum was married to the appellant. Rs.15,000/- were paid towards dowry. Clothes and utensils were given as gifts. He has specifically deposed before the Court that initially for a period of one year Kusum was treated well. Thereafter, she was being harassed and ill-treated. She was being coerced to fetch money for laying down the pipeline and also gold from her parents. She had informed her relatives that the accused persons did not like her as she has a squint in her eye. That they used to beat her. She was made to do hard work and she was kept starved. 2 – 3 years prior to her death, one Vishnu Parbat brought her to the village. At that time, she had disclosed that she is going through lot of difficulties as she was being harassed and ill-treated in her matrimonial house and that she wanted to die. She had also informed her parents that she did not wish to live any more and therefore she had jumped in the well. Since she could swim, her attempt to commit suicide had failed. She had stayed in her maternal house for about 15 days. Thereafter PW-1 had brought her to her matrimonial house. They had requested her in-laws to treat her properly. After about one year from the said incident, relatives of Kusum were informed by Kalyan that Kusum was admitted in Wagle Hospital. Her relatives had rushed to the hospital. At that time, she had disclosed that she was not treated properly. Her husband had forced her to do excessive work.

He used to beat her severely and therefore she had taken poison. After she was discharged from the hospital, she was taken to Village Nimgaon where she stayed for about six months. The appellant had sent her legal notices which she had not accepted. That the mediators of Vishnu Parbat , parents and relatives had reached her to the house of the accused. On 12.5.1994, her brother Pandit was getting married. She was invited along with her family members. They were honoured by offering clothes. The appellant had insisted upon a golden ring. As it was not given, he was annoyed. He wanted to take his wife to the matrimonial house forthwith. At the time of abusing he was threatening Kusum of dire consequences and had also stated that she had breached the promise of giving him a ring.

6. PW-2 had met Kusum and Mahadeo i.e. appellant who had come to Madha for medical treatment. At that time, she had informed PW-2 that she was being asked to lift stones and therefore she felt trouble. PW-2 had requested her to accompany him to Nimgaon. Kusum had sent a message with PW-2 to her mother and brother that they should take her to Nimgaon for 8 – 15 days. PW-2 had passed on the message. Within two days thereafter i.e. on 24.5.1994 in the morning, Ashok Patil and Kalyan Parbat had informed that Kusum was dead and her dead body was in the hospital at Kurduwadi. They had all rushed to the hospital. Post mortem

was conducted. They had performed the funeral rites upon her. The witness has not been shattered in his cross-examination except an omission brought on record that he had not informed the police at Madha that Kusum had told him that she was pregnant. The testimony of the witness would inspire confidence of the Court.

7. PW-3 Vishnu Parbat happens to be another relative of the father of the deceased. He has deposed before the Court that he used to visit the house of the accused at Ghatne quite often. That original accused Nos. 2 and 3 used to tell him that Kusum had a squint in the eye. Kusum had informed him that she was being ill-treated in her matrimonial house. The evidence of PW-3 corroborates the evidence of PW-1 and 2. In the cross-examination, PW-3 has stated that after Kusum had made first attempt of committing suicide by jumping into the well, her father-in-law Sandipan had brought her to her maternal house and had told him that due to her act, they would come in trouble unnecessarily. He had also told PW-3 to request the brother, mother and uncle of Kusum to persuade her to behave properly. As a reaction, PW-3 had advised Kusum not to jump into the well as she has to live in that house and therefore she should behave properly. While she was in her maternal house on 2 – 3 occasions, accused No.2

Sandipan had come to her house and had told them it was a harvesting time and that PW-3 should send Kusum to her matrimonial house. PW-3 assured him that he would make efforts to send Kusum to her matrimonial house. Defence has been unable to make any dent in the evidence of PW-3.

8. PW-4 Dr. Ramchandra Paranaik was working as a Physician in Madhav Smruti Hospital, which is known as Wagle Hospital. He has specifically deposed before the Court that on 6.9.1990, Parvati w/o Mahadeo Kadm was admitted in the hospital as she suffered from poisoning. She was discharged on 11.9.1990. Clinically, it was found that she suffered from organo-phosphorous poisoning. He had issued a certificate which he has proved at Exhibit 28. He had further deposed before the Court that in fact he had informed the police that since it was a medico-legal case, she was admitted in the hospital by Prakash ie. Her brother-in-law and that he had paid the bill. This element would sufficiently substantiate that on the earlier occasion also being fed up with the ill-treatment, she had attempted to commit suicide.

9. PW-5 Mahadeo Shinde was well-acquainted with the deceased. On 19.5.1994, he had been to village Ghatne to attend the marriage of

another relative. The venue of the marriage was close to the house of the accused. He had met Kusum and she had taken him to her house. She had offered tea. In the courtyard, at the time of departure, she had asked him to tell her mother and brother that she was being ill-treated by her family members and therefore they should take her to their place. On the same day, PW-5 had narrated the incident to PW-1. The accused has failed to dislodge the substantive evidence in the examination-in-chief of PW-5.

10. PW-6 Dineshkumar Kadam is the Medical Officer who had performed the post-mortem examination. In fact, the accused had admitted the post-mortem notes under Section 294 of Cr.P.C. and therefore it will not be necessary to discuss the evidence of the medical officer.

11. The C.A. Report is at Exhibit 33 which clearly shows that Kusum had consumed insecticides Endosulfan (Taiodan)

12. PW-7 Chandrakant Ghodake was working as A.P.I. Of Kurduwadi Police Station on the day when the incident was reported to the police station. He has deposed before the Court that Dr. Mehta of Primary Health Centre, Kurduwadi had given the information about the death of

Parwati Kadam @ Kusum Kadam. He had registered A.D. No.20 of 1994 pursuant to the said report. Inquest panchnama was conducted on the dead body of Kusum which is at Exhibit 14. The scene of offence panchnama was recorded which is at Exhibit 15. There were stains of vomiting at one place inside the house of the accused.

13. On 24.5.1994, PW-1 lodged a report. He has only deposed before the Court about the steps taken by him in the course of investigation. PW-8 is Sanjay Kulkarni is the Constable who was the carrier of Viscera and the said articles were seized in the course of investigation to the office of Chemical Analyzer.

14. Upon perusal of evidence adduced by the prosecution, it is more than clear that Kusum was being subjected to harassment, ill-treatment and cruelty in the house of the deceased as defined under Section 498A of the Indian Penal Code. The witnesses have proved the case to the hilt. She was being taunted on the ground that she had not conceived pregnancy for a long time. In fact, she had attempted to commit suicide. There is sufficient evidence to show that she had contacted the relatives and on every occasion had sent messages to her mother and brother to take her

back to the maternal house. She could not take the ill-treatment any more. It is the sorry state of affairs that the parents of the deceased were also hailing from economic backward class and Kusum would have been a burden to the family and therefore, despite the fact that she was being harassed and ill-treated in her matrimonial house, she was being sent back to her matrimonial house with an assurance that she would be treated well. In fact she was not being treated well. It is unfortunate that she had conceived pregnancy after more than six years. The post-mortem notes would reveal that she was carrying a male foetus and at that time she was constrained to consume poison. The witnesses have also narrated the nature of harassment and ill-treatment meted out to her. Even when she was pregnant, she was made to carry heavy stones. She was not being given proper treatment when she was suffering from colic pain. Upon failure of PW-1 and his mother to take Kusum to her maternal house as per her wish, she was constrained to commit suicide and died in the matrimonial house. In fact, her attempt to commit suicide on earlier two occasions i.e. once three years after the marriage and one year thereafter is sufficient evidence to hold the accused guilty of offence punishable under Section 498A sub-clause (a) of IPC. The learned Sessions Judge has in fact assigned good reasons for convicting the appellant for the offence punishable under

Section 306 of IPC. The appeal is being heard after 20 years.

15. The learned counsel for the appellant, upon instructions, submits that the appellant has got re-married one year after the death of Kusum. He is a father of two children and therefore prays for leniency.

16. Upon considering the evidence on record and the submissions advanced across the Bar, this Court is of the opinion that the appellant deserves to be acquitted of the offence punishable under Section 306 of IPC. However, his conviction under Section 498A is confirmed. The accused-appellant was in jail from 23.5.1994 to 18.1.1995. He has undergone substantive sentence of about six months. The sentence contemplated for the offence punishable under Section 498A of IPC is rigorous imprisonment for a term which may extend to three years and shall also be liable to fine. The learned Sessions Judge has sentenced the accused-appellant to a period of six months for the offence punishable under Section 498A of IPC. The learned Sessions Judge has not imposed any fine.

17. The learned counsel for the appellant submits that the appellant has undergone half substantive sentence imposed upon him by the learned Sessions Judge and therefore prays that the appellant shall not be remanded to custody for undergoing the rest of the substantive sentence.

Taking into consideration this aspect, the appellant deserves to be imposed with a fine besides the substantive sentence. Hence, the following order :-

ORDER

- (i) The appeal is partly allowed.
- (ii) The appellant is acquitted of the offence punishable under Section 306 of Indian Penal Code.
- (iii) The conviction of the appellant for the offence punishable under Section 498A of Indian Penal Code is upheld. He is sentenced to the substantive sentence for the period already undergone.
- (iv) The appellant is liable to pay fine of Rs.25,000/- to be paid within four weeks. The amount shall be deposited in the Sessions Court within four weeks from today.
- (v) The learned Sessions Judge shall send a compliance report. In the eventuality that the fine amount is not paid within four weeks from today, the appellant shall be taken into custody to serve the rest of the sentence.

Appeal stands disposed of.

(SMT.SADHANA S.JADHAV, J.)