

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.16 OF 1995

1) SADASHIV GOVIND NADGIRE)
2) SMT.VATSALABAI KISAN NADGIRE)...APPELLANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Jaydeep D. Mane, Advocate for the Appellants.

Mrs.S.Gajare-Dhumal, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 13th AUGUST 2015.

JUDGMENT :

1 The appellants were prosecuted on the allegation of having committed offences punishable under Section 306 of the Indian Penal Code (IPC) read with Section 34 of the IPC and Section 498A of the IPC read with Section 34 of the IPC. The learned Sessions Judge, Solapur, after holding a trial, held them

guilty of the said offences. He sentenced each of the appellants to suffer Rigorous Imprisonment for 10 years and to pay a fine of Rs.500/-, with respect to the offence punishable under Section 306 of the IPC read with Section 34 of the IPC, and to suffer Rigorous Imprisonment for 2 years and to pay a fine of Rs.200/-, with respect to the offence punishable under Section 498A of the IPC. The appellants, being aggrieved by the said order of conviction and the sentences imposed upon them, have approached this court by filing the present appeal.

2 The prosecution of the appellants had occasioned by the unnatural death of Ujwala, wife of appellant no.1 Sadashiv Nadgire. Appellant no.2 Vatsalabai Nadgire, is the wife of the uncle of appellant no.1. Appellant no.2 had no issues. Appellant no.1's parents had passed away, and therefore, he had been residing with appellant no.2, since childhood.

3 The prosecution case, as put forth before the trial court, in brief, be stated thus :

Ujwala, daughter of Nirmala Harke (PW1), from Village Ashti, District Jalna, married the appellant no.1 on 5th February 1992. After her marriage, Ujwala started residing with the appellants, at Barshi. In the night between 11th and 12th June 1993, Ujwala got herself bolted in a room and set herself on fire. The door of the room was broken open, fire was put off, and Ujwala was taken to hospital, but she died immediately thereafter. On 12th June 1993 itself, Deepak Hule (PW6), a neighbour of the accused persons, informed Nirmala about the death of Ujwala. Nirmala and others then went to Barshi by the jeep, which had been brought by Deepak. Nirmala then lodged a report with the police, alleging that, Ujwala was being treated with cruelty by the appellants, and that, Ujwala had committed suicide because of the cruel treatment given to her by the appellants, and that, the appellants had thus abetted the commission of suicide by Ujwala. This was treated as First Information Report (FIR), on the basis of which, the offences punishable under Sections 498 IPC and 306 IPC read with Section 34 IPC came to be registered against the appellants. On completion of investigation, a charge-sheet was

filed by Mallikarjun Umberje (PW9), Inspector of Police attached to Barshi Police Station, against the appellants.

4 The appellants were, thereafter, tried, convicted and sentenced as aforesaid, by the learned Sessions Judge for Solapur.

5 I have heard Mr.Jaydeep Mane, the learned counsel for the appellants. I have heard Mrs.S.Gajare-Dhumal, the learned APP for the State. I have carefully gone through the entire evidence adduced during the trial. I have carefully considered the impugned judgment.

6 The prosecution examined totally nine witnesses during the trial. In addition to Nirmala (PW1) the First Informant, one Chabu Harke (PW2), the real brother of Nirmala's husband, was examined to prove the cruel treatment allegedly given by the appellants to Ujwala. The third witness Rajani Nargide (PW3) is the wife of the real brother of appellant no.1. The fourth witness Yamunabai (PW4), resident of Barshi, is the one who was acquainted with the appellants as well as Ujwala.

The fifth witness Vijaya Hule is a cousin of Ujwala, and the sixth witness Deepak Hule, is the brother-in-law of Vijaya Hule. The seventh witness Dr.Bharat Gaikwad (PW7) was working as Medical Officer at Jawahar Municipal hospital, Barshi, at the material time. He is the one who had performed postmortem examination on the dead body of Ujwala. The eighth witness Nagnath Rathod, Head Constable of Police, is the one, who, on receipt of the information from Jawahar hospital about the admission of Ujwala due to burn injuries, had gone to the hospital and had given a requisition to call a Magistrate for recording dying declaration of Ujwala. (However, Ujwala died before the Magistrate could arrive in the hospital). He had conducted an inquiry into the unnatural death of Ujwala, before the investigation on the basis of the report lodged by Nirmala, commenced.

7 Mr.Jaydeep Mane, the learned counsel for the appellants, contended that there was absolutely no evidence to show that Ujwala was treated with cruelty by the

appellants, or any of them. He submitted that, on the contrary, there was evidence to show that Ujwala was not being treated with cruelty at all. The learned APP, on the other hand, submitted that the judgment written by the learned Sessions Judge is a well considered judgment, and that, the allegation of cruelty was satisfactorily proved from the evidence of Nirmala itself.

8 The fact that Ujwala indeed committed suicide is not in dispute. The evidence shows that Ujwala had bolted herself inside a room, and thereafter, set herself on fire. Her death could not be homicidal or even accidental; and as a matter of fact, there is not even a suggestion to that effect. Thus, that Ujwala died a suicidal death, was satisfactorily established.

9 The question that needs to be determined is, *whether Ujwala committed suicide because of the cruel treatment given to her by the appellants*. Naturally, in this context, *whether the appellants had indeed treated Ujwala with cruelty* would need examination.

10 No dying declaration of Ujwala could be recorded. No suicide note had been left by her. Thus, no version of Ujwala, as to what led her to taking the extreme step of putting an end to her life, is available. Thus, that she committed suicide because of the cruel treatment given by the appellants, is expected to be inferred from the fact that she was being treated with cruelty by the appellants. It is, therefore, that the evidence of cruelty, which is to be gathered primarily from the evidence of Nirmala, assumes significance.

11 According to Nirmala, for a period of one month after the marriage of Ujwala, which took place on 5th February 1992, the appellants treated her well. Nirmala has given a reason as to why the ill-treatment started thereafter. According to her, there were illicit relations between the appellants, and that, Ujwala had come to know about it; and that is why the appellants started ill-treating Ujwala. The appellants were not allowing her to go out of the house and to talk with outsiders. Appellant no.2 Vatsalabai

was not allowing Ujwala to sleep with appellant no.1. That, appellant no.1 Sadashiv Nadgire used to beat Ujwala and used to pick up quarrels with her, at the time of taking meals.

12 How Nirmala, who was away at Ashti, came to know about this, is explained by Nirmala. Ujwala had come to Nirmala's house at the time of Diwali festival, and at that time, Ujwala had told Nirmala everything about the ill-treatment given to her by the appellants. Ujwala had told Nirmala that she was not getting the love of her husband and mother-in-law (appellant no.2). Ujwala had also told Nirmala that she was being beaten and was not being allowed to go out of the house.

13 Nirmala's evidence shows that after Diwali festival, Ujwala was sent back to the matrimonial house, and then, was again brought to Ashti on 25th January 1993, as there was marriage of Nirmala's niece. During the time she was there, Ujwala used to tell Nirmala that she was being ill-treated, and that she was not getting the love of her husband and mother-in-law.

Ujwala was apprehending that the ill-treatment would increase as she had learnt about the illicit relations between the appellants. Ujwala stayed at Ashti till 31st May 1993.

14 Sometime prior to 31st May 1993, Ujwala had received a letter from the wife of appellant no.1's brother, who resides at Ahmedabad, saying that she would take Ujwala to Ahmedabad, and that, Ujwala should go to Barshi to see her. On receiving this letter, Ujwala wanted to go back to Barshi, but Nirmala asked her to wait till somebody from the appellants would come to fetch her. On 31st May 1993, Rajini (PW3) and Yamunabai (PW4) came to Ashti to take Ujwala back. Nirmala was not willing to send her, but as Yamunabai said that the tickets for Ahmedabad were reserved, Nirmala permitted Ujwala to go with them. Ujwala, Rajini and Yamunabai left Ashti on 1st June 1993. On 5th June 1993, Yamunabai came to Ashti with a chit in the handwriting of Vatsala, to the effect that appellant no.2 had asked the persons, who were present at the time of settlement of the marriage of Ujwala with appellant no.1, to be brought to Barshi. Thereafter,

Chabu Harke (PW2) and some others along with Nirmala went to Barshi. Appellant no.1 asked for a divorce from Ujwala. According to Nirmala, the divorce was demanded because the illicit relations between the appellants had come to light and to save their face, appellant no.1 wanted to give divorce to Ujwala. Nirmala was not willing to allow a divorce to be given, so soon after the marriage. The appellants then obtained a writing from Ujwala, that, if there would be quarrels in the family thereafter, she herself would give divorce to appellant no.1. On this writing / bond, the signatures of Ujwala, Chabu Harke, Rajini and Nirmala were taken. The bond was executed on 6th June 1993. Nirmala and others left for Barshi on 7th June 1993.

15 On 11th June 1993, Deepak Hule (PW6) came to Barshi by a jeep, told Nirmala about the death of Ujwala due to burn injuries, after which Nirmala with her relatives went to Jawahar Hospital, Barshi. She, then, lodged report on 12th June 1993.

16 Thus, the cause behind the cruel treatment given to Ujwala, as stated by Nirmala, was that the appellants had illicit relations between them, and that, Ujwala had become aware of these relations. No other cause, such as demand for money etc., has been mentioned by Nirmala for the cruel treatment, which was allegedly given by the appellants to Ujwala.

17 Interestingly, in the examination-in-chief itself, Nirmala has stated that Ujwala was writing letters to her, but she used to write letters in the presence of appellant no.2, and therefore, Ujwala was writing that 'everything was OK.' Thus, admittedly, in the letters that were sent by Ujwala to Nirmala, Ujwala had not complained about any ill-treatment. In the cross-examination, Nirmala has admitted that in all the letters received from Ujwala, she had written that she was happy. True, Nirmala has given a reason as to why Ujwala used to write that she was happy, though infact, she was not happy, viz., that 'Ujwala had to write those letters in the presence of appellant no.2, and as such, she had to write that she was happy.' But how Nirmala derived

the knowledge of this, is not clear. Nirmala has not stated that Ujwala told her that she used to write such letters because of the watch kept by appellant no.2. Nirmala, apparently, did not find it necessary to advise Ujwala to write down about the ill-treatment given to her, atleast to negative the inference that would be drawn from the letters sent to Nirmala.

18 In the cross-examination, it transpired that, after her marriage, Ujwala had come to Ashti twice. The first on the occasion of Diwali, and the second at the time of the marriage of Nirmala's niece. That, Ujwala stayed at Ashti till December 1992, when she had come on the occasion of Diwali, and as already observed, when she came in January 1993, she was there till 31st May 1993. Nirmala admitted that she wanted Ujwala to stay with her for a longer period, but that, she sent her back because appellant no.1 had sent a letter and called her. It transpired that Nirmala had also gone to Barshi with Vijaya in the month of December. In the cross-examination, Nirmala stated that when Ujwala had visited Ashti on the occasion of Diwali, she was

examined by a private nurse in Ashti, who had told that Ujwala was pregnant. However, Nirmala immediately denied this and said that Ujwala was not pregnant at all, at that time. She claimed that, she was not aware whether any abortion had taken place, and whether Ujwala was very much disturbed because of the abortion. It was suggested to Nirmala that Ujwala was very emotional, which she accepted, but the other suggestion that Ujwala was unhappy because she was issue-less, was not accepted by Nirmala.

19 In the cross-examination, it is also revealed that Ujwala had written to Nirmala that she wanted to re-appear for the 12th Standard examination, in which she had earlier failed, and that, appellant no.2 had said that Ujwala should study hard and should pass the 12th Standard examination.

20 In the FIR, Nirmala had not stated about Ujwala having told her regarding the illicit relations between the appellants. According to Nirmala, she did state so, but the police did not record it as they were not ready to believe the same.

21 In his evidence, Chabu Harke (PW2) says that he had gone to Barshi about four to six months after the marriage of Ujwala, and met Ujwala. According to him, at that time, Ujwala had told him that the appellants were ill-treating her, that she was not being allowed to sleep with her husband, that appellant no.2 was sleeping with appellant no.1 etc. He has also narrated the other incidents, more or less in conformity with what Nirmala has stated. However, in the cross-examination, it has been revealed that he had not stated before the police about his having gone to Barshi, meeting Ujwala, and Ujwala complaining to him etc. Though he claimed to have stated so before the police, the omission in that regard has been duly proved by questioning the Investigating Officer Umberje (PW9).

22 Rajini (PW3) and Yamunabai (PW4) did state about their having gone to Ashti to bring Ujwala to Barshi. Rajini has stated that she was sent by appellant no.2 for bringing Ujwala from her parents' house, and that, she was told that she should tell

Ujwala that Ujwala was to be taken to Ahmedabad and under that pretext, she should be brought. However, in the cross-examination, her omission to state before the police that appellant no.2 had told her to bring Ujwala to Barshi under the pretext that she was to be sent to Ahmedabad, has been brought on record. The omission to state so has been duly proved by Umerje (PW9). Yamunabai has categorically stated that Ujwala was being treated well by the appellants. Yamunabai though speaks of bringing Ujwala from Ashti to Barshi, does not speak that she was to be brought to Barshi under a false pretext. Yamunabai had earlier gone to Barshi along with four chits, asking the same to be given to four persons, who were present at the time of settlement of marriage between Ujwala and appellant no.1, asking them to come to Barshi. This witness was declared hostile and permission to put questions in the nature of cross-examination was granted to the APP. The learned APP, pursuant to such questioning, has been able to bring on record that Yamunabai had given a contrary version to the police when her statement was recorded. Though this witness was declared hostile, she does not seem to be

disposed to depose in favour of the appellants. In the cross-examination on behalf of the appellants, it was suggested to her that Ujwala used to tell her that everything was going on well. She denied the same. She, however, stated that, appellant no.2 had brought up appellant no.1 like a son.

23 Vijaya (PW5) and her brother-in-law Deepak (PW6) reside just adjacent to the house of the appellants. According to Vijaya, the appellants were treating Ujwala well. She was declared hostile and permission was granted to the APP to put questions in the nature of cross-examination to her. However, nothing which would advance the case of the prosecution could be elicited from Vijaya. It was suggested that as the appellants were her neighbours, she was giving false evidence to save them, ignoring that she was actually the cousin of Ujwala. In her cross-examination, it transpires that Ujwala and appellant no.1 used to go together for a walk or a movie, and that, Ujwala used to be assisted by appellant no.2 in doing the household work, going to market, etc. Her evidence shows that Ujwala used to visit her

house with appellant no.2. Even Deepak has stated that Ujwala was never telling anything to Vijaya or him about any ill-treatment. He also says that Ujwala used to visit their house with appellant no.2. He also says that Ujwala used to go to the market, that she also used to visit Bhagwati Mandir in the morning, and that, she used to go with appellant no.1 to see a movie, once in a week or fortnight. He categorically stated that Ujwala and appellant no.1 were leading a good married life, and that, appellant no.2 Vatsalabai was treating Ujwala like her daughter. His evidence also shows that Ujwala was being taken by appellants for medical treatment to Dr.Mrs.Yadav, a gynecologist. This witness was questioned by the court apparently because she gave evidence in favour of the appellants. However, such questioning was about what the witness had seen and how Ujwala actually caught fire. The answers given to the court questions are not very relevant as the fact of suicide and the time and place where Ujwala had caught fire, has not been disputed by the appellants.

24 Similarly, the evidence of Nagnath Rathod, Police Head Constable (PW8), is also not significant, in as much as all that it shows is that a requisition was sent for a Magistrate so that a dying declaration of Ujwala could be recorded, but that, actually by the time the Magistrate came, Ujwala had already died.

25 Mallikarjun Umerje (PW9) has given the various steps taken by him in the investigation. In his cross-examination, a number of omissions of the prosecution witnesses have been brought on record and duly proved. Some of the glaring aspects are that Nirmala had not stated about the illicit relations between the appellants while lodging the FIR. Chabu Harke (PW2) had not stated that he had gone to Barshi for marriage, and that, Ujwala had told him that the appellants were ill-treating her, 'were not allowing her to sleep with her husband', and the appellants were sleeping together, etc. Chabu Harke also did not state before the Investigating Officer that Rajini had told him that Ujwala and her mother-in-law were not pulling on together, and that, Ujwala and her husband were to be taken to Ahmedabad, etc. Chabu

Harke had also not stated before the police that when he went to Barshi, the appellants told him that Ujwala was not behaving properly and that the appellants obtained a bond from her, etc. Thus, all the important facts narrated by Chabu Harke in his evidence were not at all stated by him when his statement was recorded in the course of investigation, and as such, his evidence consists of significant and glaring improvements. Even Rajini's statement that appellant no.2 had told her to say that Ujwala was to be taken to Ahmedabad and was to be brought to Barshi under that pretext, is an improvement, in as much as Rajini had not stated that to the Investigating Officer and this omission has been duly proved.

26 It can be at once seen that there is no specific instance of alleged cruel treatment given to Ujwala by the appellants in the entire evidence of the prosecution. Nirmala's evidence does show that Ujwala had told her that the appellants were treating her with cruelty, and that, she was not getting the love of her husband and of Vatsalabai, i.e., appellant no.2. However, these are

extremely general averments, and not even one specific instance which would reveal *the type of cruel treatment* that was given to Ujwala, has been narrated by Nirmala. This is apart from the question of the reliability of Nirmala's evidence.

27 It is difficult to hold the evidence of Nirmala and Chabu Harke (PW2) as reliable. The reason for the ill-treatment, as given by Nirmala and Chabu Harke, is the illicit relationship between the appellants, of which Ujwala had become aware. However, that there existed such relationship between the appellants, is not at all established by any evidence. No circumstances, suggesting that there was illicit relationship between the appellants, are found in the evidence, and the assertion of Nirmala and Chabu Harke to that effect – and that too on the claim that 'Ujwala told them so' – is the only evidence in that regard. How did Ujwala know this, or from what facts observed by her, she had come to that conclusion, has not been stated by any of these two witnesses. Moreover, it is clear that, in the letters written by Ujwala to Nirmala, she *did* mention that

everything was alright and had categorically stated that she was happy. This has been admitted by Nirmala in the cross-examination, but her only explanation in that regard is that these letters had been written by Ujwala in the presence of appellant no.2, and that, therefore, Ujwala had to write it that way. Now, how did Nirmala come to know that the letters were being written by Ujwala in the presence of appellant no.2, and that, therefore, she could not write about the ill-treatment, is not clear. Nirmala does not state that Ujwala had told her that she had been writing such letters because of the watch kept by appellant no.2 on her. The possibility of Nirmala having invented this version to overcome the version in the letters of Ujwala, which is contrary to the version narrated by Nirmala, cannot be overlooked. This is particularly because the evidence of Vijaya and Deepak, who are the immediate neighbours of the appellants and relatives of Ujwala, also shows that Ujwala was leading a normal life with her husband. So far as Chabu Harke is concerned, his evidence consists only of improvements. Even the crucial facts on which the prosecution case is based, viz., that Ujwala had told him that

the appellants were ill-treating her, that she was not being allowed to sleep with her husband appellant no.1, that appellant no.2 was sleeping with appellant no.1, that the appellants were keeping her without food, that they were not allowing her to go out, are all improvements, and none of these facts were stated by him when his statement was recorded in the course of investigation. Thus, the evidence of Nirmala and Chabu Harke is not at all reliable. It cannot be safely accepted.

28 Apart from this, there is a more fundamental question that needs determination. It is, *whether the facts stated by Nirmala, even if accepted as correct, are sufficient to prove the offence of cruelty, punishable under Section 498A of the IPC.*

29 The concept of 'Cruelty' has been in existence in Matrimonial Law, but such a concept was introduced into Criminal Law for the first time by the Criminal Law (Second Amendment) Act, 1983 and by the Dowry Prohibition (Amendment) Act, 1986, by inserting certain sections in the Indian Penal Code and the

Indian Evidence Act and by making consequential amendments to the Code. Section 498A of the Indian Penal Code and Section 113A of the Indian Evidence Act were inserted by the Criminal Law (Second Amendment) Act, 1983 and the relevant provisions came in force w.e.f. 25.12.1983. By Dowry Prohibition (Amendment) Act, 1986, section 304B was inserted in the Indian Penal Code and section 113B of the Indian Evidence Act. The relevant provisions were brought in force with effect from 19.11.1986. The reasons for introducing these provisions in the Criminal Law were to effectively check the social evils of the dowry system, the cruelty with which some married women were being treated by their husbands and in-laws and the culmination of such cruel treatment into suicides and dowry deaths of such women. It was felt that these social evils could not be effectively checked under the Criminal Law, as was existing before the insertion of the said provisions, and that is why the relevant provisions were introduced.

30 Though under the Matrimonial Statutes, the necessity of defining the term 'Cruelty' was not felt, when it was made an

offence punishable under Section 498A of the Indian Penal Code, the term 'Cruelty' could not be left to be undefined for obvious reasons. Criminal liability could not be fastened on the basis of a vague or varying concept. The subjective element involved in the concept of 'cruelty' needed to be reduced to the minimum, by defining the said term and therefore, the term 'cruelty' has been defined in the explanation appended to Section 498A of the Indian Penal Code, which reads as under :

“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.”

31 The terms 'willful conduct', 'likely to' and 'injury' as used in clause (a) and the terms 'harassment' and 'unlawful demand' as used in clause (b) emphasize the scope, import and the ambit of the said clauses. It is not every type of cruelty that is made punishable under Section 498A of the Indian Penal Code. The conduct, which is alleged to be cruel must be 'willful', and it must be of such a gravity as is 'likely' to drive the woman to commit suicide, or to cause grave injury to the life, limb or health. The word 'likely' has been interpreted to show 'probability' and stands on a higher footing than a mere 'possibility'.

32 In this case, the mere bald assertion that the appellants had illicit relations between them and that, because Ujwala had become aware of this relationship, she was being ill-treated by the appellants, cannot be accepted as sufficient to hold the appellants guilty of an offence punishable under Section 498A of the IPC. The concept of cruelty envisaged in Section 498A of the IPC needs to be judged objectively. The same cannot be judged without knowing the specific instances of the alleged cruel

treatment. An assertion that the victim was being treated with cruelty, that she was harassed, that she was ill-treated, would not be sufficient to enable the court to come to any conclusion, as to the nature of the alleged cruel treatment and to be able to judge whether it was of the type that is contemplated under Section 498A of the IPC. Vague and omnibus allegations can never give an idea as to whether the conduct attributed to the appellants was of such a nature, as was likely to drive Ujwala to commit suicide, or to cause grave injury or danger to life, limb or health.

33 Though the fact that suicide has infact been committed would be relevant in judging the evidence of cruelty, the cruelty cannot be held as proved merely because suicide has, infact, been committed.

34 I had an occasion to consider this question in **Criminal Appeal No.393 of 2001 (Sau.Vajabai Vikram Sonawane & Anr. vs. The State of Maharashtra)** and **Criminal Appeal No.621 of 2011 (Santosh Vikram Sonawane vs. The State of Maharashtra**

reported in **2012 ALL MR(Cri) 1817**, wherein, I had expressed my view as follows :

“14. Though, the evidence of cruelty would be relevant in determining whether the death could be suicidal and the evidence of death being suicidal would be relevant in judging the existence or extent of cruelty, these aspects would not be conclusive. It is because there are a number of factors, which may lead to a person deciding to take his own life. Causes of suicide is a matter of study for the psychologists. Experience shows that the people who suffer severe and great miseries and sorrows do not end their lives, but people, who are required to undergo comparatively minor sufferings do, at times, commit suicide. The level of tolerance of various persons differs and further, the causes of depression, which leads to suicide may be very many. Therefore, the conclusion of cruelty cannot be drawn merely from the fact that suicide has in fact been committed, and conversely, the conclusion that the death was suicidal also can not be drawn, merely from the fact that some cruelty was meted out to the deceased. Though these aspects may be relevant, they certainly would not be conclusive.”

35 In the absence of satisfactory evidence about the cruel treatment given to Ujwala, *and in the light of some evidence indicating the position to be contrary*, that Ujwala was being treated with cruelty cannot be accepted, merely from the fact that she indeed committed suicide.

36 I have carefully gone through the impugned judgment. The learned Sessions Judge has categorically held that the allegation leveled by Nirmala that there were illicit relations between the appellants was not believable. The learned Sessions Judge observed that though the FIR lodged by Nirmala was not sufficient to discard this evidence as there was a possibility of the police not being ready to record such an allegation, still, since appellant no.2 had brought up appellant no.1 as her son right from his childhood, such allegation was not at all believable. Infact, the learned Sessions Judge observed that because of the hatred for the appellants, Nirmala might have exaggerated the matter while giving evidence. It may be recalled that the existence of illicit relationship between the appellants was the

basis of the prosecution case. It was because of such relationship and Ujwala becoming aware of the same, that she was ill-treated, is the prosecution case. If that was not believable, or was not believed, the motive for the cruel treatment said to have been given to Ujwala, goes away. The learned Judge has categorically come to the conclusion that the prosecution had failed to prove the illicit relationship between the appellants and the fact that it was because of the same, that Ujwala was being ill-treated.

37 One wonders, if this aspect is disbelieved, what was the basis for claiming that Ujwala was ill-treated. The learned Sessions Judge has discussed the evidence of Chabu Harke and has placed reliance on it observing that he had no enmity with the appellants and had no reason to give false evidence against them. This is surprising because the learned Judge has observed that Nirmala had an apparent hatred for the appellants. If this was so, why Chabu Harke, who is the uncle of Ujwala, would not have a similar hatred and grudge, and why the learned Judge who accepts hatred for the appellants on the part of Nirmala, discards

the same on the part of Chabu Harke, is difficult to understand. Moreover, while appreciating Chabu Harke's evidence, the learned Judge has simply ignored the improvements made by him in his evidence.

38 The learned Judge has discarded the evidence of Vijaya and Deepak which indicated that Ujwala was leading a happy married life. The learned Judge noted that according to these witnesses, appellant no.1 and Ujwala used to go for a walk, used to go for a movie etc., but observed that the evidence of these witnesses could not be accepted 'at face value.' He observed that none of these two witnesses stated that Ujwala ever told them that she was leading a very happy life and that the appellants were treating her very well. The learned Judge observed that the 'absence of such a positive statement from these two witnesses ought to be noted.' This approach of the learned Judge does not appear to be proper. In other words, the learned Judge did not require these witnesses who were the neighbours of Ujwala and also her relatives, to positively state that Ujwala was not being

treated well, but was of the view that, 'that she was not being treated well could be easily presumed because the witnesses did not state that Ujwala had told them that she was leading a happy life.' Moreover, what the learned Judge ignored is that, even if it is assumed that Ujwala was not leading a 'very happy life' (a phrase used by the learned Judge), that would not mean that she was being treated with cruelty by the appellants. In my opinion, the discarding of the evidence of these two witnesses simply because it did not support the prosecution version, was not proper.

39 The learned Judge also observed that though the evidence indicated that Ujwala was being taken to some doctors for medical treatment, still, that would not show that she was being treated properly. The learned Judge also noted that appellant no.2 was asking Ujwala to appear for the 12th standard examination, but did not accept that this showed that Vatsalabai did have affection for Ujwala, and that, she cared for her. The learned Judge observed that appellant no.2 Vatsalabai might have taken this stand to hide her real feelings. He considered it

possible that in order to falsely show her concern for Ujwala, appellant no.2 Vatsalabai had spoken about Ujwala appearing for the 12th standard examination.

40 While holding that cruelty was satisfactorily established, the learned Judge has relied on the fact that some writing had been obtained from Ujwala by the appellants. Significantly, no such writing was produced before the court. The evidence shows that the writing was in the nature of an assurance given by Ujwala to behave properly. Undoubtedly, if without any fault of Ujwala, she was forced to execute such a writing, she would feel humiliated and distressed. However, what was the matter, and what for the writing was taken, is not at all clear; and therefore, it would be hazardous to come to a conclusion that obtaining the writing from Ujwala was an act of cruelty. Apparently, even Nirmala has attempted to suppress some facts and has abruptly stated about giving some writing signed by her, Nirmala and others in favour of the appellants, without disclosing what was the occasion to give such writing. What was the written

matter, as aforesaid, has not been brought on record. According to the appellants, no such writing was obtained. However, even assuming any such writing was obtained, without knowing the circumstances in which it was obtained, and without knowing the contents of the writing, it cannot be assumed that the act of obtaining such writing constituted cruelty. The learned Judge has referred to the evidence of Nirmala and Chabu Harke to the effect that, the appellants were threatening that divorce would be given to Ujwala and the bond had been given in that connection. As aforesaid, without knowing what was the grievance of the appellants against Ujwala, and why the appellants threatened that Ujwala would be given a divorce, no conclusion of the appellants having treated Ujwala with cruelty can be drawn. An intention to have the marriage dissolved or the declaration thereof, cannot, by itself, amount to cruelty, punishable under Section 498A of the IPC.

41 The learned Judge has not viewed the evidence in proper perspective and in accordance with law. The learned

Judge was greatly influenced by the fact that Ujwala had committed suicide, and was of the view that *she must have done so* because the appellants had treated her badly. It is by presuming this, that he has looked at the evidence, trying to derive support to this theory. For instance, when it was pointed out on behalf of the appellants that the theory of some chits having been sent with Yamunabai was not proved as the chits had not been collected during evidence, the learned Judge observed that it was a flaw in the investigation. He observed that the 'witnesses could not be disbelieved because the Investigating Officer failed to carry out the investigation properly.' The learned Judge did not consider that the failure to seize or produce the chits could be also due to the fact that no such chits ever existed. In spite of the fact that Chabu Harke's evidence was full of improvements, the learned Judge has accepted the same as true, without even discussing the improvements and the effect thereof on his evidence. About the bond executed by Nirmala and others, not coming before the court also, the learned Judge has blamed the investigating machinery, but has not discussed whether bond had in fact been given, and if

so, what were the contents of the bond and what was the occasion to give such bond. He has concluded that the very circumstance that Ujwala was made to give a bond indicates that she was not leading a happy married life. What the learned Judge overlooked is that the question was not *whether Ujwala was happy*, but the question was *whether she was being treated with cruelty by the appellants, or any of them*. Without knowing the contents of the bond or the circumstances in which Ujwala, Nirmala and others executed the same, the learned Judge concluded that 'blame of improper behaviour was falsely being put by the appellants on Ujwala.' The only reason to hold that the blame could not be put on Ujwala appears to be the fact that Ujwala actually committed suicide. Such approach is entirely unscientific.

42 The learned Judge also observed that Ujwala had stayed at her mother's house for about four months and this indicates that she was not happy. The learned Judge poses the following question – '*why Ujwala should suddenly commit suicide ?*' and answers it by saying that she was being treated with cruelty

till 25th January 1993, and when she returned to Barshi on 1st June 1993, the cruelty continued. He observed that ultimately Ujwala and her relatives were forced to give writing on 6th June 1993. The learned Judge observed that Ujwala '*must have been treated more badly by the appellants after 6th June 1993 for no fault of hers*' and further observed that, that she had been forced to give such a writing must have given her a mental shock, it must have destroyed her honour and self esteem, and that, it was a cruel treatment to any girl. It is easy to see that all these are nothing but conjectures and surmises, and not findings based on evidence, or inferences that could be drawn from the evidence. All these conjectures and surmises are based on the fact that 'since suicide has been committed, there must be somebody who is responsible for the same, and that, such person needs to be blamed. Infact, what had happened before the death of Ujwala was not clear, is evident from the observations made by the learned Judge himself, which are as follows :

“Whatever it may be the fact remains that both the accused in furtherance of their common

intention treated Ujwala with cruelty during her married life. The cruelty was of such a nature that Ujwala committed suicide when the living became unbearable. Her mother and relatives were made to execute a bond and then were sent back to Ashti and she alone was left in the hands of the two accused thereafter. She must have predicted that she would be treated with more cruelty thereafter. Actually she must have been treated with cruelty before she committed suicide because she was found alone in the room when she should have been in the ordinary course with the husband.”

43 There is no basis for such conclusions, which are merely the flights of imagination of the learned Judge. Moreover, the observations in the last sentence, viz., that, *she was found alone in the room when she should have been in the ordinary course with her husband* are difficult to understand as the evidence indicates that Ujwala and appellant no.1 were sleeping together, but Ujwala got up, went in some other room, bolted it from inside and set herself on fire.

44 The finding of the appellants being guilty of the alleged offence, as recorded by the learned Sessions Judge, is based only on conjectures and surmises. There was absolutely no evidence to prove the offence of cruelty. The whole basis of the reasoning of the learned Sessions Judge is that since Ujwala had committed suicide, the appellants must have treated her with cruelty. He has viewed all the pieces of evidence from this angle only. He has ignored the weaknesses in the case of the prosecution. He has overlooked that the basis for cruelty, as per the prosecution case, was the fact of illicit relationship between the appellants, which had become known to Ujwala, and though he discarded the same, he substituted a new case for the prosecution, viz., that the cruel treatment was for some other reason, and that, it primarily consisted of expressing a desire that the marriage between appellant no.1 and Ujwala should be dissolved, and taking a bond from Ujwala for proper behaviour. The way the observations have been made, leave no manner of doubt that the learned Sessions Judge was of the view that some reason for the suicide of Ujwala must be found out, and that, since

the appellants could not explain this fact, they should be held as guilty. It would be appropriate here to quote from a judgment delivered by the Kerala High Court.¹

“Vagaries of human mind cannot be fathomed with precision, and one may act on sudden impulses, and suicidal proclivities cannot be explained in many cases. If the accused failed to explain as to what else would have prompted his wife to end her life in a jiffy, it is no premise to presume that she would have chosen to adopt the extreme step as she was subjected to any humiliation or ill-treatment by her husband.”

45 The appreciation of evidence, as done by the learned Sessions Judge, and the conclusion arrived at by him, is clearly contrary to law. This was a case where the appellants ought to have been acquitted.

46 The Appeal is allowed.
The impugned judgment and order is set aside.
The appellants are acquitted. Their bail bonds are discharged.
Fine if paid, be refunded to them.

(ABHAY M. THIPSAY, J.)

¹ State of Kerala vs. Mohanan Pillai, 1991(1) KLJ 359