

CRIMINAL APPEAL NO. 29 OF 2000

-: Versus :-

Ms Sharmila Kaushik, A.P.P. for the appellant-State.
Mr. Sagar Tambe, Adv. h/f Mr. V. T. Tulpule, Advocate for the
respondent.

CORAM : S. B. SHUKRE, J.
12th JUNE, 2015

ORAL JUDGMENT

1. This is an appeal preferred against the judgment and order dated 17/6/1999 passed in C.C. No.40/P/98 by the Court of Metropolitan Magistrate, 26th Court, Borivali, Mumbai, thereby acquitting the respondent of the offences punishable under Sections 498(A)(a)(b) and 377 of the Indian Penal Code. Briefly stated, the facts of the case are as under.:

The complainant in this case is one Smt. Shivpriya, whose marriage with the respondent-accused was performed on

18/6/1997. It has been alleged that at the time of marriage, there was demand made by the respondent about diamond ring worth Rs.10,000/-, which was fulfilled by the brother of the complainant at the time of marriage. It has also been alleged that several gold and diamond ornaments and other articles worth lacs of rupees were offered to the bride, Shivpriya at the time of her marriage with the respondent. After the marriage, which was performed at Pune, newly wedded couple left Pune for Vaishalinagar, Dahisar, Mumbai where the respondent had his flat. They reached the flat of the respondent on 10/6/1997. The elder sister of the complainant Chandralekha was also present at that time. The complainant and her sister Chandralekha were shocked to see that except the ceiling at the top and the tiles at the bottom, there were no household articles in the flat of the respondent. Ultimately, on 21/6/1997 the elder sister of the complainant purchased the household articles worth Rs.45,000/- and arranged them in the flat for the benefit of newly married couple.

In the morning of 22/6/1997, upon refusal of the complainant to submit herself to the demand of sexual intercourse made by the respondent, the respondent slapped her and hurled abuses to her. It has been alleged that in that morning, the respondent used force against the complainant and indulged in unnatural sex with her. On the next day morning the respondent

warned the complainant against her disclosing what was done to her by him to anybody. At that time the respondent also made a demand of encashing Kisan Vikas Patra certificates worth Rs.25,000/- and Unit Trust of India certificates valued at Rs.45,000/- and handing him over the proceeds thereof. On 24/6/1997, the respondent asked the complainant to bring an amount of Rs.5 lac from her brother, who was a rich and affluent person in order to enable him to purchase a flat in Mumbai. Upon her refusal, the respondent subjected the complaint to ill-treatment. It has also been alleged that the respondent demanded from the complainant ornaments, which were offered to her at the time of her marriage and when she refused to fulfill his demand, the respondent again ill-treated the complainant. It has also been alleged that the respondent had made a telephonic call to the brother of the complainant and demanded Rs.5 lac from him to enable him to purchase a flat in Mumbai.

Meanwhile, ill-treatment of the complainant at the hands of the respondent continued and ultimately being fed up with the cruelty that was meted out to her, the complainant went to the house of her sister, situated at Borivali on 26/6/1997. Upon reaching there, the complainant narrated her tale of woes to her sister. The complainant together with two sisters again came to the house of respondent in order to instill some wisdom in him,

but to no avail. Ultimately, on 16/9/1997, the complainant went to police station, Dahisar and lodged a report against the respondent. Police registered an offence punishable under Section 498-A of I.P.C. against the respondent and made investigation into the allegations contained in the complaint. The marriage invitation card and horoscope were seized. The respondent was placed under arrest, some house hold articles were also seized, statements of witnesses were recorded and after completion of investigation, a charge-sheet was filed against the respondent.

Initially, the trial Court framed charge for an offence punishable under Section 498-A of I.P.C. against the respondent. As he denied the charge and claimed to be tried, the trial Court commenced recording of evidence. After the examination-in-chief of the complainant had begun, additional charge for the offence punishable under Section 377 of I.P.C. was framed against the respondent to which also the respondent pleaded not guilty. The trial thereafter was completed in accordance with law.

On merits of the case, the learned Magistrate found that evidence of material prosecution witnesses; the complainant, P.W.-1 Shivpriya and her two sisters, P.W.-2 Sou. Neela Jadhav and P.W.-3 Chandralekha, was discrepant in nature and failed to inspire confidence of the Court and, therefore, the learned Magistrate held that the prosecution failed to prove beyond

reasonable doubt the offences with which the respondent was charged in the case. Accordingly, the learned Magistrate by his judgment and order delivered on 17/6/1999, acquitted the respondent of the said offences. Being aggrieved by the same, the State has preferred the present appeal.

2. I have heard learned Ms Kaushik, learned A.P.P. for the State and Mr. Sagar Tambe, instructed by Mr. V. T. Tulpule, learned Counsel for the respondent. I have gone through the record of the case and also the impugned judgment and order.

3. Learned A.P.P. for the State has submitted that although there has been delay in filing of the complaint against the respondent by P.W.-1 Shivpriya, her evidence is mostly consistent with what she had stated in her complaint before the police and also with the evidence of her two sisters, P.W.-2 Sou. Neela and P.W.-3 Sou. Chandralekha. Learned A.P.P. further submits that from the evidence of P.W.-1 Shivpriya, it can be clearly seen that she was subjected to cruelty by the respondent during short period in which she cohabited with the respondent. The cruelty was meted out with a view to compel P.W.-1 Shivpriya to fulfill the unlawful demand for cash amount of Rs.5 lac, handing over of the proceeds of U.T.I. and K.V.P. certificates and also handing over of the ornaments. This cruelty consisting of several acts varied from giving of abuses to Shivpriya by the

respondent to his forcibly having unnatural sex with her and, therefore, according to the learned A.P.P., the charge of cruelty punishable under Section 498-A of I.P.C. could be said to be proved beyond reasonable doubt against the respondent. She also submits that even the charge of respondent having unnatural sex with the complainant has been proved in a reasonable manner by the prosecution. She has, therefore, argued that the impugned judgment and order deserve to be quashed and set aside and the respondent needs to be convicted and sentenced appropriately for the offences with which he has been charged in this case.

4. Learned Counsel for the respondent submits that evidence of prosecution witnesses has been elaborately discussed in the impugned judgment and order and the discussion made therein would show that there are several inadequacies and discrepancies in the evidence of the star prosecution witnesses which taken together would render their evidence as of untrustworthy nature and as such this appeal, he further submits, deserves to be dismissed.

5. Upon going through the impugned judgment and order as well as evidence of the prosecution witnesses, I find that there is great substance in the argument of learned Counsel for the respondent and I find it difficult to accept the argument of learned A.P.P. for the State.

6. On going through the evidence of P.W.-1 Shivpriya and her two sisters namely, P.W.-2 Neela and P.W.-3 Chandralekha, one would notice that they have generally, if not consistently, stated about the cruelty meted out to P.W.-1 Shivpriya by the respondent on account of failure to fulfill his demand of cash amount and also excessive urge of the respondent to have sexual intercourse with the complainant. But, I must say, there is a fundamental flaw in the prosecution story which is unescapable from being noticed. It is well settled law that the first information report or complaint made to police with a view to set the law in motion forms a foundation over which edifice of the prosecution case is built and if the foundation is squeaky or weak, the inevitable result would be collapse of the building called the prosecution case. This seems to have happened in this case.

7. In the instant case, admittedly the complainant had left her matrimonial house on 26/6/1997 and if whatever she has stated in examination in chief is accepted as true account of her sufferings at the hands of the respondent, natural reaction from such a person would be of filing of police complaint against her husband either immediately after or within a reasonable period of time from 26/6/1997. But, she did not do so. She filed it almost after three months. Then, a person who suffered so much at the hands of the respondent would, in the ordinary course of nature,

choose to share her sufferings at the hands of her husband with her near and dear ones, if available. In this case, two sisters, P.W.-3 Chandralekha and P.W.-2 Neela were available and their houses were not situated far away from Dahisar, the matrimonial home of the complainant, with P.W.-2 residing at Borivali and P.W.-3 residing at Pune. P.W.-1 Shivpriya, however, did not immediately narrate some of the material facts to her sisters, which could be seen from the testimonies of P.W.-2 Neela and P.W.-3 Chandralekha. No explanation whatsoever has been given by P.W.-1 Shivpriya about belated lodging of the FIR, which was filed almost after about a period of three months from leaving the matrimonial home nor any reason was given by her for not narrating the material facts to her sisters. Therefore, a serious doubt about genuineness of prosecution case against the respondent arises in one's mind and, therefore, it would be necessary for us to look for corroboration to the versions of P.W.-1 Shivpriya as well as P.W.-2 Neela and P.W.-3 Chandralekha from the independent witnesses. However, no independent prosecution witnesses have been examined by the prosecution, even though it is seen from the evidence of Investigating Officer, P.W.-5 Waman Kharat, that statements of two neighbours namely Tara Yasim Mohammad and Sau. Rina Shahaji Nair were recorded. There were also two mediators who had mediated for bringing about the

marriage of the complainant and the respondent. Even, those mediators were not examined by the prosecution. Therefore, the evidence of P.W.-1 Shivpriya, P.W.-2 Neela and P.W.-3 Chandralekha cannot be relied upon for basing conviction of the respondent.

8. Apart from the above referred material infirmities, there are also serious discrepancies in the evidence of all the three important prosecution witnesses. The allegations of cruelty made by these three witnesses; P.W.1, P.W.-2 and P.W.-3 against the respondent had their genesis in excessive sexual urge of the respondent; his having had unnatural sexual intercourse with P.W.-1 Shivpriya; his demanding Rs.5 lac from the brother of P.W.-1; his demanding proceeds of K.V.P. and U.T.I. certificates and also his demand of handing over ornaments and valuables to him. But, on all these counts, one can see discrepancies in the evidence of prosecution witnesses.

9. Although, it has been alleged by P.W.-1 that gold and diamond ornaments and also other valuables worth lacs of rupees were received by her in the marriage, there is no mention about the same in the list of articles vide Exh.P-2, which has been adduced in evidence by the prosecution. Even P.W.-2 Neela does not say anything about receiving of gifts, ornaments and valuable articles worth lacs of rupees by her sister P.W.-1 at the time of her

marriage. Then, in the reply notice vide Exh.P-9 which was sent from the side of the complainant in reply to the notice sent by the respondent to her brother, there is a vital admission as regards K.V.P and U.T.I. certificates. P.W.-1 Shivpriya in her cross-examination has admitted that nomination forms for U.T.I. and K.V.P. certificates were received by her on 26/6/1997 and those certificates were received by her in the month of November, 1997. This only shows that these certificates were not in the hands of the complainant and if that was so, the allegation that her husband-the respondent, on seeing these certificates had demanded from her that they be encashed and their proceedings be handed over to him seems to be only a figment of imagination of the complainant.

10. As regards purchase of furniture and other house hold articles on the demand of the respondent, there is no specific mention about demand of household articles by the respondent in the police complaint. About the demand of cash amount of Rs.5 lac also, there is a serious doubt. According to the complainant as well as her elder sister, P.W.-3 Chandralekha, this very demand was made by the respondent at the time of settling of his marriage with the complainant. This demand was made in presence of the mediators. The mediators were not examined by the prosecution. It is also the case of the complainant that the respondent had made a telephonic call to her brother and had repeated his

demand for giving him cash amount of Rs.5 lac to enable him to purchase a flat. However, in the reply notice (Exh.P-9), nothing is mentioned about the telephonic call and said demand placed by the respondent with the brother of the complainant.

11. About the allegation relating to respondent forcibly indulging in unnatural sex with the complainant, nothing is mentioned in the reply notice (Exh.P-9) as well as the first information report (Exh.P-4). About absence of this allegation in the F.I.R., there is some explanation given by the complainant. She says that she did not narrate this fact to the police officer who recorded her statement because he was a male officer and no female police officer was present at that time. The explanation is apparently reasonable and satisfactory, if considered without other circumstances. But the other circumstances, particularly of the complainant not giving any explanation about absence of the said allegation in the reply notice vide Exh.P-9, would make the said explanation as afterthought on her part. The complainant, i.e. P.W.-1 Shivpriya has admittedly not disclosed immediately such sexual perversion of her husband to her elder sister or younger sister. No explanation about the same is forthcoming from the prosecution witnesses and so P.W.-1 cannot be trusted for what she says about respondent's sexual depravity.

12. All the afore-stated discrepancies in the prosecution

evidence create a serious doubt in the mind of one about creditworthiness of the witnesses. As stated earlier, there has been no corroboration coming from any independent witness to the evidence of the main prosecution witnesses; P.W.-1, P.W.-2 and P.W.-3. No explanation much less satisfactory explanation about belated lodging of the F.I.R. by P.W.-1 Shivpriya has been given by the prosecution. The delay is almost of three months and it being an unreasoned delay has made the whole prosecution case against the respondent as highly suspect in the eye of law.

13. Admittedly, the relations between P.W.-1 and her husband, the respondent, were strained. The two had lived together for hardly six days and it is doubtful if during such a short period of time, cruelty as contemplated under Section 498-A I.P.C. could really be said to be proved just because certain acts, which were not to the liking of the wife, were performed by the husband. In order to bring home to the accused his guilt for an offence punishable under Section 498-A, I.P.C., it is necessary that various acts of commission and omission, which cause suffering to the wife and which are on account of illegal demand of valuable articles or property are performed in a consistent manner. A person can ordinarily be said to be a victim of crime of cruelty under Section 498-A I.P.C. only when she can be perceived as tortured, tormented and traumatized by the tormentor or her

husband. Being tortured, tormented and traumatized are the kind of feelings that generally develop over a period of time due to constant or consistently nasty behaviour of the other and would not be aroused by some stray acts of offensive nature in a short period of time. Sometimes, what is seen by a wife as rude and even cruel behaviour of her husband could be nothing more than a teething trouble of a new relationship about to blossom. Although, there is no thumb rule to say that; 'X' period of time must have gone by before a finding of cruelty could be recorded as it depends on several factors such as sensitivity of the woman, upbringing of spouses, nature and severity of acts complained of, frequency and consistency of ill-treatment and so on and so forth. But, courts would be generally on their guards, as a rule of caution, in judging the nature of relationship in a short span of time.

14. In this case, P.W.-1 Shivpriya and her husband, the respondent, lived as husband and wife for just six days and even before they could understand each other and give time to each other for adjusting themselves to the trials and travails of marital life, the two had parted ways and on a bitter note. In such a short period of time, it is quite difficult to judge an act which is perceived by the bride as torture-some or degrading as cruelty as defined under Section 498-A of the Indian Penal Code. In many a

marriages, the voyage of the spouses may not be smooth sailing. Spouses go through troubled waters, even feel frustrated and fed up with each other and yet, many a spouses mellow down over a period of time, start understanding each other better and ultimately reconcile their differences to lead a happy marital life. It is said that time is the best healer of all troubles and pains. So, unless some time is given to a relationship, especially a marital one, to settle down; adjudging the relationship as good or bad would be dangerous. In a given case it may be too premature to call the alleged offensive acts of the husband as causing cruelty to the wife, unless the facts are such that they show nasty and revolting behaviour of the husband. Present case does not appear to be falling in the said category of extremely bad behaviour of the respondent as there is no reliable evidence available on record to convince the Court of such harassment or cruelty on the part of respondent as contemplated under Section 498-A, I.P.C. What appears to me in this case is the problem of incompatibility between the two leading to stating of exaggerated facts. From this view point also, in the instant case, I find that it would be too unsafe or risky to rely on the evidence of afore-stated prosecution witnesses to record a finding of guilt as against the appellant for the offences of cruelty against the complainant and his having unnatural sex with the complainant.

15. Viewed in this way, I do not find any illegality or perversity in the findings recorded by the trial Court. I see no error nor any flaw in the approach adopted by the learned Magistrate in appreciating the prosecution evidence and, therefore, I see no merit in the present appeal. The appeal deserves to be dismissed.

The appeal stands dismissed.

S. B. SHUKRE, J.