

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 306 OF 1995

Mahadeo Sheshnarayan Ugale.
Aged 25 years, Occ. Labour,
residing at Hajipur, Taluka Gevrai,
District Beed, presently residing
at Someshwar Sugar Factory,
Someshwar Nagar,
Taluka Baramati, District Pune.

... Appellant.

Versus

The State of Maharashtra.

... Respondent.

Mr. Rahul S. Kate, advocate for Appellant.

Ms. P.P. Shinde, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : FEBRUARY 2, 2015

JUDGMENT :

1 The appellant herein is convicted for offence punishable under Section 498A of the Indian Penal Code and is sentenced to suffer R.I. for one year by Additional Sessions Judge, Baramati in Sessions Case No. 40 of 1991 vide Judgment and Order dated 18/5/1995.

2 Such of the facts necessary for the decision of this appeal are as follows :

The appellant herein was married to Sanjeevani in the year 1989. That the family of the appellant was working as seasonal labour and was going from place to place for cutting sugar cane. It is alleged that Sanjeevani had complained to her parents that she was being ill-treated in her matrimonial home. That her mother-in-law expected her to do work beyond her capacity. She had also disclosed to her parents that her husband had illicit relations with another woman and therefore, he was indulging into abusing and beating her intermittently. The parents and relatives of Sanjeevani had convinced her that by efflux of time, relations would improve and therefore, she was made to go back to her matrimonial house.

3 It is alleged that since early hours of 18/1/1991 Sanjeevani was missing from her matrimonial home. Her father-in-law and other relatives had informed her parents about the same. A missing complaint was lodged at the police station. That a dead body of

unidentified female was found in the canal flowing from Baramati to Jalochi. Irrigation canal passes from Someshwar to Baramati. The dead body was sent for post-mortem. It was in highly decomposed state. The medical officer who conducted the autopsy was of the opinion that the cause of death was asphyxia due to drowning. A.D. No. 5 of 1991 was registered. The initial investigation was carried out in A.D. enquiry. That after verification of the missing complaint, the police was of the opinion that the description of the dead body matched with the description in missing complaint. The parents of the deceased were called. The dead body was identified by the present appellant to be that of his wife Sanjeevani. He informed the police that she was missing from matrimonial house from 4 a.m. of 18/1/1991.

4 Upon enquiry from Kacharu Deoram Ghungrat, the police had learnt that Sanjeevani was ill-treated in her matrimonial home and therefore, being fed up with the ill-treatment, she had committed suicide. Kacharu had informed the police that his sister Sanjeevani

was abused and assaulted by her husband, brother-in-law, mother-in-law etc. The Police officer then lodged first information report on the basis of which Crime No. 4 of 1991 was registered against the appellant and his family members for offence punishable under Section 498A, 306 read with Section 34 of the Indian penal Code. After completion of investigation, charge-sheet was filed on 18/3/1991. The case was committed to the Court of Sessions and registered as Sessions Case No. 40 of 1991. The prosecution examined 7 witnesses to bring home the guilt of the accused.

5 P.W. 1 Kachru Deoram Ghungrat happens to be brother of deceased Sanjeevani. He has deposed before the Court that on one occasion his sister Sanjeevani had sent a letter to him through one lady Babita. He has produced the said letter on record which is marked as Exh. 40. the contents of the letter would show that the deceased was harassed and ill-treated by the members of her matrimonial family.

6 The learned Sessions Judge has not placed implicit reliance upon the said letter as the letter was seized without there being any panchanama. It is pertinent to note that the letter was also not sent to hand writing expert to verify scribe of the said letter.

7 P.W. 4 Babita has deposed before the Court that one Padmabai had given her the said letter and that at the request of Padmabai, she had given the said letter to Deoram i.e. father of Sanjeevani. She has admitted in the cross-examination that in her statement under Section 161 of the Code of Criminal Procedure, 1973, she had not stated before the police that Padmabai had handed over the chit to her. Learned Sessions Court has rightly held that the very source of the said letter is not proved by the prosecution. The prosecution has also examined the other relatives of deceased Sanjeevani.

8 P.W. 2 Mahadeo Sahebrao Ghungrat is cousin brother of deceased Sanjeevani. He has also reiterated the allegations made by P.W. 1.

9 P.W. 3 Shamrao Patilbua Thite is maternal uncle of deceased Sanjeevani. He has stated before the Court that accused No. 1 i.e. the present appellant had lodged report with the police station. It is this report which was taken as a missing complaint.

10 P.W. 4 Babita Bhausahab Aundhkar is the carrier of the said letter at Exh. 40.

11 P.W.5 is the sister of deceased Sanjeevani. She has deposed before the Court that at the time of Diwali, Sanjeevani had met her and at that time, she had disclosed that she was being ill-treated by her in-laws. She has also disclosed that her husband was having extra-marital relations and hence, he was beating her. However, it is not specifically stated as to whether the deceased had any knowledge about the identity of the woman with whom her husband had illicit relations.

12 P.W. 6 Kisan Lagad is police head constable who had reduced into writing, report filed by the present applicant, on 22/1/1991. The said missing complaint is at Exh. 46.

13 P.W. 7 Somnath Salunkhe is the Investigating Officer who has deposed that A.D. No. 4 of 1991 was registered on 22/1/1991. He has admitted in the cross-examination that it had not transpired in the course of investigation as to with whom the accused No. 1 was having illicit relations. There was no enquiry about the same. He had recorded the statement of the labourers who were working with the accused. He had admitted that he had not seized the chit Exh. 40 under panchanama.

14 The learned Counsel appearing for the appellant submits that the prosecution has recorded the statement of only family members of the deceased Sanjeevani. There is no independent evidence. It is further submitted that the appellant and co-accused have been acquitted for the offence punishable under Section 306 of the Indian

Penal Code. The learned Counsel submits that the very fact that the appellant is acquitted under Section 306 of the Indian Penal Code would be sufficient to hold that the appellant had not ill-treated his wife.

15 Learned APP submits that in fact, wife of the appellant has committed suicide. Body was found floating. No specific plea of accidental death has been raised by the appellant and therefore, according to the learned APP, it is clear that the appellant had ill-treated his wife and therefore, she was constrained to commit suicide.

16 It is true that it cannot be said that the appellant had abetted the commission of suicide. However, upon perusal of the substantive evidence of witnesses of prosecution, it can be safely held that the prosecution has established guilt of the accused under Section 498A of the Indian Penal Code.

17 The appellant was in jail from 24/1/1991 to 2/2/1991. The judgment of the conviction is recorded on 18/5/1995. The appeal has come up for hearing practically after 20 years. No notice of enhancement was issued at the stage of admission. The sentence imposed upon the appellant is of one year. Taking into consideration the fact that the appeal has been finally heard after 20 years, the sentence of the period already undergone would meet the ends of justice. Hence, following order is passed :

ORDER

- (i) The appeal is partly allowed.
- (ii) The conviction of the appellant for offence punishable under Section 498A of the Indian Penal Code is upheld. However, the appellant is sentenced to the period already undergone.
- (iii) Bail bond stands cancelled.

18 The Criminal Appeal is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)