

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.500 OF 1998

SOU.SWATI @ NAMRATA KISHOR GAJAKAS)...APPELLANT

V/s.

KISHOR SRIPATI GAJAKAS AND ORS.)...RESPONDENTS

None for the Appellant.

None for Respondent Nos.1, 2, 3 and 4.

Mr.D.P.Adsule, APP for Respondent No.5 - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 21st AUGUST 2015.

ORAL JUDGMENT :

1 The appellant is the original complainant. She had filed a complaint against respondent nos.1 to 4 herein, and one Dr.Ashok Mainkar, alleging commission of offences punishable under Section 498A IPC, Section 313 IPC, Section 323 IPC,

Section 504 IPC and Section 506 IPC read with Section 34 IPC. The process was, however, issued only against respondent nos.1 to 4 herein, and that too, only with respect to the offence punishable under Section 498A IPC read with Section 34 IPC. The Judicial Magistrate First Class, Saswad, after holding a trial found the respondents not guilty and passed an order of acquittal. The appellant is aggrieved by the said order of acquittal, and has, after obtaining special leave of this court, filed the present appeal challenging the said acquittal.

2 The appeal appeared on board for final hearing on a number of occasions, but the parties and their advocates were absent on all such occasions. Under the circumstances, on 20th July 2015, it was directed that the appeal shall be decided, notwithstanding the absence of the counsel for the parties, after hearing the learned APP.

3 I have heard the learned APP. I have carefully gone through the impugned judgment, the original complaint and the evidence adduced during the trial.

4 For the sake of convenience and clarity, the appellant shall hereinafter be referred to as 'the complainant' and respondent nos.1 to 4 as 'accused nos.1, 2, 3 and 4' respectively.

5 Accused no.1 is the husband of the complainant. The accused nos.2 and 3 are his father and mother, respectively. The accused no.4 is the real brother of accused no.1.

6 The case of the complainant was that, after her marriage with accused no.1, which was solemnised on 14th February 1992, she was tortured, physically and psychologically, by the accused persons. According to her, this harassment started from the month of March 1992. That, the accused persons were asking her to bring an amount of Rs.7,500/- and a gold necklace weighing 2½ tolas from the house of her parents. That, in order to force her to satisfy this demand of amount and of the gold necklace, the accused persons were ill-treating her. That, the complainant was fed up with life and was intending to commit suicide. The

accused persons also forced her to terminate her pregnancy against her wish. On 9th August 1992, the complainant left the matrimonial house and went to reside with her parents.

7 The complainant examined herself and her mother in support of her case.

8 The learned Magistrate observed that the complainant had stayed with the accused persons only for a short period of about five to six months. He also observed that the story of complainant having been forced to terminate the pregnancy against her wish was not true, and that, actually the pregnancy was terminated for the reasons of health of the complainant. The Magistrate referred to various admissions given by the complainant in her cross-examination and came to the conclusion that there was no substance in the allegation of ill-treatment. The Magistrate also referred to complainant's admission that due to the family of the accused persons being a joint family, there was pressure of domestic work and that the complainant had gone to

her parents' house in order to get rest. According to the Magistrate, this would not have been possible, had the accused persons been ill-treating and harassing the complainant.

9 After going through the evidence of the complainant, as adduced during the trial, it does not appear to me that the appreciation of her evidence, as done by the Magistrate, suffers from any infirmity or error.

10 I find that there were vague and omnibus allegations of ill-treatment, the truth of which was rightly doubted by the Magistrate. It may be added that the 'cruelty' contemplated by Section 498A of IPC is of a high degree. The explanation appended to Section 498A IPC makes it clear that every dispute or differences in the matrimonial life causing some anxiety and a feeling of distress to the wife cannot be brought within the purview of penal provisions of Section 498A of IPC. The 'cruelty' contemplated therein is of such a type as would lead a woman to put an end to her life and to cause grave and serious danger to her

life. The evidence did not show any such acts of cruelty on the part of the accused persons.

11 In any case, the view of the matter, as taken by the Magistrate, is a possible view. It is well settled that in such a case, this court should not interfere with the order of acquittal.

12 The appeal is dismissed.

(ABHAY M. THIPSAY, J.)