

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.520 OF 1995

1) VIKRAMSINGH VILAS KHADE)
2) SANJIVANI VILAS KHADE)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Prakash Naik i/b. Mrs.Gauri K. Jadhav, Advocate for the Appellant.

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

CORAM : ABHAY M. THIPSAY, J.

DATE : 17th JULY 2015.

JUDGMENT :

1 The appellants and two others were prosecuted on the allegation that they had committed offences punishable under Section 498A of Indian Penal Code (IPC) read with Section 34 IPC, Section 306 IPC read with Section 34 IPC and Section 304B IPC read with Section 34 IPC. After holding a trial, the learned

Additional Sessions Judge, Kolhapur, found the appellants, who were accused nos.1 and 2 respectively in the said case i.e. Sessions Case No.1 of 1992, guilty of the aforesaid offences. He found the other two not guilty and acquitted them. The learned Additional Sessions Judge imposed a sentence of Rigorous Imprisonment for a period of 7 years on appellant no.1 and a sentence of Simple Imprisonment for 7 years on appellant no.2 with respect to the offence punishable under Section 304B IPC read with Section 34 IPC. He, however, did not pass any separate sentence for the offences punishable under Section 306 IPC read with Section 34 IPC and Section 498A IPC read with Section 34 IPC.

2 During the pendency of the appeal, appellant no.2 passed away. As such, the appeal, so far as appellant no.2 is concerned, abates.

3 For the sake of convenience and clarity, appellant no.1 shall be referred to as 'accused no.1' and the deceased appellant no.2 as 'accused no.2.'

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

Kanchan, daughter of Pandurang (PW1) married to accused no.1 Vikramsingh on 21st May 1990. Cash of Rs.85,000/- was given by Pandurang (PW1) to accused no.2 Sanjivani, who was the mother of accused no.1. When Kanchan was seven months pregnant, she was taken to the house of her parents, where *Oti bharne* (ओटी भरणे) function was held. Accused no.1 - Vikramsingh, and accused no.2 - Sanjivani, did not attend the same inspite of having been invited. At that time, Kanchan told her parents that her husband and mother-in-law had demanded from them material required for the function of *Oti bharne* that was to take place at their (appellants') house, clothes, and cash of Rs.4,000/- to Rs.5,000/-. Pandurang sent the articles to the house of accused no.1 through his son - Subhash (PW2). However, the cash sent was not Rs.4,000/- or Rs.5,000/-, as per the demand of accused nos.1 and 2, but only of Rs.1,000/-. Accused nos.1 and 2 did not accept the cash amount and told

Subhash (PW2) that they wanted Rs.10,000/-. That, on that day, all the accused including accused no.3 – Swati and accused no.4 – Sheela (who have been acquitted) insulted and abused Subhash and Kanchan.

That, on 29th August 1991, Kanchan delivered a male child in the hospital of Dr.Parandekar of Kolhapur. All the accused abused and insulted Kanchan in the hospital saying that proper hospitality was not extended to them. From the hospital, Kanchan was taken to the house of her father Pandurang.

On 8th September 1991, Shashikant (PW3) another son of Pandurang, went to the house of accused nos.1 and 2 and invited them to attend the naming ceremony (बारसे) of the child that was to be held in their house on 9th September 1991. Accused nos.1 and 2 did not attend this function. Accused no.3 - Swati and accused no.4 – Sheela, however, attended it, but left within a short time. At about 7.00 - 7.30 p.m., accused nos.1 and 4 went to the house of Pandurang and said that proper hospitality was not extended to them. Accused no.1 Vikramsingh then called Kanchan out of the house and asked her to accompany him

immediately, and said that, if she would not do so, he would perform second marriage on the following day. Kanchan started weeping. She, however, did not go along with accused no.1, but, narrated the matter to Pandurang and other family members. On the same night, at about 10.00 p.m., Pandurang, Nivrutti (PW5) and two others went to the house of one Dinkar Patil – maternal uncle of accused no.1, and narrated the incident to him. As per his advise, they went to the house of accused nos.1 and 2, and told that Dinkar Patil had been contacted, and that, he would be meeting accused nos.1 and 2 on the next day. Accused nos.1 and 2 then told Pandurang that Kanchan should be sent back to them with a golden *ganthan* (गंठण). They also told Pandurang that Kanchan should be sent back up to 9.00 a.m. on the *Ghat Sthapana* (घट स्थापना) day. So on the *Ghat Sthapana* day i.e. on 8th October 1991, Kanchan was sent to her matrimonial house along with a *ganthan* of two *tolas* of gold.

5 That, on 22nd October 1991, the naming ceremony of the child was organized by the accused persons. After the function

was over, Kanchan left the house. Since Kanchan did not return, accused no.3 Swati and her husband went to the house of Pandurang to inquire whether Kanchan was there. However, Kanchan was not there. On 23rd October 1991, accused no.1 lodged a report with police that after the naming ceremony at their place, Kanchan had left the house. On the same day, dead body of Kanchan was found floating in *Rankala* lake at Kolhapur.

6 Pandurang, thereafter, lodged a report at Juna Rajwada Police Station alleging that Kanchan was ill-treated and harassed, because he had failed to comply with the demands of gold and money, that she was physically and mentally harassed; and that, it is because of the harassment caused to her, that she had committed suicide. On the basis of this report, which was treated as the First Information Report (FIR), a case against all the accused came to be registered, and investigation commenced. On completion of investigation, a police report, as contemplated under Section 173(2)(i) of the Code came to be filed alleging commission of the aforesaid offences by the accused.

7 The prosecution examined seven witnesses during the trial. The accused persons examined two witnesses in defence. The defence of the accused persons, in brief, is that the allegations of harassment, ill-treatment and cruelty are false, and that, actually Kanchan was suffering from epilepsy, and that, because of the mental disorder, she might have committed suicide.

8 I have heard Mr.Prakash Naik, the learned counsel for the appellants. I have heard Mrs.S.Gajare-Dhumal, the learned APP for the State. With the assistance of the learned counsel, I have gone through the entire evidence, oral and documentary, adduced during the trial. I have carefully gone through the impugned judgment.

9 That, Kanchan was being treated with cruelty, is sought to be established by the evidence of Pandurang (PW1), Subhash (PW2) and Shashikant (PW3).

10 The facts, which are undisputed, are that, the marriage between accused no.1 and Kanchan had taken place on 21st May 1990. The accused persons, as well as Pandurang and his family, were staying in Kolhapur only. The distance between Pandurang's residence and the residence of accused nos.1 and 2 was about 10 to 12 kms. According to Pandurang, for a period of 3 to 4 months after the marriage, Kanchan was treated well in the matrimonial home by the accused persons. He, then stated that about 8 to 9 months after the marriage, there was a ceremony of *oti bharne*, and that, Kanchan was seven months pregnant at that time. This ceremony was performed in the house of Pandurang, and Kanchan had been brought to their house for the said ceremony. Till this time, there was no ill-treatment or harassment caused to Kanchan. Kanchan actually delivered a child on 29th August 1991, and therefore, this *oti bharne* ceremony must have taken place sometime in May / June 1991. Thus, since her marriage, which had taken place on 21st May 1990, till about June 1991, Kanchan had not been ill-treated or harassed, even as per the prosecution case.

11 According to Pandurang, the demand for money and ill-treatment started after the *oti bharne* ceremony that took place at Kanchan's matrimonial house, which was about 2 to 4 days after *oti bharne* ceremony had taken place in the house of Pandurang. Kanchan had already given a list of articles to Pandurang and had told him that accused nos.1 and 2 had demanded those articles, clothes and cash of Rs.4,000/- to Rs.5,000/- for the *oti bharne* function to be done in their house. Shashikant had gone to drop Kanchan along with the articles and cash of Rs.1,000/-. About 8 to 15 days thereafter, Kanchan was brought to the house of Pandurang for delivery. On 29th August 1991, Kanchan delivered a male child. On the fifth day of the child birth, accused nos.1 and 2, accompanied by accused no.4, visited the hospital and accused no.3 Swati also visited the same. In Pandurang's presence, all the accused from time to time, taunted Kanchan in the hospital. After about 12 days from the birth of the child, Kanchan was taken to the house of Pandurang. That, on 9th September 1991, the naming ceremony was performed in Pandurang's house. Pandurang had sent Shashikant

to inform accused nos.1 and 2 that there would be a function, and that, they should come, but accused nos.1 and 2 did not come. That, accused nos.3 and 4 came, but left after putting the child in the cradle. Accused nos.3 and 4 were requested not to go without taking meals, but they said that they would return within a short time and went away. Their bags having coconut and other articles remained in the house of Pandurang. That, at about 7.30 p.m., accused no.1 and accused no.4 Sheela came to the house of Pandurang and asked their bags to be handed over. They refused to come inside the house or to have meals. They said that they would not have meals, as they had not been treated well by Pandurang and his family, and that, their people had been insulted. Kanchan was called outside the house by accused no.1, who spoke 'badly' with her and asked her to accompany him immediately, as otherwise, on the following day, he would perform a second marriage.

12 It is clear that even as per the prosecution case, there was no ill-treatment till 9th September 1991. It is the incident of

9th September 1991 that caused torments to Kanchan. The evidence of Subhash and Shashikant is also similar to that of Pandurang, with respect to the sequence and dates of the material incidents. However, there are some variations between their versions. For instance, according to Subhash, when he went to drop Kanchan to her matrimonial house after the *oti bharne* ceremony, accused no.1 asked Kanchan as to why she had brought only Rs.1,000/- when she was asked to bring Rs.4000/- to Rs.5000/-, and that, accused no.1 Vikramsingh told Subhash that he would not accept the low amount and asked him to get out of the house. According to Subhash, he returned home and narrated the matter to Pandurang and others. Pandurang, however, does not say a word about this incident in his evidence, or about Subhash having told him about it.

13 Subhash does not speak about the 'taunting' done to Kanchan in the hospital. Shashikant (PW3) has tried to improve over the version of Pandurang and Subhash. Though Pandurang and Subhash had said that initially for a period of about 4 to 5

months, Kanchan was treated properly, and though these two witnesses did not speak about any demand of money made by the accused persons or any ill-treatment caused to Kanchan till the *oti bharne* ceremony (which took place sometime in May / June 1991). Shashikant states that '*within a month after the marriage of Kanchan, she had told him that she was being given insulting treatment.*' Shashikant narrated the incident which is supposed to have taken place when Kanchan was sent back for the *oti bharne* ceremony. He states that when Kanchan had gone along with necklace of two tolas, accused no.2 had said that it was an old necklace, and that, it was not of five tolas, and that, accused no.1 had then said that he would see how to take gold from her parents. Shashikant also said that accused no.1 threw *chappal* towards Kanchan, which hit her. According to him, accused no.1 gave two slaps to Kanchan. In the cross-examination, his omission to state before the police about his visit to the house of Kanchan after one month from her marriage, and about Kanchan having told him that she was being humiliated was brought on record. Since, he had claimed that 'the accused persons had not invited

Pandurang and his family for the *oti bharne* ceremony that took place in the house of the accused' (as an instance of the cruel treatment given by the accused) he was confronted with three photographs, wherein, he, Subhash and Kanchan were seen. Shashikant admitted that they were seen in the photographs and also that the photographs had been taken in the house of accused no.1. In spite of this, he claimed that he still 'did not remember' whether he and Subhash had attended the *oti bharne* function held by the accused nos.1 and 2.

14 The evidence of Pandurang, Subhash and Shashikant, or of any of them, does not inspire confidence.

15 In the cross-examination, it was put to Pandurang that Kanchan suffered from fits of epilepsy since prior to her marriage, that, she used to fall down, that she had convulsions of the limbs; and that, these facts were suppressed from accused nos.1 and 2. It was also suggested that he was surreptitiously treating Kanchan medically. Pandurang has denied this suggestion. However, the

evidence of Dr.Mahavir Mohire (DW1) clearly contradicts this. His evidence shows that on 13th December 1990, Kanchan was referred to him, and that, her name at that time was mentioned as 'Kanchan Pandurang Patil', though Kanchan was already married at that time.

16 In the cross-examination, it was also suggested to Pandurang that he had borrowed some amounts from the accused no.1. Though he denied that suggestion, he said that 'he could not say' whether there was an entry of an amount of Rs.10,000/- being given to him on 23rd March 1991 in the cash book maintained by accused no.1.

17 Subhash (PW2), initially in the cross-examination, denied that he, Shashikant and two women from the relatives of Kanchan, attended the *oti bharne* function held at the place of accused nos.1 and 2. However, when the photographs Exhibits 53, 54 and 55 were shown to him, he admitted that the same had been taken at the time of *oti bharne* function held in the house of

accused no.1. *He also agreed that, that function was held happily and pompously. He also admitted that, at that time, Kanchan was happy.*

18 The evidence of Pandurang, Subhash and Shashikant shows that they have made a number of improvements in their evidence. Some part of their evidence is contradicted by the defence witnesses, which shall be discussed later. It is not necessary to discuss their evidence any further, because on several aspects, their evidence has been disbelieved by the trial Judge himself. For instance, the evidence of Subhash, to the effect '*that he had visited the house of Kanchan after her marriage, and that, accused no.2 and accused no.3 had abused Kanchan in his presence,*' etc., was not believed by the trial court, and discarded holding it to be a clear improvement. Similarly, the evidence of Shashikant to the effect '*that about a month after the marriage of Kanchan, he had gone to her house and that Kanchan told him that the accused persons were giving her insulting treatment*', was not believed by the trial court, because of his omission to state so before the

police, and because of the other contrary evidence showing that for a few months after the marriage, Kanchan was treated well. The learned trial Judge also disbelieved the version of Pandurang *'that the accused persons had taunted Kanchan from time to time while she was in the hospital, after delivering a child.'* Similar version of Shashikant was also disbelieved by the learned trial Judge. This evaluation of the evidence of these three witnesses by the learned trial Judge appears to be proper.

19 It is not possible to hold that, that Kanchan was being treated with cruelty, was satisfactorily established by the prosecution.

20 As per the case of the prosecution itself, the whole trouble had started only after 8th September 1991. On that day, accused nos.3 and 4, who had been invited for the naming ceremony, allegedly left the house of Pandurang, without having meals and later on accused nos.1 and 4 alleged that accused nos.3 and 4 had not been treated properly. It is, at that time, Kanchan

was allegedly insulted by accused no.1. Thereafter, even as per the prosecution case, there was no occasion to further humiliate or insult Kanchan, in as much as, Kanchan did not go to the matrimonial house till 8th October 1991. From the time of her marriage till the birth of her child on 29th August 1991, Kanchan was happy. Thereafter, for quite sometime, she was with her parents only. Thus, really speaking, Kanchan was with the appellants for a very little period, during which, she *could have been* subjected to cruelty.

21 If the evidence of prosecution is seen, actually, there are only three instances of the alleged cruel treatment given to Kanchan. The first such incident is of 9th September 1991. The cruel treatment, that was given by the appellants to Kanchan on that day, was by their not coming to the *naming ceremony* of the child, that took place in the house of Pandurang. On that day, appellant no.2 is alleged to have said to Kanchan that accused nos.3 and 4 had not been properly treated during the function, and that, he asked Kanchan to accompany him immediately and

threatened that otherwise he would perform a second marriage. It has already been noticed that Kanchan actually did not accompany him and remained with her parents till 8th October 1991. The second incident of cruelty is found in what is said to have happened on 8th October 1991. On that day, which was *Ghat Sthapna* day, Kanchan was insulted, abused and even slapped for not having brought gold necklace of 5 *tolas* and the cash, as had been demanded by the accused persons. The third incident, which had allegedly taken place in the hospital, viz., 'of the accused persons taunting Kanchan continuously', has not been believed by the learned trial Judge and his conclusion in that regard appears to be proper.

22 Even if the fact that Pandurang, Shashikant and Subhash are not held to be reliable witnesses, and that, they have made a number of improvements in their evidence, is ignored, still, the evidence of the prosecution falls short of establishing cruelty as defined in Section 498A of the IPC. By Section 498A of IPC, concept of cruelty was for the first time introduced in

criminal law. The concept of cruelty did exist in Matrimonial law, where the term 'Cruelty' was not defined. When, however, cruelty was sought to be made an offence punishable under the law, it was necessary to remove, or at any rate, reduce, the subjective element in the concept of 'Cruelty' by laying down certain parameters. The cruelty, as contemplated under Section 498A of the IPC, is of a high degree. The explanation appended to Section 498A of the IPC makes it clear that '*Cruelty*' means '*any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or cause grave injury or danger to life, limb or health of such woman or the harassment of the woman where it 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 on account of the failure to meet such demand.*' The words '*willful conduct*' and '*likely to*' used in the explanation are significant. It is not that every incident of cruelty, which might be sufficient in matrimonial proceedings, can be brought into the purview of the penal provisions of Section 498A of the IPC. The alleged instances, even if accepted as by and large true, still, fall short of

establishing the commission of an offence punishable under Section 498A of the IPC by the appellants.

23 The next point that would need consideration is whether the appellants can be said to have abetted the commission of suicide by Kanchan. Infact, this is sought to be established on the basis that Kanchan was being treated with cruelty. Once, that Kanchan was being treated with cruelty is not satisfactorily proved, the evidence with regard to the allegation of abetment of suicide would need to be scrutinized properly. In such cases, '*where the death was indeed suicidal*', would need a more careful examination.

24 In this case, the possibility of the death of Kanchan being accidental, is not ruled out. There is no basis for holding that the death of kanchan was certainly suicidal and could not have been accidental at all. Kanchan had, apparently, left the house after the naming ceremony function was over, for celebrating Kojagiri Pournima. Her body was found in Rankala

lake. The possibility of Kanchan going towards Rankala lake for celebrating Kojagiri Pournima certainly cannot be ruled out.

25 In the background of the weaknesses of the prosecution case, the defence evidence may now be examined. It may be recalled that the defence of the accused persons is that Kanchan was suffering from epilepsy, was taking treatment therefor, and had suicidal tendencies. Though the suggestion given to Pandurang 'that he was secretly and without disclosing it to the accused persons, treating Kanchan for her problems', was denied by Pandurang, the trial court has held rightly, that this denial was false. The evidence of Dr.Mahivir Mohire (DW1) shows that Kanchan was brought to him on 13th December 1990, i.e. after her marriage, but her name was given as 'Kanchan Pandurang Patil.' This indeed indicates that Kanchan had been taken to Dr.Mohire by the parents of Kanchan, and obviously, this was without informing the appellants. *This indicates an attempt to conceal the fact that Kanchan was suffering from some ailment.* Dr.Mohire, who is a Neurophysician, has categorically stated that,

the examination of Kanchan done by him, indicated that she was suffering from epilepsy. He has also stated that, such a patient, during the attack of epilepsy, can meet with an accident due to fall. He also stated that any epilepsy patient may commit suicide due to abnormal psychological aspects, that such patients are usually irritable, unable to concentrate and get confused. In the cross-examination, it was suggested to him, that, mental torture could be a reason for mental disturbance, to which the witness answered in affirmative. The evidence of Dr.Vinod Wagle (DW2) shows that he had treated Kanchan on 15th October 1991, and that the history of the patient, as given by her relatives, was suggestive of epileptic attack. In the cross-examination of this defence witness, an admission that the patient was not thoroughly examined by him and that he had given medicines on the basis of information given by her relatives, was elicited.

26 Even though, the defence evidence cannot be taken as having conclusively established, that Kanchan was suffering from some mental disorder to such an extent, as would make it likely

that her death was accidental or would develop an urge in her to commit suicide; it appears to be a fact that Kanchan was suffering from *some disorder*, which was similar to *epilepsy*, and was taken to doctors even by her parents, and that too, *without disclosing this fact to the husband and in-laws of Kanchan*. This suggests that Kanchan's parents wanted to conceal the information of the ailment from which Kanchan was suffering, from the husband and in-laws of Kanchan, and lends credence to the defence of the appellants. It has already been observed that the death of Kanchan was suicidal, has not been satisfactorily established; but even on the basis that Kanchan indeed committed suicide, *it cannot be said that she did so because of the cruel treatment meted out to her by the appellants*. When there is no satisfactory evidence of cruelty, the same cannot be inferred merely from the fact of suicide. The appellants, in these circumstances, cannot be said to have abetted the commission of suicide by Kanchan.

27 As aforesaid, the period during which cruel treatment could have been given to Kanchan, was extremely limited, as per

the prosecution case itself. The instances of cruelty, as alleged by two or three stray instances, are not sufficient to establish the commission of an offence punishable under Section 498A of the IPC, which requires a high degree of cruelty. However, even if Kanchan's death is accepted to be suicidal, still, in the light of the defence evidence, which indicates that Kanchan was suffering from some ailment, similar to epilepsy, the suicide committed by her, cannot be attributed to the alleged cruel treatment given to her by the appellants.

28 This was a case where the Charge against the appellants had not been satisfactorily proved. The appellants were entitled to be acquitted.

29 Since the appeal against appellant no.2 stands abated, the operative order, that is being passed, shall be only in respect of appellant no.1.

30 The Appeal is allowed.

The impugned judgment of conviction and the sentences imposed upon appellant no.1 are set aside.

Appellant no.1 stands acquitted. His bail bonds are discharged.

Appeal is disposed of accordingly.

(ABHAY M. THIPSAY, J.)