

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 597 OF 1995

Nandu Nanabhau Dingre
Age-21 years, Occ. Labourer,
R/o at & Post- Fakate,
Taluka- Shirur, Dist.-Pune.

... Appellant.

Versus

The State of Maharashtra.

... Respondent.

Mr. Ranjit R. Bhosale, advocate for appellant.

Mr. Arfan Sait, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : DECEMBER 14, 2015

JUDGMENT:

1 The appellant herein stands convicted for offence punishable under Section 306 and 498A of the Indian Penal Code and is sentenced to suffer R.I. for 5 years and to pay a fine of Rs. 1,000/- I.d. to suffer R.I. for one year for offence punishable under Section 306 of the Indian Penal Code. The appellant is also sentenced to suffer R.I. for one year and to pay a fine of Rs. 500/- I.d. to suffer R.I. for three

months for offence punishable under Section 498A of the Indian Penal Code by the Additional Sessions Judge, Pune in Sessions Case No. 136 of 1993 vide Judgment and Order dated 7th November, 1995. Hence this appeal.

2 The facts necessary for deciding the appeal are as follows :

It is the case of the prosecution that the present appellant was married to Kavita in June, 1991. The couple was blessed with a son. According to the prosecution, Kavita was treated properly for first four months and thereafter, she was harassed on account of the demand of Rs. 500/- and half tola golden ring. She had complained to her parents on every visit to her maternal house. Her parents had convinced her that things would settle and therefore, had sent her back to her matrimonial home. On one occasion, the appellant herein had assaulted Kavita in the presence of her parents and therefore, they had declined to send her back to the matrimonial home. They had called upon the relatives and respectable persons from village-

Fakate. Only when respectable persons from the village had taken responsibility, parents of Kavita sent her to matrimonial home.

3 On 21/9/1992 the police of Takli Haji outpost were informed by the medical officer of Primary Health Centre that one Gautam Dagadu Dingare, resident of Fakate had informed the Primary Health Centre that his cousin sister-in-law had sustained burns. There is no arrangement for taking her to the hospital and therefore, he had requested that a jeep be sent. Accordingly, a jeep was sent to village Fakate. Upon examination, it is noticed that she has sustained 100% burn injuries and had succumbed to the burn injuries.

4 A.D. No. 56 of 1992 was registered. Spot panchanama and the inquest panchanama was conducted in A.D. No. 56 of 1992. A message was sent to the parents of deceased Kavita. Her relatives had come to village Fakate on the next day.

5 On 27/9/1992 father of the deceased Kavita approached the police station and lodged the report against the present appellant and his family members alleging therein that after marriage, Kavita was treated properly for first few months. Thereafter she has been harassed and ill-treated on account of demand of Rs. 500/- and half tola gold ring. She had complained intermittently. It is alleged that the appellant had assaulted the deceased Kavita in the presence of her parents and therefore, they had not sent her back to the matrimonial house. It is further alleged that the present appellant has brought the respectable person from the village and therefore, she was sent to her matrimonial home. It is alleged in the FIR that Kavita could not take the harassment and ill-treatment meted out to her and therefore, she had committed suicide on 25/9/1992.

6 On the basis of the said report, Crime No. 88 of 1992 was registered at the Shirur Police Station for offence punishable under Section 304B and Section 498A r read with Section 34 of the Indian Penal Code. The appellant was arrested on 27/9/1992. After

completion of investigation charge-sheet was filed on 26/12/1992. The case was committed to the Court of Sessions and registered as Sessions Case No. 136 of 1993. The prosecution examined 6 witnesses to bring home the guilt of the accused.

7 P.W. 1 Suman Mane happens to be the panch for inquest panchanama. She has proved the inquest panchanama, which is marked at Exh. 15. In the cross-examination, she has admitted that it is true that inquest panchanama was already written. In view of this, learned Counsel for the appellant rightly submitted that it cannot said that she has proved the contents of the inquest panchanama.

8 P.W. 2 Sudam Thorat happens to be panch for spot panchanama. It is admitted that scene of offence panchanama was drawn on 26/9/1992. He has also admitted in the cross-examination that when the panchas reached in the house, police were writing panchanama and the police asked them to sign on the panchanama saying that it is a scene of offence panchanama. He has admitted

that after putting his signature on the panchanama, he peeped through the door of the house and saw inside the house. The learned Counsel for the appellant rightly submits that in view of this admission in the cross-examination, it cannot be said that the contents of the scene of offence panchanama are proved by P.W. 2.

9 P.W. 3 Laxman Rakhama Shinde, resident of village Alkuti, Taluka Parner is the father of the deceased Kavita. He deposed that whenever Kavita used to visit them, she was making complaints against her husband that he used to beat her on the ground that less dowry was given to him at the time of marriage and therefore, he was demanding half tola golden ring and cash of Rs. 500/-. According to P.W. 3, Kavita had also complained against her in-laws on the ground that she was not efficient in carrying out the domestic chores. He has further deposed that on one occasion, the present appellant had assaulted Kavita in his presence in her maternal house and he has refused to send her alongwith him. He had directed him to bring respectable persons in the village. After the appellant assured, P.W. 3

had sent Kavita to her matrimonial house. At the time of her delivery also Kavita had complained that despite there being assurance, she has been ill-treated and harassed in her matrimonial house. He has further deposed that on Friday Kavita had accompanied the appellant to her matrimonial house and on the very next day i.e. early in the morning appellant informed him that Kavita had died due to burns. In the cross-examination, he has reiterated that she was harassed and ill-treated in her matrimonial house and when she could not take it any more, she had committed suicide. He has further submitted that his daughter was not a hot tempered

10 P.W. 4 Somanath Maruti Walunj is a hostile witness. He had accompanied the appellant to the house of P.W. 3 when Kavita was with her parents. Since the witness has resiled from his earlier statement, his evidence would not be of any significance.

11 P.W. 5 Rajanikant Gopinath Adhav happens to be the neighbour of P.W. 3. According to him, PW 3 happens to be his cousin brother-

in-law. He has deposed before the court that the appellant and his family were demanding half tola gold ring and Rs. 500/- and Kavita was being harassed on the said count itself. He has admitted in the cross-examination that two days' prior to Pola festival, Kavita last visited to her parents house and thereafter, her husband took her by beating. The Court cannot be oblivious of the fact that soon thereafter Kavita had committed suicide in her matrimonial house.

12 P.W. 6 Pandurang Salge happens to be the investigating officer. He has proved the contents of Exh. 29. He has deposed before the court that on 25/9/1992 medical officer had sent letter to him that burned patient Kavita Dingre has died due to burns. The said letter was sent to Shirul Police Station. Thereafter, he had conducted investigation in accordance with law. According to him, on the next day i.e. on 26/9/1992 he had prepared the scene of offence panchanama. On that day, the parents of Kavita were not in a position to give statement and therefore, they were called on 27/9/1992. That P.W. 3 lodged a report on the basis of which C.R.

No. 88/1992 was registered against the accused. He has proved the omissions and contradictions and the statement of the hostile witness.

13 The learned Counsel for the appellant rightly submits that there is no evidence on record to even remotely indicate that the present appellant had abetted, instigated or facilitated commission of suicide by Kavita. That the couple was blessed with a male child. According to the learned Counsel for the appellant, it cannot be said that the appellant has committed an offence punishable under Section 306 of the Indian Penal Code and therefore, he deserves to be acquitted of the said charge.

14 The learned APP submits that the witnesses have categorically stated that just 2 days before pola festival, the appellant had come to maternal house of Kavita i.e. house of P.W. 3 and had insisted upon her to accompany her to matrimonial abode. Upon her refusal, he had even assaulted her. According to the learned APP, there is proximity between the demand and death of Kavita. Hence, in fact

the Sessions Judge ought not to have acquitted the accused for offence punishable under Section 304B of the Indian Penal Code.

15 It is true that there is evidence to indicate that the deceased used to visit her maternal house intermittently and complain of cruelty and ill-treatment till a few days before the incident. There is evidence to indicate that the deceased was ill-treated by her husband and in-laws but it cannot be said that the accused appellant had instigated, abetted or facilitated the commission of suicide. The accused are acquitted of the charge under Section 304-B of the Indian Penal Code. The said acquittal has attained finality as the State has not challenged the acquittal. On the basis of the evidence adduced by the prosecution, it cannot be said that the deceased had no other alternative but to commit suicide. Hence, the appellant deserves to be acquitted of the offence punishable under Section 306 of the Indian Penal Code.

16 The sentence for offence under Section 498A of the Indian Penal Code against the appellant stands modified. Hence, the appellant deserves to be convicted for the offence punishable under Section 498A of the Indian Penal Code to the period already undergone.

17 The learned APP submits that the appellant has undergone imprisonment for hardly 19 days and therefore, he should be taken into custody. The appeal is being heard after 20 years. The incident is of the year 1992. The learned Counsel for the appellant submits that the Sword of Damocles was hanging on the accused for the last 22 years. By passage of time, the appellant has undergone mental trauma. In view of this, the learned Counsel for the appellant seeks leniency. In any case, the sentence imposed for offence punishable under Section 498A is one year. Hence, the appellant deserves to be sentenced to the period already undergone.

18 For the reasons mentioned above, following order is passed.

ORDER

- (i) The appeal is partly allowed.

- (ii) The Judgment and Order of conviction passed by the Additional Sessions Judge, Pune dated 7th November, 1995 for offence punishable under Section 306 of the Indian Penal Code is hereby quashed and set aside.

- (iii) The appellant is acquitted of the charge under Section 306 of the Indian Penal Code.

- (iv) Fine, if any paid, be refunded to the appellant.

- (v) The Judgment and Order of conviction passed by the Additional Sessions Judge, Pune dated 7th November, 1995 for offence punishable under Section 498A of the Indian Penal Code is

maintained. However, the substantive sentence is modified. The appellant is sentenced to the period already undergone.

(vi) Sentence of fine for offence punishable under Section 498A of the Indian Penal Code is maintained.

(vii) Bail bond stands cancelled.

19 The appeal is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)