

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 571 OF 2001

State of Maharashtra. ... Appellant.

V/s.

1. Sanjiv Bhimrao Kamble.
Age 30 years, Occu. Service,
R/o.- Radhanagar, Juni Sangavi,
Pune.
2. Sou.Mai alias Pallavi Ashok More,
Age 32 years, Occu. Service.
3. Ashok Ramchandra More,
Age 39 years, Occu. Service.

Nos.2 & 3 R/o. 192, Radhanagar,
Sangavi, Pune- 27.

4. Sou Nirmala Nanavare,
Age 33 years, Occu. Service,
5. Ashok Daudhas Nanavare,
Age 39 years, Occu. Service,

Nos.4 & 5 R/o. Bldg.No.19,
Room No.3, ESIS Staff Colony,
Wagale Estate, Thane (W).

... Respondents.

Dr.F.R.Shaikh, APP for the appellant- State.

V.C.Desai for the respondents.

CORAM : S.B. SHUKRE, J.

DATED : 28th October 2015.

ORAL JUDGMENT :

By this appeal the State has challenged the legality and correctness of the judgment and order dated 24th April 2001 passed in R.C.C.No.23/1995 by Judicial Magistrate, First Class, Pimpri whereby the respondents have been acquitted of the offence of cruelty punishable under section 498-A read with section 34 of Indian Penal Code (I.P.C.)

2. The respondent No.1 is the husband of the complainant-Sadhana Sanjiv Kambale. Respondent Nos.2 and 4 are the sisters of respondent No.1 and respondent Nos.3 and 5 are respectfully the husbands of respondent Nos.2 and 4. By a complaint lodged on 11th July 1994, the complainant- Sadhana alleged that respondent No.1 being her husband and respondent Nos.2 to 5 being her in-laws subjected her to ill treatment and cruelty on account of her failure to bring some amount of money. Investigation was made and when it was found that there was sufficient evidence available to proceed against the respondents, the Police filed a charge-sheet against all the respondents. The charge for an offence punishable under section 498-A read with section 34 of I.P.C. was framed against the respondents to which they pleaded not guilty and claimed to be tried. On merits of the case, learned Magistrate found that the evidence adduced by the prosecution was insufficient to prove the

charge of cruelty against the respondents and, accordingly, by his judgment and order dated 24th April 2001 the learned Magistrate acquitted all the respondents of the charge of cruelty. Being not satisfied with the same, the State is before this Court in the present appeal.

3. I have heard learned A.P.P. for the appellant- State and Mr.Desai, learned counsel for the respondents. Respondent No.1- accused No.1 is also personally present in the Court in compliance with the directions issued by this Court. I have gone through the record of the case.

4. According to learned A.P.P., this is a fit case for interference with the impugned judgment and order as there is improper appreciation of evidence, which submission is opposed by learned counsel for the respondents.

5. On going through the record of the case including the judgment and order impugned in the present appeal, I find that there is no merit in the argument of learned A.P.P. as the inference drawn by the learned Magistrate in the present case is based upon appreciation of evidence available on record and is the result of a view which could be said to be plausible, and not impossible.

6. The record shows that there are four prosecution witnesses, who are material, and careful scrutiny of evidence of these witnesses would show that they have not come out with any consistent stand as

regards the ill-treatment and cruelty allegedly meted out by the respondents to the complainant. While the complainant- Sadhana (PW-1) says that she was harassed by the respondents and was compelled to withdraw an amount of Rs.13,000/- from Bank of Karad, the other witnesses i.e. Vishnu Waghmare (PW2)- father of the complainant and Suhas Waghmare (PW4)- brother of the complainant state that the complainant withdrew an amount of Rs.15,000/- under compulsion not from any bank but from the society. Madhukar Waghmare (PW3)- uncle of the complainant also states the same thing as said by father and brother of the complainant. No explanation is forthcoming from the prosecution side as regards inconsistency between the evidence of PW1 on one hand and evidence of the other witnesses i.e. PW2, PW3, PW4 on the other in respect of alleged compulsion brought upon the complainant for withdrawing the amount either from the bank or from the society. Even otherwise, none of the witnesses have stated before the Court that earlier there was any demand of money made by the accused from the complainant and as it was not fulfilled by her she was harassed so much that, ultimately, out of desperation or to save herself from further harassment that she decided to withdraw sum of Rs.13,000/- or Rs.15,000/- from the bank or the society. A person can be said to be compelled to do something only when situation of a desperation by some overt acts is created by the accused persons. In the instant case, no such evidence regarding some acts of commission or omission, which ultimately led to bring so much pressure upon the complainant that it resulted into a feeling on her part that there was no other option left for her than to withdraw the money from the bank or the society, has been adduced by

the prosecution. Therefore, it could not be said that the prosecution has proved its case of handing out of cruelty to the complainant on the count of demand of money as contemplated under section 498-A of I.P.C.

7. There is one more allegation which, according to prosecution, is quite serious and which, if proved, would require consideration from this Court for evaluating its impact on the conduct of the complainant. This allegation is about bringing a second wife to his house by respondent No.1. I must say it here that it is not every type of misconduct that has been made punishable under section 498-A of I.P.C. Cruelty has been defined in section 498-A to mean any willful conduct of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or physical or mental health of the woman or harassment of the woman made with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security. So, it is clear that only those acts committed willfully and which are in the nature of degrading treatment which qualify to be termed as cruelty in law. In other words, cruelty is a conduct designed to produce definite result in relation to physical or mental condition of a woman. In order that the conduct is called willful, it must have been such as could be said to be indulged in by the accused with an intention to cause or with the knowledge that it is likely to cause degrading or humiliating or injurious effect on the mind or conduct of the woman. It involves acts the result of which causes hurt and often-times agony to the opposite party, be it mental or physical, which in turn has further damaging consequences, the most serious of which is an ultimate suicide, as held in the case of

Madhuri Mukund Chitnis v. Mukund Martand Chitnis, 1992 CRI.L.J.

111. Thus, the condemned act called cruelty must be accompanied by *mens rea*. Having said so, it has to be seen whether the allegation that the accused No.1 had brought one stranger lady to his house at Pune and announced not only to the complainant but also to her father and uncle that the stranger was his second wife was reasonably established or not. Even if this allegation is proved, the matter would not end there, as it cannot be presumed in every case that such conduct of husband would create such an adverse impact on the mind of the wife as is sufficient to drive her to commit suicide or cause grave injury to herself and hence a willful conduct. There are instances where a second wife has been accepted by first wife willingly or unwillingly but surely without losing balance of mind by causing any injury to herself. So all depends on the facts and circumstances of each case. The evidence as regards the said allegation, therefore, needs to be assessed in the light of the law so discussed.

8. Upon considering the evidence of PW1- Sadhana as well as her father Vishnu (PW2) and uncle Madhukar (PW3), I am of the view that the allegation of second wife has not been proved beyond reasonable doubt by the prosecution. If the allegation has not been proved, hunger for knowing what the allegation did to mental equilibrium of the complainant would not be ignited. Reasons for such conclusion could be seen in foregoing paragraphs.

9. According to PW1- Sadhana, on 26th June 1994, after making an announcement to her that the stranger was his second wife the respondent No.1 had told her to leave his house or he would finish her. In her evidence, PW1- Sadhana does not say anything about command of respondent No.1 regarding leaving of the house. PW2- Vishnu says that respondent No.1 had asked him and his brother Madhukar (PW3) to take back along with them PW1- Sadhana but without taking her, both of them went back to their respective places. PW3- Madhukar also says that even though respondent No.1 had asked him to take along with him PW1- Sadhana, he returned from the house of respondent No.1 without taking Sadhana with him. In the FIR vide Exh.44, however, the complainant PW1- Sadhana has alleged that on 26th June 1994 she was forcibly driven out of house by the respondents and at that time all of them had hurled abuses at her. This would mean that there is a material variance between the version of the complainant, her father and her uncle before the Court and version of the complainant before the Police when she lodged the complaint at the Police Station on 11th July 1994. No explanation has been provided in the prosecution case to enable the Court to ascertain as to which of them is correct. Therefore, a serious doubt has arisen about the trustworthiness of these important witnesses as regards their evidence on the events of 26th June 1994 and some corroboration from other or independent witnesses was necessary so as to clear the cloud of doubt on their reliability. However, there is no corroboration provided by any other witness in this regard.

10. The doubt about the trustworthiness of the prosecution witnesses has been further deepened by the fact that there was inordinate delay in lodging of FIR. From the evidence of the complainant as well as her relatives and what has been alleged in the FIR, it appears that the incident of 26th June 1994 proved to be a proverbial final nail in the coffin marking a virtual snapping of matrimonial relations between the complainant- Sadhana and her husband- Sanjiv Kamble. After this incident, there was nothing which could have been done or even avoided to be done by the complainant so as to keep her marriage with respondent No.1 alive. So, it would have been her natural reaction, if she had immediately lodged a police complaint against the respondents. But, it is seen that even an attempt was not made to file any FIR against the husband or in-laws or all of them in the evening of 26th June 1994 or within a reasonable period of time thereafter. There was a delay of about 15 days in lodging of the FIR. The delay has not been explained at all. The circumstances brought on record by the prosecution also do not explain the delay. In the background of what has been discussed above, especially the evidentiary worth of material prosecution witnesses and absence of any independent or other corroboration, the delay in lodging of FIR has become fatal to the prosecution case. It appears that the entire story made up in the FIR was product of an afterthought on the part of the complainant and her father as well as uncle who were admittedly in the profession of advocacy at the relevant time.

11. With such evidence available on record, as stated earlier, the view taken by the learned Magistrate cannot be said to be an impossible

view. I agree with him when he finds that the prosecution has failed to prove beyond reasonable doubt the charge framed against the respondents under section 498-A of I.P.C. There is no scope for making any interference in the impugned judgment and order. The appeal deserves to be dismissed.

12. The appeal stands dismissed.

(S.B. SHUKRE, J.)