

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.606 OF 1994

1 Ramdas Dhondiba Gaikwad
2 Smt. Hirabai Dhondiba Gaikwad
Both residents of Room No.2,
Ganesh Gulab Kripa Society,
Utkarsh Nagar, J.M.Road,
Bhandup, Bombay 400 078
Versus
The State of Maharashtra

....Appellants.

...Respondents.

Ms. Amita Kuttikrishnan advocate appointed for original accused no.1/appellant no.1 and also for original accused no.2/Appellant no.2.
Mr. Arfan Sait, APP for the respondent-State.
Mr. Ramdas Dhondiba Gaikwad, original accused no.1 produced in the Court today.

CORAM : MRS. MRIDULA BHATKAR, J.

DATED : March 26, 2015.

ORAL JUDGMENT:

This appeal is directed against the sentence of conviction dated 19.10.1994 passed by the learned Additional Sessions Judge, Greater Bombay in Sessions Case No.555 of 1987.

2 It is the case of the prosecution that the appellant no.1 Ramdas got married with the deceased Chhaya on 17.11.1986. At the time of marriage Chhaya was 18 years old. Her brother and mother were

staying at Daund, Pune. After marriage, she started residing with her husband at Bhandup, Bombay. Her husband who is appellant no.1 and mother-in-law, who is appellant no.2 and her father-in-law, who died during the pendency of the trial used to harass her and treated her with cruelty. She complained about it to her brother i.e. P.W.2 Arun Shinde. Four days prior to 18.2.1987, she was not given food. On that day in the morning, she did not come out of bathroom immediately after the call of her husband-appellant no.1 therefore, he slapped her. Then her husband took bath and left home without speaking with her at around 8 am. Thereafter, at around 8.30 am, she poured kerosene on her person and committed suicide. When she was burning, a woman in the neighbourhood extinguished the fire and took her to the hospital. Her brother, mother and her aunt were called. They reached on the same day. She was treated in the burning ward. However, burn injuries were 65% and she succumbed to death on 22.2.1987. When she was hospitalised, Special Executive Magistrate P.W.3 Mr. Virchand Hemraj Jain recorded her dying declaration on the day of the incident itself i.e. 18.2.1987. She disclosed that she was tortured, abused and beaten up by her husband appellant no.1 and also her mother-in-law appellant no.2. She also stated that the appellant no.1 used to tell her that he did not need her and he fought with her in the morning and slapped her. Due to this harassment and cruel behaviour by the appellant nos.1 and 2, she

committed suicide. Her second dying declaration was recorded on the same day by the Investigating Officer P.W.4 PSI Verghese Mathu attached to Bhandup Police Station. PSI Verghese registered the offence on the basis of chhaya's dying declaration recorded by him, drew panchanama of the scene of offence and also recorded statements of the neighbours. After completion of the investigation, the Investigating Officer filed charge-sheet in the 27th Court of Metropolitan Magistrate on 4.4.1987 and the case was committed to the Court of Sessions on 6.5.1987. The learned Sessions Judge framed the charges under Section 498A read with Section 34 and under Section 306 read with Section 114 of the IPC against both the appellants. Both appellants pleaded not guilty. Hence, trial commenced. Prosecution examined 4 witnesses and after recording the evidence and marshalling the evidence, the learned Additional Sessions Judge held both the accused guilty for the offences punishable under Section 498A read with Section 34 of the IPC and under Section 306 read with Section 114 of the IPC.

3 The learned trial Court sentenced both the accused to suffer R.I. for 3 years under Section 498A of the IPC with fine of Rs.500/- each in default of payment of fine, RI for six months.

Both the accused were sentenced to suffer RI for 4 years under Section 306 of the IPC with fine of Rs.500/- each and in default of payment of fine RI for six months.

4 Being aggrieved by the said judgment and order, this common appeal is filed by both the appellants.

5 The learned counsel Ms. Amita Kuttikrishnan from the panel of legal aid is appointed as the appellant no.1 has expressed his willingness to avail legal aid. Appellant No.2 is his mother. It is informed that she is old unable to come to the Court and, therefore, Amita Kuttikrishnan is appointed to defend the case of the appellant no.2 also. Appellant No.1 is taken in custody pursuant to the order passed by this Court as he was not traceable and was not attending. So NBW was issued. He is in jail since 15.3.2015.

6 The learned counsel for the defence has submitted that the case of the prosecution stands mainly on two dying declarations i.e. Ex.9 and 12. The learned counsel submitted that there is some variance in the dying declaration recorded at Ex.9 by Special Executive Magistrate and Dying declaration at Ex.12 recorded by the Investigating Officer. The learned counsel argued that the details, which are given in respect of the sequence as to what happened in the morning of 18.2.1987 are not same in both the dying declarations. She submitted that both the appellants are falsely implicated in the case. They were not present in the house when the incident has taken place. She submitted that appellant no.2 had no altercations of any nature with the deceased on that day. She further

submitted that in the evidence of P.W.1 Bhimrao and P.W.2 Arun, no sufficient evidence is found even on the ground of cruelty to hold the accused guilty under Section 498A of the IPC. She submitted that whatever allegations are made against the appellants in the evidence of P.W.2 Arun are infact normal wear and tear in the life and, therefore, appellants should not have been convicted. She further submitted that the appellant no.2 has not committed any offence much less the offence under Section 306 of the IPC as she is not attributed any role to the effect of instigation causing abetment under Section 306 of the IPC. She further submitted there were no such circumstances grave enough are brought on record by the prosecution against the appellant no.1, which drove deceased to commit suicide. Hence, she prays for acquittal of both the accused.

7 The learned prosecutor while opposing the appeal has submitted that the period between the marriage and death of the deceased is to be taken into account. She committed suicide within three months from the date of her marriage. She was 18 years old girl. She was alone staying with her husband in the city like Bombay. She held from small village Daund in Pune. The learned prosecutor submitted that there is evidence to show that she was treated cruelly and which had led her to commit suicide. He relied upon the evidence of prosecution witnesses and so also dying declarations. He further submitted that the contents in

the dying declarations are to be believed in toto. Deceased Chhaya has not falsely implicated the appellants by giving any exaggerated details of her death. He supported the reasoning and sentence passed by the learned Sessions Judge. The learned prosecutor further speaks about Section 113A of the Indian Evidence Act and submits that the conviction under Section 306 of the IPC is justified.

8 This is usual and unfortunate case of cruel treatment given by the husband and mother-in-law to newly married girl. She got married on 17.11.1986 and immediately within three months of her marriage, she committed suicide by pouring kerosene on her person. A fact of suicidal death is proved by the prosecution. Following questions need to be answered.

(1) Whether there was cruel treatment given to the deceased Chhaya during the short period of 3 months by the appellants ?

(2) Whether the appellants are responsible for her suicide ?

9 Evidence of P.W.2 Arun and two dying declarations at Exhibits 9 and 12 are rightly believed by the learned Sessions Judge on the point of cruelty. P.W. 2 Arun has stated that one and half months after Chhaya'

marriage, he visited her house. At that time, deceased told him that she was harassed by her husband and his family members. No much details of harassment were given by her as her husband was present. However, her evidence corroborates the contents in the dying declaration. No reason has brought on record to disbelieve the dying declarations. One dying declaration is recorded by the Special Executive Magistrate and second dying declaration is recorded by the Investigating Officer. Deceased Chhaya suffered 65% burn injuries and she was in a fit condition to give statement to the Special Executive Magistrate and the Investigating Officer. She died four days after the date of incident. On perusal of the dying declarations, they contain sufficient and satisfactory evidence on the point of ill-treatment and harassment given to her by her husband and mother-in-law. It is proved from the dying declarations that both the appellant nos.1 and 2 used to abuse her, beat her and she was unfed on some occasions. Four days prior to her committing suicide, she was not given food properly. This is enough evidence against both the appellants to hold them guilty under Section 498A of the IPC. Undoubtedly, this conduct of both the accused is willful to drive her to commit suicide. It is to be noted that the acts committed by the husband-appellant are more of grave nature than the act of harassment, torture attributed to the appellant no.2.

10 It has been stated by the deceased in the dying declarations that on 18.2.1987 i.e. on that fateful day, appellant no.1 asked her to come out of the bathroom and she was late in coming out as she was weak, he slapped her, took his bath and left the house without speaking to her. Then her mother-in-law also left after him. Half an hour thereafter she poured kerosene and committed suicide. Though she has been tortured and harassed by both the appellants in various manner during the period of three months, it is evident that the act of appellant no.1 of slapping her when she was in weak condition has definitely made her to commit suicide. She was 18 years old, away from her parent's home and hardly completed three months of her marriage. In her tender age, she was subjected to cruelty by her husband and, therefore, she took such a drastic decision of committing suicide. Mr. Prosecutor has rightly pointed out Section 113A of the Indian Evidence Act, which speaks on presumption as to abetment of suicide by married woman, if at all she has committed suicide within a period of 7 years from the date of her marriage and she had been subjected to cruelty by husband or the relatives. Thus, in the event of commission of suicide by newly married woman within seven years of her marriage, meaning and scope of abetment defined under Section 107 of the IPC is wider and within purport of Section 113A of the Indian Evidence Act if cruelty under Section 498A is proved and considering other circumstances as

mentioned under Section 113A of the Indian Evidence Act. It is to be presumed that husband or the relatives, who cause such cruelty are the abettors. Considering the scope of Section 113A of the Indian Evidence Act and if it is against the husband-appellant no.1, I hold that the appellant no.1 has committed offence under Section 498A and so also under Section 306 of the IPC. The evidence of the act of cruelty against the appellant no.2 mother-in-law though is proved the degree of harassment or the cruelty if considered is not as high as compared with torture caused by the appellant no.1. Thus, the treatment given by the appellant no.1 to the deceased Chhaya on that day is the main cause which instigated her to commit suicide. No incriminating role is attributed to appellant no.2 on that day.

11 In view of this, I hold appellant no.1 guilty of the offences punishable under Sections 306 and 498A of the IPC and the appellant no.2 is held guilty under Section 498A and is acquitted of the offence punishable under Section 306 of the IPC.

12 Thus, appeal is partly allowed.

13 On the point of quantum, the learned counsel for the defence has submitted that considering the manner in which incident has taken place and as 20 years have passed from the date of judgment, leniency be shown. She further submitted that the appellant no.1 is married. He has two daughters. He shoulders responsibility of his wife and, therefore,

quantum of punishment may be reduced. The learned prosecutor opposes this oral request. He submitted that this is not the case where the leniency is to be shown and it is an offence against a woman.

14 Taking account of all the factors and the manner in which offence has taken place and the evidence against both the appellants so also considering incriminating and mitigating factors so also passage of time of 20 years from the date of conviction till hearing of the appeal, I think that following sentence is adequate and proper:

(I) Conviction against the appellant no.1 and holding him guilty under Section 498A and 306 of the IPC is hereby confirmed. However, sentence given to him under Section 498A so also under Section 306 of the IPC is reduced as follows:

(II) Appellant No.1 is sentenced to suffer six months' RI under Section 498A of the IPC with fine of Rs.500/- and in default to pay fine, three months RI.

(III) Appellant no.1 is hereby sentenced to suffer RI for one year under Section 306 of the IPC with fine amount of Rs.500/- and in default to pay fine, three months' RI.

(IV) Appellant No.1 is entitled to set of the period already undergone.

(V) Superintendent of prison to take accused in custody to suffer remaining part of sentence.

(VI) Conviction of the appellant no.2 under Section 498A of the IPC is hereby confirmed. However, her sentence is reduced as follows:

(VII) She is sentenced to suffer imprisonment for the period already undergone. It is to be noted that the appellant no.2 is 68 years old and she has met with an accident and she has lost her memory and she is unable to maintain herself. Sentence of payment of fine is hereby confirmed.

(VIII) She is acquitted from the offence of Section 306 of the IPC.

Copy of the judgment is to be sent.

(MRS.MRIDULA BHATKAR, J.)