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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.685 OF 2002

The State of Maharashtra	]	
at the instance of Nagothane	]	... Appellant.
Police Station, Dist. Raigad	]	

V/s.

1. Bhagvan Tukaram Bhoir	]	
age: 40 years,	]	
	]	.. <u>Respondents</u>
2. Bharti @ Kusum Bhagvan Bhoir	]	Original
age: 35 years,	]	
	]	
3. Damodar Nathu Bhoir	]	
age: 50 years,	]	

Mrs. A. S. Pai, APP for the appellant State.

Ms. Rohini M. Dandekar, appointed advocate for the Respondent Nos 1 to 3.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 8th DECEMBER, 2015.

ORAL JUDGMENT: [Per : Dr. Shalini Phansalkar-Joshi, J.]

1. The State has preferred this appeal, challenging the acquittal of the respondents as recorded by the II nd Adhoc Additional Sessions

Judge, Raigad, by his judgment and order dated 7th February, 2002 in Session Case No.148 of 2000, for the offences punishable under Sections 498A and 306 read with section 34 of the Indian Penal Code.

2. Brief facts of the appeal can be stated as follows :-

The marriage of Kashibai since deceased, was performed with respondent No.1, in the year 1982. Out of the wedlock she had given birth to three sons. Her marital life was going on smoothly till respondent No.1 started having illicit relations with respondent No.2, since about 5 to 6 years prior to her death. On account of such illicit relations between respondent Nos. 1 and 2, respondent No.1 was harassing and beating the deceased without reason on several occasions. The deceased had made complaints about this harassment and illtreatment to her brother P.W. 3 Manohar. He used to persuade respondent No.1 not to illtreat her, but it was of no use. Respondent No.1, left her company and started residing separately with respondent No.2 at Nagothane. After some time, respondent No.1 took away with him their children from the deceased. The harassment of the deceased, however, continued at the hands of respondent No.1 on the instigation of

respondent No.2. He used to come to her house and beat and abuse her. He was not contributing any amount towards her maintenance. Even the crops grown by her were taken away by respondent Nos 1 and 2. Once the respondent No.1 visited the house of deceased and stuffed the wooden piece in the private part of the deceased thereby causing bleeding injury to her. The deceased was then taken to the IPCL Hospital at Nagothane by her sister. There respondent No.3 threatened her not to disclose the real facts before the Doctor. The harassment of deceased thereafter also did not end. Respondent No.1, then disconnected the electric connection of her house and removed wooden planks of the door.

3. Just about 20 days before the incident, respondent Nos 1 & 2 harassed and beat her and further asked her to leave the house. As per prosecution case, due to such, continuous harassment and illtreatment, deceased Kashibai was ultimately constrained to end her life. On 25th July, 2000, some persons noticed a dead body in the creek water. Missing complaint was, therefore, lodged by her brother P.W.3 Manohar in respect of deceased. The search of the dead body was taken in the creek and ultimately it was recovered on 28th July, 2000. P.W. 1

Prabhakar, who was Police Patil of the village gave information of the recovery of dead body to the police. On the basis thereof, A.D.No.17 of 2000 was registered at Nagothane Police Station.

4. After inquest panchnama Exh.10, the dead body was referred for postmortem and as per postmortem report Exh.21, the cause of death was found to be asphyxia due to drowning. On the next day i.e. on 29th July, 2000, the dead body was identified by P.W.3 Manohar, her brother and respondent No.1, the husband, as that of Kashibai. After performing funeral rites on the dead body, on 30th July, 2000 P.W.3 Manohar lodged complaint against respondents.

5. On his complaint C.R.No.55 of 2000 came to be registered against respondents, for the offences punishable under Sections 498A and 306 read with 34 of the Indian Penal Code. The investigation of the said offence was taken over by P.W.8 PSI Shaikh. On the same day, he arrested respondent Nos 1 and 2 under panchnama Exh.14 and respondent No.3 under panchnama Exh.15. The spot panchnama of the house of deceased was made on the same day vide Exh.16. As part of further investigation, P.W.8 PSI Shaikh recorded statements of

witnesses. He also collected one anonymous letter purported to be written by deceased which is produced in the case vide Exh.35. He further collected 3 extracts of N.C. complaints lodged by the deceased during her life time against respondent No.1 and they are produced on record vide Exh.36, 37 and 38. Further to completion of investigation, P.W.8 PSI Shaikh filed chargesheet in the Court, against respondents.

6. On committal of the case to the Sessions Court, trial Court framed charge against respondents vide Exh.5. The respondents pleaded not guilty and claimed trial, raising the defence of denial and false implication.

7. In support of its case, prosecution examined in all 8 witnesses and on appreciation of their evidence, trial Court was pleased to hold that the prosecution has failed to prove that the deceased was subjected to the 'cruelty' as contemplated under Section 498A of IPC and also failed to prove the necessary nexus between the fact of her suicide and the alleged cruelty. The trial Court, therefore, acquitted respondent Nos. 1 to 3 of both the offences charged against them.

8. This judgment of the trial Court is challenged in this appeal by learned APP for the State; whereas supported by learned counsel for respondents. According to learned APP, there is more than sufficient evidence on record not only to prove the cruelty but also to prove the nexus between cruelty meted out by respondents to the deceased and suicide committed by the deceased; whereas according to learned counsel for respondents, there is absolutely no evidence on record to prove the nexus between the alleged cruelty and the suicide. Moreover, according to learned counsel for respondents, the death of Kashibai had taken place 7 years after the marriage, therefore, the presumption under Section 113A of the Evidence Act, is also not available in the instant case for prosecution to prove that deceased was constrained to commit suicide as a result of the alleged cruelty meted out to her at the hands of respondents. It is further submitted by learned counsel for respondents that as regards respondent Nos. 2 and 3, there is no iota of incriminating evidence or material and they deserve clean and clear acquittal. Even as regards respondent No.1, it is urged that the alleged cruelty had taken place 5 to 6 years i.e. much prior to the death of the deceased and the said cruelty also cannot be called as so severe or of such nature as is likely to drive her to commit suicide or to cause grave injury to herself.

Hence according to learned counsel for respondents, the benefit of doubt given by the trial Court to the respondents being justified and the findings of the trial Court being borne out from the evidence on record, no interference is warranted in the said findings at the hands of this Court, especially when this Court is sitting in Appeal against acquittal.

9. In the light of these rival submissions advanced at bar, if the evidence on record is appreciated, it can be stated that as regards to the death of deceased Kashibai, the evidence on record like the testimony of P.W.1 Police Patil – Prabhakar is sufficient to prove that on 28th July, 2000 her dead body was found in the creek and after it was removed, the inquest panchnama was conducted and then the dead body was sent for postmortem. The postmortem report Exh.18 is eloquent to further prove that the cause of her death was asphyxia due to drowning. No case of accidental drowning is ever suggested or tried to be made out. As a matter of fact, respondents have also not seriously challenged the fact that it was a case of suicide, The trial Court, has accordingly recorded the finding that the prosecution has succeeded in proving that the cause of death was suicide and the evidence on record completely justifies the said finding. The said finding of trial Court is not assailed by

respondents in this appeal also.

10. Once the factum of suicide is proved on record, the next question arising for consideration is the cause of her suicide. Whether she was constrained to end her life on account of illtreatment and harassment meted out to her at the hands of respondents or whether there was any other cause for her to take such an extreme step? In this respect, prosecution has relied upon the evidence of P.W.3 her brother Manohar. His evidence depicts that the marital life of deceased with respondent No.1 was not at all smooth or happy since 5 to 6 years before her death. The cause for the same was the love affair and illicit relations between respondent Nos. 1 and 2. According to his evidence, about 5 to 6 years prior to the death of Kashibai, love affair started between respondent Nos. 1 and 2. As a result, respondent No.1 deserted the deceased and started residing separately from her with respondent No.2. . However, that did not put an end to the harassment of the deceased as respondent No.1 used to come to her house and beat her; he was not providing any maintenance to her. Conversely causing harassment to her by taking away the crops grown by her, disconnecting her electricity supply and removing the wooden planks of the door of her house.

11. This evidence of P.W.3 Manohar about illicit relations between respondent Nos 1 and 2 is fully corroborated from the evidence of P.W.2 Gajanan Bhoir, the husband of respondent No.2. According to his evidence, he was working as Bus Conductor and used to remain out of the house most of the time. Respondent No.1 was his cousin brother and neighbour. He has deposed that he had heard rumours from the villagers that his wife, respondent No.2 and respondent No.1 were having extra marital relations. He tried to persuade his wife, but it was of no use. Hence ultimately he and his wife took divorce. After divorce, his wife, respondent No.2 went to reside with respondent No.1. Then respondent Nos. 1 and 2 shifted their residence to Pen; whereas deceased continued to reside alone at village Jambhultep near his house. There is hardly any cross examination of this witness on this aspect of illicit relations between his wife respondent No.2 and his cousin brother respondent No.1, which ultimately was the reason for his divorce with respondent No.2. There is also no reason to disbelieve him as he will not come to the Court to depose about his marital life in which his wife has left him, unless it was true.

12. P.W.4 Surekha, the maternal aunt of the deceased, has also deposed about love affair between respondent Nos. 1 and 2 which was developed since 5 to 6 years prior to the death of the deceased. She has also deposed that as a result of the said love affair, respondent Nos. 1 and 2 were residing together separately, deserting deceased who was staying alone. Respondent No.1 was not giving any money for her maintenance. She has further deposed that respondent No.1, however, used to come and beat the deceased. He had even once cut and taken away the crops grown by the deceased.

13. Further there is also evidence of cruelty of most violent nature proved on record. In the evidence of P.W.4 Surekha, it is brought on record that one day deceased was taken to IPCL Hospital as respondent No.1 had stuffed wooden piece in her private part. This evidence of P.W.4 is also corroborated from the evidence of P.W.3 Manohar, who has also deposed that accused No.1 visited the house of deceased and stuffed wooden piece in her private part which caused bleeding injury to her and hence she was taken to IPCL Hospital at Nagothane. There, she was threatened not to disclose the said fact to anyone.

14. The material evidence on this aspect is that of P.W.5 Kashibai Patil, the maternal aunt of the deceased. According to her 2 to 3 years prior to death of Kashibai, respondent No.1 entered into house of Kashibai and stuffed wooden piece in her private part. Respondent No.3 then brought the deceased in a bleeding condition to her house and then took her to the IPC Hospital.

15. P.W.7 Dr. Bharat Rana who was working as Medical Officer at IPCL Hospital, Nagothane has deposed that on 16.9.1994, deceased was brought to his hospital by her relative for treatment. On examination, he found that something was inserted in her private part and it was bleeding with white discharge. As deceased was complaining of pain, she was given anesthesia and then a small particle of wood was found in her private part which was removed. He has produced on record at Exh.32 the case papers of the deceased which show that she was admitted in the hospital from 16.9.1994 to 20.9.1994. It may be true that the said case paper disclose that deceased has stated that she does not want to complain to police about it, but the very fact that she was admitted for four days there for bleeding injury with wooden piece in her

private part is sufficient to prove the prosecution case, coupled with the evidence of P.W.5 Kashibai, her maternal aunt and other two witnesses that she was threatened by respondent No.1 not to disclose his name to anyone.

16. P.W.6 Dr. Laxmibai Bharti, in whose house, deceased was working as maid servant has also deposed that the deceased has informed her that her husband was residing with another woman and hence to earn her livelihood, she was doing job of maid servant in her house. The deceased has told her also that her husband used to beat her and she was hospitalized for removing wooden piece from her private part.

17. This act of respondent No.1 of inserting wooden piece in the private part of the deceased, in my considered opinion, is more than sufficient to bring the case of cruelty within four corners of section 498A of IPC. There is no suggestion to the effect that said act was done by any other person than respondent No.1. There can be no other explanation for insertion of wooden piece in the private part of the deceased unless it was done by someone and therefore an irresistible inference that can be drawn is that it was the respondent No.1 who has subjected the deceased

to this heinous and cruel act.

18. The evidence of P.W.3 Manohar further proves that just 20 days before her death respondent Nos. 1 and 2 had badly harassed her, beat her and also asked her to leave house in which she was residing. For that purpose the electricity connection of her house was disconnected and wooden planks of the door were removed.. Thus, even if a cursory glance to the entire conduct of respondent No.1 as brought on record from the evidence of these witnesses who are close and near relatives of the deceased and hence bound to know about her illtreatment and harassment, is more than sufficient to prove the offence under Section 498A IPC and also under Section 306 of IPC as regards respondent No.1 husband.

19. There is further corroboration to this oral evidence of these witnesses, in the form of three complaints, lodged by the deceased against respondent No.1, during her life time. On her complaints Non-cognizable offences were registered and the certified extracts of those three N.C. complaints are produced on record at Exh. 36, 37 and 38. N.C. Complaint at Exh.36 is lodged on 1st August, 1994 in which it is

stated that respondent No.1 has given abuses and threatening to the deceased, hence offence u/s 504 and 506(i) IPC was registered against him. In N.C. complaint Exh.37 lodged on 6.12.1994, it is stated that the deceased has made complaint that respondent No.1 was always going to the house of P.W. 2 Gajanan Bhoir. Hence deceased accosted him about it, therefore, respondent No.1 was always giving her abuses, threatening and beating. On this complaint offence under section 323, 504 and 506 was registered. In the third N.C. Complaint Exh.38, lodged on 10.6.1996, it is stated that while deceased was working in the field, respondent No.1 came there on that day and without any reason, gave her fist-blows and kicks and hence offence u/s 323 and 504 IPC was registered against respondent No.1.

20. These three N.C. complaints, thus, prove that there was frequent harassment to the deceased at the hands of respondent No.1. The trial Court has, however, not placed reliance on these complaints by observing that **“they are of general nature and such incidences usually take place in any household”**. It is despite the fact that the trial Court has noticed in one of those three N.C. complaints Exh.37 that **“harassment was on account of illicit relations between respondent**

Nos. 1 and 2”.

21. In my considered opinion, the trial Court has committed a grave error in disposing of this material piece of evidence as “of no help to the prosecution”, though they were corroborating the prosecution case that the marital life of the deceased was not at all smooth or happy due to harassment of respondent No.1. She had to resort to police station to lodge complaints against respondent No.1 from time to time on account of abuses, threatening and also the beating. Though the trial Court has observed that there is no mention of illicit relations between respondent Nos. 1 and 2 in the said N.C. complaints, N.C. Complaint Exh.37 dated 6.12.19994, shows that there was clear allegation to the effect that as deceased has objected to the habit of respondent No.1 visiting the house of P.W. 2 Gajanan, the husband of respondent No.2, she was abused, threatened and beaten. Therefore, there is clear and unequivocal mention of illicit relations between respondent Nos. 1 and 2 which was the cause of illtreatment, abuses and beating of deceased at the hands of respondent No.1.

22. It cannot be accepted that the husband visiting the house of

his mistress and residing separately with the mistress, deserting to his own wife, is a matter of routine nature or which happens, “generally in each household” as observed by the trial Court. It also cannot be accepted that the complaint of beating by fist-blows and kicks which was made by deceased against respondent No.1 as reflected in N.C. Complaint Exh.38, is of a routine nature or “**which can usually takes place in any household**”, as observed by the trial Court. Normal wear and tear of marital life does not contemplate beating of wife or illicit relations of the husband with some other woman. As a matter of fact by making such observation that “**these instances are of general nature, which usually takes place in any household**” and on that ground discarding this material piece of evidence as not helpful to prosecution, trial Court has added an insult to the injury and pain which a married woman like deceased has suffered at the hands of her husband.

23. At this stage a useful reference can be made to the judgment of Apex Court in **Vajresh Venkatray Anvekar -vs- State of Karnataka (2013) SCC 462**, wherein while dealing with similar such observations made by Sessions Court to the effect that, “**one or two**

beatings are not the act of cruelty and are not sufficient in the ordinary course for a woman to commit suicide", Supreme Court was pleased to characterize those observations as "perverse". In paragraph No.28 of its judgment, Supreme Court has laid emphasis on the sensitive and realistic approach of the Court while dealing with the offences against women in view of phenomenal rise in crime against women by laying down in unequivocal terms that :-

"The tenor of the judgment suggests that wife beating is a normal facet of married life. Does that mean giving one or two slaps to a wife by a husband just does not matter? We do not think that that can be a right approach. It is one thing to say that every wear and tear of married life need not lead to suicide and it is another thing to put it so crudely and suggest that one or two assaults on a woman is an accepted social norm. Judges have to be sensitive to women's problems. Perhaps learned Sessions Judge wanted to convey that the circumstances on record were not strong enough to drive Girija to commit suicide. But to make light of slaps given to Girija which resulted in loss of her eyesight is to show extreme insensitivity. Assault on a woman offends her dignity. What effect it will have on a woman depends on facts and circumstances of each case. There cannot be any generalization on this issue. Our observation, however, must not be understood

to mean that in all cases of assault suicide must follow. Our objection is to the tenor of learned Sessions Judge's observations. We do not suggest that where there is no evidence the court should go out of its way, ferret out evidence and convict the accused in such cases. It is of course the duty of the court to see that an innocent person is not convicted. But it is equally the duty of the court to see that perpetrators of heinous crimes are brought to book. The above quoted extracts add to the reasons why learned Sessions Judge's judgment can be characterized as perverse. They show a mindset which needs to change. There is a phenomenal rise in crime against women and protection granted to women by the Constitution of India and other laws can be meaningful only if those who are entrusted with the job of doing justice are sensitized towards women's problems".

(emphasis supplied)

24. In the instant case also the approach adopted by the trial Court of treating lightly the registered complaints of deceased regarding illtreatment, beating and harassment as of, “**general nature**” is not less than “perverse”. As observed by Supreme Court, there cannot be any generalisation on this issue. Moreover, herein the case, evidence on record has proved the husband's illicit relations with Respondent No.2

and also his pervert act of inserting wooden piece in her private part, leading to bleeding injury and to her hospitalization for four days. This conduct of the husband cannot fall in the category of “**general nature**” or ordinary wear and tear of married life.

25. If the husband has started having illicit relations with another lady and on that count subjects his wife to physical and mental cruelty, then in my considered opinion, the requirements of “cruelty” as contemplated under section 498A IPC, are sufficiently met out. What section 498A IPC lays down is the evidence of willful conduct on the part of husband or his relatives which is of such nature as is likely to drive the married woman commit her suicide or to cause grave injury to herself. Therefore, willful conduct or cruelty contemplated under Section 498A is even if something more than normal wear and tear of marital life, but definitely not something which is impossible for any married woman to allege or to prove.

26. Here in the case, the evidence on record proves the fact that respondent No.1 had started having illicit relations with respondent No.2 and on that count he left the deceased and started residing with

respondent No.2. It is also proved that he has taken away custody of the the three children from deceased. From time to time he was visiting her and beating her, taking away the crops grown by her. The evidence of P.W.3 Manohar also proves that respondent No.1 has disconnected electricity supply of her house. This fact is further proved from the spot panchnama Exh.16 which records that electricity wire connection in the house of the deceased was disconnected. The evidence of P.W.3 Manohar that just few days before her death, the wooden planks of the house of deceased were removed, is also found reflected in the spot panchnama exh.16.

27. Thus, the evidence on record clearly goes to prove that respondent No.1 has made life of the deceased quite miserable and unbearable since few years before her death. He has not made any provision for her maintenance and also gone to the extent of cutting and taking away crop grown by her.

28. It may be true that presumption, as laid down under Section 113A of the Evidence Act is not available in the instant case, as the

death of deceased had taken place more than 7 years after the marriage, but then charge of abatement stands sufficiently and independently proved. The conduct of respondent No.1 of continuously subjecting the deceased to harassment, beating, physical and mental cruelty and his very act of having illicit relations with respondent No.2 and on that count even depriving her from maintenance, her bare necessities of life, by cutting and taking away the crops grown up by her, disconnecting electric supply of her house, further removing wooden planks of house, this continuous course of conduct adopted by respondent No.1 definitely amounts to abatement of her suicide. The conduct of respondent No.1 has made her life so miserable and unbearable that she was left with no other alternative than to end her life. The trial court has clearly missed the impact of these circumstances on her mind frame. Therefore, as regards respondent No.1, in my opinion, there is more than sufficient evidence on record to prove both the offences punishable under Sections 498A and 306 IPC. So far as respondent Nos 2 and 3 are concerned, for want of sufficient clinching evidence on record against them, the finding of the trial Court of acquitting them need not be disturbed. But as regards, respondent No.1 the said finding is liable to be quashed and set aside.

29. At this stage, it may be noted that this court is aware that it is sitting in an appeal against judgment of acquittal and hence only when the view taken by the trial Court is found to be 'perverse' it can interfere in the findings of the trial Court. In my considered view, this is a fit case where interference is warranted otherwise it will result into failure of justice; as the view adopted by the trial Court is not at all borne out from the evidence on record. The approach made by the trial Court about illtreatment and harassment to which deceased was subjected fall in the category of “**perverse**”. As a result, the appeal needs to be allowed partly.

30. In consequence, the acquittal of respondent No.1 Bhagwan Tukaram Bhoir, for the offences punishable under Sections 498 and 306 of IPC stands quashed and set aside and he is convicted for the offences punishable under Section 498A and 306 of the IPC.

31. As regards sentence, learned counsel for respondents submits that as that the incident has taken place in the year 2000 and as there is long gap of time, the minimum punishment be imposed on

respondent No.1. Per contra, learned APP submitted that having regard to the cruelty inflicted on the deceased, this is not a fit case where a lenient view can be taken. In my considered opinion though much time has elapsed since the incident, even then as facts of the present case do not justify leniency, following punishment will meet the ends of justice. Hence the order.

ORDER

- The appeal is partly allowed.
- The impugned order dated 7.2.2002, passed by learned Jnd Adhoc Additional Sessions Judge, Raigad, in Sessions Case No. 148 of 2000 stands quashed and set aside as regards respondent No.1.
- Respondent No.1 stands convicted for the offence punishable under Section 498A IPC and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.5,000/- in default to suffer rigorous imprisonment of six months.
- Respondent No.1 is further convicted for the offence punishable under Section 306 IPC and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.10,000/- in default to suffer rigorous imprisonment for six months.

- Both the substantive sentences of imprisonment to run concurrently. Respondent No.1 is entitled to set off for the period which he has already undergone in jail.
- The bail bonds of respondent No.1 stands cancelled. Respondent No.1 shall surrender before the trial Court, within a period of six weeks, failing which the trial Court shall take necessary steps to arrest him to undergo remaining sentence.
- The appeal stands dismissed as against respondent Nos. 2 and 3. Their bail bonds stand cancelled.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the original signed judgment.