

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 468 OF 2001

Tulsiram s/o Shankar Bramhane,
age 25 years, occ. Labour,
r/o Borgaon Kasari, Tq. Sillod,
District Aurangabad

...Appellant

VERSUS

The State of Maharashtra

...Respondent

Ms. Varsha Ghanekar, Advocate h/f
Shri N.S.Ghanekar, advocate for the appellant
Mr. S.D.Ghayal, APP for Respondent/State

CORAM : INDIRA K. JAIN, J.

DATED : 25th April, 2016

J U D G M E N T :

This appeal takes an exception to the judgment and order, dated 18.10.2001, passed by the learned Additional Sessions Judge, Aurangabad, in Sessions Case No.111 of 1998. By the said judgment and order, appellant/original accused no.1 was convicted

of the offence punishable under Section 498-A of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.1,000/- with default clause. Initially appellant and his mother co-accused Rukhmanbai were tried for the offences punishable under Sections 307, 498-A r/w 34 of the Indian Penal Code. Both the accused were acquitted of the offence punishable under Section 307 of the Indian Penal Code. Accused no.2 was also acquitted of the offence punishable under Section 498-A r/w 34 of the Indian Penal Code.

2] For the sake of convenience, appellant shall be referred in his original status as an accused as he was referred before the Trial Court.

3] Prosecution case, in brief, is as under : -

(i) Accused was married to complainant Rekha before seven years of incident. After marriage Rekha started residing at village Borgaon Kasari along with her husband and mother-in-law. Initially for six months she was treated well in the matrimonial house. It is alleged that thereafter both

the accused were illtreating Rekha on demand of Rs.10,000/- for purchase of she-buffalo and a thrashing machine. Rekha was blind by one eye. Accused used to torture her saying 'duchaki'. On one occasion accused beat Rekha and driven her out of the house. She went to Wadod Bazar police station and lodged report. On the basis of report, case under Section 498-A of the Indian Penal Code was filed against the accused before the learned Judicial Magistrate, First Class, Sillod.

(ii) According to complainant she instituted proceedings under Section 125 of the Code of Criminal Procedure against accused no.1. The Court awarded maintenance to her. When accused no.1 found that he had to pay maintenance and to face criminal prosecution he along with some villagers approached the complainant and her mother. After assurance of good behaviour matter was settled. An agreement was executed wherein accused no.1 had given an undertaking to behave properly with complainant. After settlement Rekha

joined the company of her husband and mother-in-law.

(iii) It is the case of prosecution that despite undertaking of good behaviour given by accused no.1 there was no change in his attitude. Both the accused continued harassment to Rekha. She disclosed about the same to her mother on the occasion of Diwali festival.

(iv) Incident took place on 6.12.1997. Rukhmanbai was residing in farm house that time. It is alleged that she brought a can of pesticides and kept the same in the house. She instigated her son and on her instigation accused Tulsiram attempted to administer pesticide to Rekha. She became unconscious. She was immediately removed to the hospital at Sillod and thereafter brought to Medical College and Hospital, Aurangabad.

(v) On 13.12.1997 she regained consciousness. Police Head Constable Nawsare recorded her

statement. Same was treated as first information report. On the basis of statement of Rekha investigation was set into motion. On completing investigation, charge sheet was submitted and case was committed to the Court of Sessions.

4] Charge of the alleged offence was explained to the accused vide Exh.6. He pleaded not guilty and claimed to be tried. The defence of accused was of total denial and false implication. According to accused Rekha wanted to extract money from him. On the day of incident he paid Rs.30,000/- to her towards maintenance in lump sum and divorce-deed was executed. Accused submitted that relationship of husband and wife had ceased between him and complainant and so charge under Section 498-A of the Indian Penal Code would not sustain.

5] Prosecution examined in all eleven witnesses in support of its case. Considering the evidence of complainant, her mother and other witnesses, Trial Court came to the conclusion that accused no.1 illtreated his wife and illtreatment was to such an extent that it amounted to cruelty under Section 498-A of the Indian Penal Code. Trial Court then convicted accused Tulsiram for the offence

punishable under Section 498-A of the Indian Penal Code as stated in paragraph 1 above.

6] Heard Ms. Varsha Ghanekar, learned counsel for the appellant and Shri S.D.Ghayal, learned Additional Public Prosecutor for respondent/State.

7] With the assistance of learned counsel for the parties, this Court has gone through the evidence of prosecution witnesses. Considering the evidence of star witnesses complainant Rekha and her mother Subhadrabai, this Court for the below mentioned reasons is of the view that prosecution could not prove the guilt of accused and accused ought to have been acquitted of the charge.

8] PW 1-Rekha states in her evidence that after six months of marriage accused started illtreating her on demand of Rs.10,000/- for purchase of she-buffalo and thrashing machine. She states that one year after marriage accused beat her with kicks and fists and drove her out of the house. She lodged report with the police. The case instituted on the basis of police report was pending before the Court at Sillod. She further stated that she filed petition for maintenance in Sillod Court and Court awarded Rs.250/- monthly

maintenance to her. After one year of the order of maintenance accused Tulsiram and some villagers came to her parents house to take her back. She stated that Tulsiram executed bond and gave assurance of good behaviour to her. After the bond was executed she came to the house of accused.

It is further stated by Rekha that eight days thereafter accused again started illtreating her. She had been to her maternal house for Diwali festival. That time she told about illtreatment to her mother. She then states that her husband was not willing to pay her maintenance, so in collusion with co-accused he attempted to administer insecticide to her. She became unconscious and was admitted to Ghati hospital. She stated that for seven days she remained unconscious. After she regained consciousness her statement was recorded at Ghati hospital. The same is proved at Exh.60.

9] The evidence of PW 2-Subhadrabai on the alleged illtreatment is hear say. She stated that at the time of Diwali festival when Rekha visited her house she told her that she was being illtreated on demand of Rs.10,000/- for purchase of she-buffalo and thrashing machine. Rekha also told her that as she was blind with

one eye accused used to tease her saying 'Duchaki Aandhali'.

10] It is apparent from the cross-examination of complainant Rekha and her mother PW 2-Subhadrabai that before 1½ months of alleged incident of administering pesticide there was settlement between the parties. In view of settlement Rekha resumed the company of her husband. It also appears from their evidence that agreement was reduced to writing, accused assured to treat her properly and on assurance she joined the company of her husband.

11] In view of these admitted facts it was incumbent on prosecution to bring on record evidence regarding illtreatment between the period of settlement and alleged incident. Needless to state that past instances of illtreatment alleged by complainant and her mother would lose their significance in view of the settlement between the parties.

12] On going through the testimonies of Rekha and Subhadrabai it is crystal clear that there was no illtreatment to Rekha after settlement till the alleged incident of administering poison. If this is so provisions of Section 498-A of the Indian Penal Code would not come into play.

13] Another important factor to be noted in the present case is that Rekha was not willing to go back to her matrimonial house. This fact is evident from the evidence of Subhadrabai. It is stated by Subhadrabai that Rekha was her only daughter. She hardly stayed for one year in her matrimonial house and rest of the time she stayed with her mother. Subhadrabai admitted in unequivocal terms that Rekha was not willing to go back to accused no.1. She also admits that Rekha obtained divorce from accused no.1 and they have also taken money from accused no.1.

14] In the light of these material admissions elicited in cross-examination of the star witness, this Court finds that prosecution has no case on merits and accused ought to have been acquitted. Appeal thus deserves to be allowed. Hence the following order.

ORDER

- (i) Criminal Appeal No. 468 of 2001 is allowed.
- (ii) The judgment and order, dated 18.10.2001, passed by the learned Additional Sessions Judge, Aurangabad, in Sessions Case No.111 of 1998 is set aside.

(iii) Instead appellant is acquitted of the offence punishable under Section 498-A of the Indian Penal Code.

(iv) Bail bonds of the accused stand cancelled.

(v) Fine amount, if paid, shall be refunded to appellant.

[INDIRA K. JAIN, J.]

dbm/cra468/01