

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

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CRIMINAL REVISION APPLICATION NO. 176 OF 2003

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DR. VILAS NARHARRAO VIDOLKAR
age 50 years, Occ. Medical Practice,
R/o Sawarkar Nagar,
Hingoli.

..Applicant..
(Orig. Accused)

VERSUS

STATE OF MAHARASHTRA
(Copy to be served on the
Public Prosecutor, High Court,
Bench at Aurangabad.)

..Respondent..

...

Advocate for Applicant : Mr. Vijay Sharma
APP for Respondent: Mr. P N Kutti

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CORAM : V.K. JADHAV, J.

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Date of reserving the Judgment 11.01.2016
Date of pronouncing the Judgment : 19.01.2016

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JUDGMENT :-

1. In this Criminal Revision Application, challenge is to the Judgment and order of conviction and sentence passed by the Judicial Magistrate First Class, Hingoli dated 18.10.1994 in R.C.C. No.228/1986, thereby convicting the present applicant/original accused for the offence punishable under section 498-A, 506 and 507 of the Indian Penal Code and sentencing him to suffer Simple

Imprisonment till rising of the Court and to pay a fine of Rs.1,000/- (Rs. One Thousand) and Rs.500/- (Rs. Five hundred only) respectively, and, in default of payment of fine, he is directed to suffer simple imprisonment for three months and forty five days respectively, and the conviction u/s 498-A, 506 upheld by the Additional Sessions Judge, Hingoli, by judgment and order dated 17.3.2003 in Criminal Appeal No.3/1998.

2. The prosecution version, as unfolded, during the trial, is as under :-

PW 4 Sunanda was married to the applicant/original accused Vilas on 14.4.1986. After marriage they resided at Hingoli alongwith other family members. Initially, the applicant/original accused and his family members treated PW 4 Sunanda properly till June, 1986. However, thereafter, PW 4 Sunanda was subjected to cruelty on various counts. Applicant/original accused started suspecting about the chastity of Sunanda. He used to keep her awake till late night and also used to put lock to the doors of the house. Even, he used to connect those locks with the live electric current wire. The petitioner is Doctor by profession and he used to threat that he would give her injection and would kill her. It is also prosecution's case that, applicant/original

accused started demanding Rs.10,000/- and subjected PW 4 Sunanda to ill-treatment on account of non-fulfillment of the said demand. Even applicant/original accused used to write letters to PW 4 Sunanda on address of her parental house after she was taken to her parental house by her brother. Applicant/original accused was writing obscene and filthy matters in those letters and thereby started defaming PW 4 Sunanda. Consequently, PW 4 Sunanda on 24.9.1986 lodged a report at Police Station, Hingoli. On the basis of her report at Exh.45 a crime was registered. On completion of the investigation, Investigating Officer has submitted charge sheet against the applicant/original accused Vilas and his other five family members. In the discharge application submitted by accused nos. 2 to 6 before the learned Judicial Magistrate First Class, Hingoli, the original accused nos. 2 to 6 came to be discharged by the Magistrate and further directed that the case be proceeded against the present applicant/original accused no.1 Vilas for the aforesaid offences.

3. The prosecution has examined in all four witnesses to substantiate the charges levelled against the applicant/original accused. After examination of the applicant/original accused u/s 313 of Criminal Procedure

Code, the applicant/original accused has examined one defence witness Exh.79. After hearing both sides, the learned Magistrate First Class, Hingoli convicted and sentenced applicant/original accused for the offences punishable u/s 498-A, 506, 507 of the Indian Penal Code as stated above, and confirmed by the Additional Sessions Judge, Hingoli, so far as sentence of the applicant/original accused for the offence punishable u/s 498-A and 506 of the Indian Penal Code. The learned Additional Sessions Judge, Hingoli acquitted the applicant/original accused for the offence punishable u/s 507 of Indian Penal Code.

4. The learned counsel for the applicant/original accused submits that, applicant's marriage with PW 4 Sunanda was solemnized on 14.4.1986 and as per prosecution's case, after the marriage, she was treated well till the month of June, 1986. Thus, the total period of cohabitation as appearing from the prosecution's evidence itself is very short. Learned counsel further submits that, in such a short period of cohabitation, wild allegations have been made against the applicant/original accused subjecting PW 4 Sunanda to cruelty on various counts. Learned counsel submits that, the same is humanly impossible. Learned counsel further submits that, so far as allegations about the unlawful

demand made by the applicant/original accused is concerned, the prosecution has failed to prove the same and thus, at the most clause (b) of Section 498 can be attracted. Learned counsel further submits that, the prosecution has utterly failed to prove a willful conduct on the part of the applicant/original accused of such a nature as is likely to drive PW 4 Sunanda to commit suicide or to cause grave injury, etc. Learned counsel further submits that, there are vague allegations about the alleged ill-treatment and no details are given. Learned counsel further submits that, the witnesses are highly interested and therefore, no reliance can be placed on their interested testimony. Learned counsel submits that, the witnesses have exaggerated prosecution's story and their evidence suffers from omissions and contradictions. Learned counsel further submits that, the Trial Court as well as the Appellate Court committed a grave error of law while relying upon the xerox copies of the letters alleged to have been written by the applicant/original accused. Learned counsel thus submits that, prosecution has failed to prove the case beyond reasonable doubt. The applicant/original accused, thus, deserves to be acquitted by setting aside the Judgment and order of conviction passed by both the Courts below. Lastly, the learned counsel has pointed out that, since the year 1988, the parties are

residing separately by obtaining divorce from the competent Court.

5. In order to substantiate the contentions, the learned counsel for the applicant/original accused placed his reliance on following two judgments :

1. Altaf Hussain Allauddin Shaikh and another reported in 2015 (2) LJSOFT.
2. Sou. Swati @ Namrata Kishor Gajakas Vs. Kishor Sripati Gajakas and others.

6. The learned APP submits that, evidence of the prosecution witnesses is cogent, trust worthy and consistent. PW 4 Sunanda was treated with cruelty as defined u/s 498-A of the Indian Penal Code. She was subjected to ill-treatment on various counts and, the applicant/original accused has treated her in a cruel manner. The learned APP further submits that, in a case of such a dispute, only the family members are usually witnesses, thus, their evidence cannot be thrown away straight way only on the ground that, witnesses are interested witnesses. Learned APP further submits that, prosecution witnesses, more particularly PW 4 Sunanda has given all the details of ill-treatment being extended to her by the applicant/original accused. The learned APP submits that, the courts below rightly convicted

the applicant/original accused for the offences punishable u/s 498-A, 506 of the Indian Penal Code. Learned APP further pointed out that, the applicant/original accused is convicted and sentenced till rising of the Court and to pay a very meager amount as fine. Learned APP, thus, submits that, no interference is required in the impugned judgment and order of conviction. Criminal Revision Application, thus, liable to be dismissed.

7. There is no proposition of law that relatives are to be treated as untruthful witnesses, however, the Court has a duty to scrutinize their evidence with great care, caution and circumspection and be very careful to in analyzing such evidence.

8. In the case in hand, PW 4 Sunanda had cohabited with the applicant/original accused no.1 for about four months. Out of it, as per prosecution's story, for initial two months, PW 4 Sunanda was treated well. Thus, there are allegations about the demand and cruelty being extended to her on account of non-fulfillment of said demand within the remaining period of two months.

9. PW 1 Shrinivas Namde, who happened to be the father

of PW 4 Sunanda deposed that, his daughter informed about her ill-treatment to his son who was working as a doctor at Kalamnuri and also about the demand of Rs.10,000/- made by the accused to the said son. He has further deposed that, accused also gave threats to his daughter of killing her, if the demand is not fulfilled. According to him, 3-4 days after 16.8.1986, he received the letters containing threats to his daughter from the accused. He has further deposed that, accused also wrote a letter expressing suspicion on the character of his daughter.

10. PW 2 Narhari Namde and PW 3 Dr. Ratnakar Namde are the real brothers of PW 4 Sunanda. PW 2 Narhari has simply deposed in his examination-in-chief about the beating and ill-treatment being extended to complainant PW 4 Sunanda and she was asked to bring money. According to him, accused no.1 was unemployed and he was demanding money for the marriage of his brother and sister. He further deposed that, he met PW 4 Sunanda one and half months after the marriage and at that time PW 4 Sunanda told him that accused and his family were demanding money and beating and ill-treating her on that count. PW 2 Narhari has not deposed about the exact amount demanded by the applicant/original accused as narrated to him by his sister

PW 4 Sunanda.

11. PW 3 Dr. Ratnakar has deposed that, the in-laws of PW 4 Sunanda and applicant/original accused sent her to her matrimonial home and told her to bring Rs.10,000/- and they could not satisfy the demand. According to him, since the demand could not be satisfied, PW 4 Sunanda was subjected to beating and ill-treatment. He has given two instances of the ill-treatment. First is that, accused used to confine her in a room and apply electric current to the lock in which she was confined and secondly, they used to throw chilly powder into her eyes and accused used to threat her that she would be killed by means of injection. He has deposed that, he used to visit matrimonial home of PW 4 Sunanda and she used to tell him the aforesaid facts of ill-treatment and demands. He has also deposed that on 10.8.1986 accused demanded Rs.10,000/- from him to start a dispensary and also threatened him if the demand is not fulfilled. He has also deposed about threat and the defaming letters written and send by the applicant/original accused to the complainant and his family members.

12. PW 4 Sunanda has deposed about the demand of Rs.10,000/- made to her by the accused, however, she is not

sure as to on what count exactly the demand was made. She has further deposed that, since the demand was not fulfilled, accused and his family members started ill-treating her. She has further deposed that, accused used to suspect about her chastity by making false allegations and he also used to confine her and used to lock the room from inside and apply electric current to the lock to prevent her. She has further deposed that accused used to tell her for bringing Rs.10,000/- from the parents or that she should admit that she is a woman of bad character. She has also deposed that, the accused gave threat to her to kill by means of an injection. She has given instances of the ill-treatment. According to her, accused used to make her stand for whole night and used to beat her.

13. On careful scrutiny of the evidence of PW 4 Sunanda and her family members from maternal side, it appears that their evidence is not consistent about the said unlawful demand of money and the reasons behind the said demand. PW 3 Dr Ratnakar deposed that accused send PW 4 Sunanda to her parental home and told her to bring Rs.10,000/-. On the other hand, PW 1 Shrinivas deposed that accused made demand of certain amount to his son i.e. PW 3 Dr. Ratnakar. PW 4 Sunanda is not certain as to for

what purpose the demand was made. PW 3 Ratnakar, at one place, deposed that unlawful demand was made by the accused for incurring expenses of marriage of his brother and sister and further deposed that, the demand was made by the accused to start dispensary. PW 4 Sunanda has not deposed anything about visit of PW 2 Narhari to her matrimonial home, however, PW 2 Narhari has deposed that on his visit to the matrimonial home of PW 4 Sunanda, she told him that accused were demanding money and they were beating and ill-treating for the same. Thus, evidence of the prosecution witnesses including PW 4 Sunanda is not consistent so far as the alleged unlawful demand made by the applicant/original accused is concerned.

14. According to PW 3 Ratnakar, on 27.5.1986, the marriage of the sister of the accused was to take place and on 1.6.1986 marriage of the brother of the accused was to take place and before above said marriage, in-laws of the complainant and applicant/original accused sent the complainant P.W.4 Sunanda to her parental home and told her to bring Rs.10,000/-. As per the prosecution's story and as deposed by the prosecution witnesses, PW 4 Sunanda was treated well for a first period of one and half months to two months after the marriage. During that period, as it appears

from the evidence of PW 3 Dr. Ratnakar, marriage of the sister of the applicant/original accused and brother of the applicant/original accused solemnized. The marriage of the sister of the applicant/original accused solemnized on 27.5.1986 and marriage of brother of the accused was solemnized on 1.6.1986. It is rather logical that had there been any demand of Rs.10,000/- for incurring the expenses of the said marriage by the accused, it would be prior to 27.5.1986. It is, thus, difficult to accept that there was an unlawful demand of Rs.10,000/- from the accused for incurring the expenses of said marriage.

15. So far as the evidence about ill-treatment being extended to PW 4 Sunanda is concerned, PW 1 Shrinivas-father deposed that accused used to give threats to PW 4 Sunanda and that PW 4 Sunanda was subjected to mental and physical torture. Except this, he has not given any details of ill-treatment, though, according to him, PW 4 Sunanda informed him about the same on 16.8.1986 when she had finally returned to her parental home.

16. PW 2 Narhari deposed that applicant/original accused used to give burn injuries with burning cigarettes to PW 4 and used to confine her in a room and also used to apply

electric current to the lock in which room she was confined. According to him, the same was disclosed to him by PW 4 Sunanda when he went to see her 1 and ½ to 2 months after her marriage at her matrimonial home. PW 4 Sunanda has, however, not deposed anything about the burn injuries inflicted on her person by the applicant/original accused with burning cigarettes.

17. PW 3 Dr. Ratnakar has deposed about the confinement of PW 4 Sunanda in the room and electric current to the lock and further added that the applicant/original accused used to throw chilly powder into the eyes of the complainant and used to threaten her by saying that she would be killed by means of injection. PW 3 Dr. Ratnakar, as per the prosecution story, used to visit the matrimonial home of PW 4 Sunanda. He was not able to tell in which manner the accused used to apply electric current to the lock of the door. Even though PW 4 Sunanda has deposed about only one incident of throwing chilly powder in her eyes, PW 2 exaggerated the story by saying that applicant/original accused used to throw chilly powder in her eyes. Even PW 3 Dr. Ratnakar has stated in his cross-examination and further exaggerated the story by stating that PW 4 Sunanda was beaten before him by the applicant/original accused by

giving her slap in his presence on 16.8.1986. PW 4 Sunanda has not deposed anything about it.

18. The prosecution witnesses have deposed about certain letters alleged to have been sent by the applicant/original accused. Those letters are containing threats, some defamatory statements. However, the original letters are not produced before the Court and only xerox copies are produced. On the basis of admissions given by the defence witness, no interference could be drawn that those letters have been sent by the applicant/original accused. On the other hand, prosecution witnesses admit that the letters are not addressed to anybody and they are not able to tell even as to whether the letters have been sent by Post or delivered personally.

19. PW 4 Sunanda has deposed about the ill-treatment, threats, etc. to her, however, she could not tell the exact date or day on which she was firstly subjected to ill-treatment and beating. Even, she was not able to tell the reason for what purpose they were demanding the money from her. None of the prosecution witnesses have given the details with date or day about the said incidence of ill-treatment which were though serious in nature.

20. It is not clear as to what lead the accused to suspect about the chastity of PW 4 Sunanda within four months of their marriage. PW 4 Sunanda has deposed that, accused used to threat her to bring amount of Rs.10,000/- from the parents or to admit that she is a woman of bad character. She has deposed about only instance of throwing chilly powder in her eyes when she was at Kandhar. She has not given details as to what happened at Kandhar and what lead applicant/original accused to throw chilly powder in her eyes when they stayed in the house of brother of the applicant/original accused namely Pramod. PW 4 Sunanda has also exaggerated the story by deposing that accused used to make her stand for whole night and used to beat her. If, at all she had narrated the entire incident to her real brothers and father, then their evidence should have been consistent with her evidence. On the other hand, PW 1 Shrinivas has not given any details of ill-treatment. PW 2 Narhari-brother has deposed about causing the burn injuries with burning cigarettes by the applicant/original accused. PW 3 Dr. Ratnakar and PW 4 Sunanda are not able to give details of the said ill-treatment. It is also doubtful that applicant/original accused no.1 demanded certain amount. On scrutinizing the evidence of the prosecution with great care and caution, I do not think that

their evidence is credible and can be relied upon. Their evidence is not consistent.

21. It is difficult to digest that the accused used to lock the room from inside and used to apply electric current to the lock. It would have been logical if the room is locked from outside and electricity supply is given from the outside to the lock. Father and real brother are silent about the alleged confinement, application of the electricity to the lock of the door and other ill-treatment as deposed by PW 4 Sunanda. PW 4 Sunanda, if narrated entire alleged ill-treatment to them, there was no reason for the father and real brother to depose some different ill-treatment.

22. Though, the learned Judge of the Trial Court has observed that, the evidence lead by the prosecution in respect of the alleged demand of Rs.10,000/- is doubtful, believed further part of the prosecution story about the ill-treatment being extended to PW 4 Sunanda on account of non-fulfillment of the said unlawful demand. The learned Judge of the trial court, while appreciating the evidence of PW 4 Sunanda has observed that a woman will not allege such a thing against her husband unless there is substance in it. The Appellate Court has also not given thought to it.

Thus, the Judgment of both the courts below suffers from perversity. The prosecution has failed to prove the case against the applicant/original accused no.1 beyond the reasonable doubt. The applicant/original accused no.1, thus, entitled for the benefit of doubt. Thus, Criminal Revision Application deserves to be allowed. In the result, following order is passed.

ORDER

1. Criminal Revision Application is hereby allowed.
2. The judgment and order of conviction passed by the Judicial Magistrate First Class, Hingoli dated 18.10.1994 in RCC No.228/1986, and confirmed by the Additional Sessions Judge, Hingoli by judgment and order dated 17.3.2003 in Criminal Appeal No.3/1998 is hereby quashed and set aside.
3. The applicant/original accused is hereby acquitted of the offences punishable u/s 498-A and 506 of the Indian Penal Code. Fine amount, if deposited, be refunded to the applicant/original accused.
4. Criminal Revision Application stands disposed of.

(V.K. JADHAV, J.)

aaa/-
