

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.83 OF 2001

Prakash D. Kate**.. Appellant***Versus***The State of Maharashtra****.. Respondent**

Mr.Ranjit R. Bhonsale with Mr.Kedar Patil, Advocate for the appellant.

Mrs.M.R.Tidke, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.**DATED : 11th JANUARY 2016**

ORAL JUDGMENT :

1 The appellant and five others were prosecuted on the allegation of having committed offences punishable under Section 306 of the IPC r/w Section 34 of the IPC and 498A of the IPC r/w section 34 of the IPC. After holding a trial, the Addl. Sessions, Sangli acquitted all the other accused. He acquitted even the appellant so far as the charge of an offence punishable under Section 306 IPC r/w Section 34 IPC was concerned. He, however,

convicted the appellant of an offence punishable under Section 498A of the IPC and sentenced him to suffer RI for 2 years and to pay a fine of Rs.1,000/-. Being aggrieved by his conviction and the sentence imposed upon him, the appellant has approached this Court by the present Appeal.

2 The State has not challenged the order of acquittal of the appellant in respect of the offence punishable under Section 306 of the IPC r/w section 34 thereof.

3 I have heard Mr.Ranjit Bhonsale, learned counsel for the appellant. I have heard Mrs.M.R.Tidke, learned APP for the State. With the assistance of the learned counsel, I have gone through the entire record of the case. I have carefully gone through the evidence and the impugned judgment.

4 The appellant was the husband of Nayana, the deceased. The marriage between the appellant and Nayana had taken place in the year 1992. On 28/10/1998, Nayana died an unnatural death due to drowning in a well. Two days thereafter, Nayana's mother Vimal (PW 1) lodged a report with the police alleging that Nayana was being treated with cruelty by the appellant and his relatives, and that because of the cruel treatment

meted out to her, Nayana had committed suicide; and that the appellant and other accused had thus abetted commission of suicide by Nayana.

5 In the course of investigation, the appellant and other accused were arrested. The trial, as aforesaid, resulted in the acquittal of all the accused, including the appellant with respect to the offence punishable under Section 306 of the IPC r/w Section 34 of the IPC, and the acquittal of all other accused, except the appellant, with respect to the offence punishable under Section 498 of the IPC r/w Section 34 of the IPC also.

6 Upon going through the evidence adduced by the prosecution which consists only of the relatives of deceased Nayana, it is clear that the alleged cruel treatment seems to be (i) by way of beating Nayana, (ii) demanding an amount of Rs.10,000/- from her, and (iii) keeping of a mistress by the appellant in Sangli.

7 None of the witnesses have given any details of any incidents of cruelty. The witnesses have merely said that they had seen Nayana weeping on some occasion, and of Nayana having told them that the appellant was demanding an amount of

Rs.10,000/- from her. The witnesses have also said about Nayana having told them that the appellant had kept a mistress in Sangli.

8 In the cross-examination of Vimal (PW 1), she, among other things, admitted that she had requested the appellant to secure admission for her another daughter – Ujwala – for the D.Ed course, and told him that the college authorities were demanding donation. She also said that the appellant had told her that he was not in a position to pay that much donation. Though the appellant admittedly did not pay any donation for the admission of Ujwala in D.Ed College, *the fact remains that the appellant was requested by Vimal to secure admission for her another daughter by paying donation to the college authorities.* When such is the case, it is quite unlikely – if not altogether impossible – that the appellant would be making any unlawful demand of Rs.10,000/- from Nayana, or that he would insist that Nayana should procure that amount from her mother, who is a widow, and give it to him.

9 Two letters written by Nayana were tendered in evidence. These letters were supposed to support the theory of cruel treatment given to Nayana. However, a perusal of the letters shows that the same do not support the allegations of cruelty, in

any manner. As a matter of fact, in these letters, Nayana had repeatedly said that she was alright. There is nothing in the letters from which, even remotely, an inference that Nayana was being treated with cruelty, can be drawn.

10 The evidence of the other prosecution witnesses who are the relatives of Nayana also does not make out any case of cruelty. At the cost of repetition, it may be observed that none of the witnesses have given any details of the alleged incidents of cruelty and have merely repeated that on some occasions *they had seen Nayana weeping*.

11 Some of the witnesses have stated in their evidence that Nayana was allegedly being beaten by the appellant, and that, she had told so to these witnesses. However, in the cross-examination, it was revealed that these witnesses had not stated so before the police when their statements were recorded in the course of investigation.

12 Thus, the allegations, in the first place, were extremely vague, general and devoid of any details. That 'the appellant used to beat Nayana', as stated by some of the prosecution witnesses in their evidence was not believable, in view

of the omission of the witnesses to state the same before the police at the investigation stage despite it being extremely relevant in the allegation of cruelty. Such omission has been duly proved.

13 Regarding the allegation that the appellant had kept a mistress, also there are absolutely no details. No name or address of any such woman has been given by any of the prosecution witnesses. None of them claims that Nayana had given any such details to them. The Investigating Officer has admitted that he did not investigate into that aspect of the matter. Under these circumstances, this allegation which was levelled for the first time after the death of Nayana, cannot be accepted as true, safely.

14 Even otherwise, the crucial aspect of the matter is quite different. It is of understanding the concept of cruelty as laid down in Section 498A of the IPC. The cruelty contemplated by Section 498A is of a high degree. It is different from the cruelty contemplated in matrimonial proceedings. In matrimonial proceedings, the concept of cruelty would be largely subjective, and therefore, in the statutes dealing with Matrimonial Law, the necessity of defining the term 'cruelty' was not felt. However, when cruelty was made an offence punishable under the Indian Penal Code, the subjective element needed to be reduced to the

minimum. It is, therefore, that section 498A has defined as to what would be meant by 'cruelty'. The explanation appended to Section 498A of the Indian Penal Code reads as under :-

“Explanation – For the purpose of this section,
“cruelty” means –

- (a) any willful conduct which is 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 health (whether mental or physical) of the woman; or,
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

15 The terms 'willful conduct', 'likely to' and 'injury' as used in clause (a) and the terms 'harassment' and 'unlawful demand' as under in clause (b) emphasize the scope, import and the ambit of the said clauses. It is not every type of cruelty that is made punishable under Section 498A of the Indian Penal Code. The conduct, which is alleged to be cruel must be 'willful', and it must be of such a gravity as is 'likely' to drive the woman to commit suicide, or to cause grave injury to the life, limb or health.

The word 'likely' has been interpreted to show 'probability' and stands on a higher footing than a mere 'possibility'.

16 There is absolutely nothing in the prosecution evidence, even if it is taken at face value, to show that such type of cruelty was meted out to Nayana.

17 The finding of the learned Judge on whether Nayana had indeed committed suicide, is not clear; and the learned Judge has rather avoided giving a finding in that regard. He has, anyway not held the appellant responsible for the suicide *even assuming that the death was suicidal*. In certain cases, the fact that the victim committed suicide can be taken as circumstantial evidence of cruelty, but in this case, the evidence of suicide itself, is unsatisfactory. On the contrary, the panchnama (Exhibit-12) indicates that a steel bucket was found near the well. The well was situated in the compound of the appellant's own house. There were slopes and steps for going inside the well. The well was 300 ft deep. In these circumstances, the death of Nayana being accidental, could not be ruled out.

18 The learned counsel for the appellant has pointed out that Nayana was born and brought up in a city like Thane, and was unhappy in residing in a small village near Kumthe. The learned counsel for the appellant advanced this contention in the context of Nayana being uncomfortable and for showing that he might be unhappy because of being required to stay in a small village against her wishes. There is substance in this but, what is more significant is that this factor also makes it quite likely that the death of Nayana was accidental. Nayana was not used to fetching water from well and was accustomed to civil amenities which were not available in the village where she was staying.

19 While appreciating the evidence of the witnesses who are relatives of deceased in cases of offences punishable under Section 306 IPC and 304B of the IPC, it must be kept in mind that the relatives of the victim who are grieved by the death, are likely to make such false allegations. The evidence of such relatives, therefore, is required to be examined with great care, and the omissions or contradictions in their evidence need to be appreciated properly. In this case, the witnesses had made improvements over their original versions. Further, a number of other relatives of the appellant were also dragged in for no reason,

whatsoever. There was absolutely no evidence against them, but still they came to be prosecuted. The implication of a number of relatives of the husband in the case which is not supported by any evidence, is also a factor which is relevant in judging the reliability of the evidence of the prosecution witnesses.

20 The learned trial Judge failed to appreciate the evidence properly. This was a case where the prosecution had failed to prove, even the charge of cruelty.

21 The appellant should have been acquitted.

22 Appeal is allowed.

23 The impugned judgment and order is set aside.

24 The appellant is acquitted.

25 His bail bonds are discharged.

26 Fine, if paid, be refunded to him.

(ABHAY M.THIPSAY, J)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment/Order.**