

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 333 OF 1997

Suresh Thakorbbhai Waghela)
aged about 28 years, Occ: Electrician,)
resident of Room Nos. 1 & 2, Soma Ganu)
Chawl, Daruwala Compound, S.V.Road,)
Malad (West), Mumbai – 400 064.)
(presently lodged in Yerawada Central Prison)
C/28207, Barrack No.2, Pune-6.)... Appellant
(Orig. Accused-1)

vs.

1. The State of Maharashtra)
C/o. The Public Prosecutor,)
High Court, Bombay – 400 032.)
2. “Swadhar”, Keshav Gore Smruti)
Sabhagraha, Goregaon (West),)
Mumbai)... Respondents

Mr. M.G.Shukla, Advocate for the appellant.
Ms. A.A.Mane, APP, for the State.

CORAM: SMT. SADHANA S.JADHAV, J.
DATE : 13th January, 2016.

ORAL JUDGMENT:

The appellant herein is convicted for the offence punishable
under Sections 498A and 306 of the Indian Penal Code and sentenced to

R.I. for three years and fine of Rs.10,000/- in default to undergo three months' R.I. by the Addl. Sessions Judge, Greater Bombay in Sessions Case No.446 of 1996 vide judgment and order dated 25.4.1997. Hence this appeal.

2. Such of the facts necessary for the decision of this Appeal are as follows :-

The appellant herein was married to Sharda on 23.5.1994. It is the case of the prosecution that on 23.12.1995 Sharda committed suicide in her matrimonial house. She had committed suicide by hanging. On the same day, the present appellant was arrested and had faced the trial as an under-trial prisoner. In the present case, the background of the accused needs to be considered from the following point of view.

(a) In July, 1994, Sharda had fallen sick and, therefore, she had been to her maternal house. She resided in her maternal house for about one year. During her stay in the maternal house, on one occasion, she had left the house without informing anybody. Her brother and family members were searching for her. Similarly, the appellant and his family members were also searching for her. On 10.12.1994, she was found in an

unconscious condition near N.L. School at Malad (West). The brother had taken her to the hospital. It is also a matter of record that he had scolded her. That she had admitted that she has committed a mistake. Thereafter, the appellant and his family members had refused to take her back to the matrimonial house since she had attempted to commit suicide. They had apprehended that she might commit the same mistake in the matrimonial house for which they would have to pay a heavy cost and, therefore, they had refused to take her to the matrimonial house. It appears that her brother PW-2 had taken her to Swadhar, a non-Governmental organization and therefore they had filed a report that Sharda was being ill-treated in her matrimonial house. The NGO had called upon the present appellant and other family members. It was agreed that they would reconcile their dispute. It is also a matter of record that Sharda had admitted her mistake during the proceedings before Swadhar. Her brother intended to approach the Family Court or any other appropriate Court for initiating divorce proceedings between the couple. It was also agreed that they should appear before the Jat Panchayat. Before the Jat Panchayat, there was reconciliation between the couple and thereafter she had returned to her matrimonial abode.

(b) On 23.12.1995, the appellant herein had approached the Malad Police Station at about 7.45 a.m. and had reported to the police that his wife had committed suicide by hanging. The police had reached the spot and they had seen that Sharda was hanged to the rafter of the roof. The scene of offence was drawn which is at Exhibit 28.

3. After completion of investigation, charge-sheet was filed. The case was committed to the Court of Sessions and registered as Sessions Case No.446 of 1996. The prosecution examined 11 witnesses to bring home the guilt of the accused. The relevant witnesses for the purpose of appreciating the evidence would be PW-2, PW-3, PW7 and PW-8.

4. Upon perusal of the substantive evidence of PW-2, it is clear that Sharda had resided in her matrimonial abode just for a period of two months initially. She had returned to her maternal house for the purpose of taking medical treatment as she was sick. The nature of sickness has not been brought on record by any of the prosecution witnesses. After residing for two months in her matrimonial house, she had informed her brother that she was being subjected to cruelty and ill-treatment at the hands of her husband and other members of the matrimonial family as they were of the opinion that she was not efficient in carrying out the domestic chores in the

house. They had also expressed their displeasure at the nature and quality of the gifts with which they were honoured at the time of marriage. That she was being treated as a servant in the family and did not get due respect. PW-2, who happens to be the brother of the deceased Sharda, has deposed before the Court that on 23.12.1995, he received a message that his sister had expired in the matrimonial house and hence he rushed to the house of the accused. According to him, accused Nos. 1, 2 and 3 were present in the house.

5. Upon perusal of the records and proceedings, it appears that the main contention of the prosecution is that Sharda had committed suicide as she could not take the ill-treatment in the house of the appellant. To substantiate this contention, the prosecution has placed implicit reliance upon three chits, the recovery of which is shrouded with mystery.

6. The learned counsel for the appellant rightly submits that prior to recovery of the said chits from the person of the deceased, the inquest panchnama was performed on the dead body of deceased Sharda. According to PW-8, soon after the body was removed from the rafter, the sister of the present appellant had removed the ornament from the person

of the deceased. At that stage, she had found three chits on the person of the deceased which she had promptly handed over to the police even without verifying the contents of the said letter. The learned counsel for the appellant rightly submits that in the eventuality that the sister had written those chits and had even suspected that there was incriminating material against the accused, she would not have handed over those chits to the police. In any case, there is no panchnama of the recovery of the said chits. Secondly, the scribe of the said chits has not been ascertained. From the records, it is clear that the chits were not sent to handwriting expert for the simple reason that the material for comparing the handwriting was not obtained from any member of the family of the deceased.

7. As against this, the learned APP submits that the very fact that the chits were found on the person of the deceased, it was not necessary to send the letters/chits to the handwriting expert as presumption ought to be drawn that the chits must have been written by the deceased. It is further submitted by the learned APP that the body was found hanging to the rafter of the roof soon after it was released from the hook. The chits were found and handed over to the police. According to the learned APP, the fact that the chits were written by the deceased has been proved by the prosecution.

However, no such inference can be drawn. It is incumbent upon the prosecution to primarily establish that the chits were found on the person of the deceased. In the eventuality that they have been found after performing the inquest panchnamna, the question will be as to how the chits could not be found in the inquest panchnama itself. There is also a contrary evidence that chits were found on the person of the deceased while she was being taken for post-mortem as it was deposed by PW-2 as well as PW-3. Hence, this Court is of the opinion that there is recovery of the said chits is shrouded with mystery and no implicit reliance can be placed on it.

8. The learned counsel for the appellant has drawn attention of this Court to the deposition of PW-2, wherein it is categorically admitted that while deceased Sharda was residing in her matrimonial house, she had consumed obnoxious substance and attempted to commit suicide as she was found unconscious near N.L. School at Malad. Thereafter, she has also admitted before Jat Panchayat that she has committed an error and that she will not repeat the said mistake again. It is only after she had admitted her mistake and given the same in writing, there was reconciliation between the husband and wife and thereafter she had returned to her matrimonial abode. The learned counsel for the appellant submits that the apprehension

of the accused, more particularly the appellant herein, had shown that their apprehension was well-founded and that was precisely the reason why they they did not wish to take her back to the matrimonial home as in the eventuality she had attempted to commit suicide, they will be held responsible for the same. It appears that when she had returned to her matrimonial home, she had not only made an attempt to commit suicide, but had actually committed suicide and that their apprehension had come true. It is also a matter of record that soon after the death was reported, no ADR was registered as the registration number of accidental death does not find place in the scene of offence panchnama but it finds place in the post-mortem notes. It appears from the record that the post-mortem had commenced at about 4 p.m. on 23.12.1995 and was concluded at 4.20 p.m. The learned counsel also rightly submits that as to hospital record, their ADR was registered in any case registration of ADR has not been proved by any witness, including the investigating officer. Therefore, according to the learned counsel, it can be safely inferred that the ADR was given in the post-mortem notes only for the purpose of hospital records.

9. The very fact that the deceased had left her matrimonial house within two months of marriage and had continuously stayed in the maternal

house for a period more than one year, it is clear that it cannot be said that the accused persons had subjected her to cruelty and ill-treatment to such an extent that she will be constrained to commit suicide. Moreover, she had made an attempt to commit suicide when she was in safe custody of her parents, brothers and other members of the family. It therefore cannot be concluded that the accused-appellant had subjected his wife to cruelty and ill-treatment as contemplated under Section 498A of the Indian Penal Code.

Section 498A of IPC reads thus :-

“498A. Husband or relative of husband of a woman subjecting her to cruelty – Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.”

10. In view of the above discussion, the following order is passed :-

- (i) The appeal is allowed.
- (ii) The conviction and sentence under Sections 306 and 498A of the Indian Penal Code awarded by the Addl. Sessions Judge, Greater Bombay vide judgment and order dated 25th April, 1997 in Sessions Case No.446 of 1996 is hereby quashed and set aside.
- (iii) The appellant is acquitted of all the charges levelled against

him.

- (iv) His Bail bonds stand cancelled.
 - (v) Fine, if paid, shall be refunded to the accused-appellant.
- Appeal stands disposed of.

(SMT.SADHANA S.JADHAV, J.)

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P.C.

For the reasons stated in the Judgment separately, the following order is passed :-

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