

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 577 OF 1996

1. Dattatray Yeshwant Hegiste
2. Baliram Yeshwant Hegiste
3. Mankibai Yeshwant Hegiste
All residing of Mhasla, Shetali
Tal. Mhasla, Dist. Raigad.

.....Appellants

V/s.

The State of Maharashtra

....Respondent

Ms. Juni Pandey appointed Advocate

a/w Mr. Jayant J. Bardeskar, Advocate for Appellants

Mrs. A. A. Mane APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : MAY 3, 2016.

JUDGMENT:

1) Appellants herein are convicted for offence punishable under sections 498 (A), 306 r/w 34 of the Indian Penal Code. They are sentenced to suffer rigorous imprisonment for three years and fine of Rs. 500/- each in default to suffer simple imprisonment for three months for offence punishable under

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section 498 (A) r/w 34 of the Indian Penal Code. Appellant nos. 1 & 2 are convicted for offence punishable under section 306 r/w 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 5 years and to pay fine of Rs. 500/- each, in default to suffer simple imprisonment for three months. Appellant no. 3 is convicted for offence punishable under section 306 r/w 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 500/-, in default to suffer further imprisonment for three months, by 3rd Additional Sessions Judge, Raigad-Alibaug in Sessions Case No. 6 of 1996 vide Judgment and Order dated 22/08/1996. Hence, this appeal.

2) Such of the facts necessary for the decision of this appeal are as follows.

(i) Dattatray Hegiste was married to Neha in the year 1991. The couple was blessed with a daughter in June 1992. Neha had returned to her matrimonial home on the occasion of Ganpati festival. In July 1992, Dattatray went to Saudi Arabia for a job. Vaishali @ Neha had been to her parents house. At the time of Ganpati festival, she returned to her matrimonial home. Vaishali was ill-treated by her in-laws. She had sent three letters to her

parents, informing them about the ill-treatment meted out to her at the instance of Baliram & Mankibai. It was also informed that she had been compelled to stay in the house of one Nandappa who happens to be the brother of accused nos. 1 & 2. Her parents had been to visit her. They found Vaishali at the house of Nandappa. She had been informed her father that her brother-in-law namely Baliram had abused her and thrown her out of the house and similarly accused no. 3 had abused her by saying that they could not afford to feed the mother and the daughter. That her parents brought her to Chiplun and informed accused no. 1 about the ill-treatment meted out to her at the hands of his parents. Dattatray had replied the said letter by questioning his father-in-law as to how he could bring Vaishali to the maternal home without his permission. He had also asked his father-in-law to send Vaishali to Mhasla and that there would be no trouble or ill-treatment to her. On the written assurance given by Dattatray, Vaishali was taken to Mhasla, where she resided for a few days. She was ill-treated by her in-laws.

(ii) In December 1994, Dattatray returned from Soudi Arabia. He was addicted to alcohol and had started abusing his wife physically. Vaishali had also informed to Vishwanath that she is being ill-treated at the hands of the

accused. It is the case of the prosecution that in June 1995, Dattatray visited the house of brother of Vaishali and had requested her mother and brother to ask Vaishali to behave properly and only then he would allow her to co-habit with him at Mhasla. Vaishali was once again taken to Chiplun. It appears that there was ill-treatment to Vaishali.

(iii) On 03/10/1995, Vishwanath, father of Vaishali received a telephonic message that Vaishali was serious. On 04/10/1995 at about 5.00 a.m., Vaishali and other relatives reached at Mhasla. They were shocked to see that Vaishali was lying dead on the floor at Mhasla. They were shocked to see that Vaishali was lying dead on the floor in the kitchen and that she had sustained burn injuries all over her body. The post mortem was conducted on the dead body of Vaishali. The cause of death was “Accute Cardio Respiratory failure from Asphyxia due to inhalation of the smoke caused by 98% burn”.

(iv) Vishwanath had then approached the police station and lodged a report at the police station 04/10/1995. He had narrated the nature of harassment and the instances of ill-treatment and harassment. He had also alleged that the accused had suspected her character and thereby abetted the commission of suicide. On the basis of his report, crime no. 11 of 1995 was registered against

the accused for offence punishable under section 306, 498 (A) r/w 34 of the Indian Penal Code.

(iv) Investigation was set in motion and charge-sheet was filed against the accused on 30/12/1995. The case was committed to the court of Sessions and registered as Sessions Case No. 6 of 1996. Prosecution examined as many as 13 witnesses to bring home the guilt of the accused.

3) P.W. 1 Eknath Ahire had prepared the map of the spot of the incident. It is admitted in the cross-examination that the entire house consists of two rooms only. The place of incident is the kitchen room.

4) P.W. 2 Vishwanath Redis is the father of deceased Vaishali. He is the first informant. He has deposed before the court about all the instances of ill-treatment. He has proved the contents of F.I.R. which is at Exhibit 22.

5) In the cross-examination, P.W. 2 has admitted that he had lodged the report at about 10.00 to 11.00 a.m. on the same day. At that time, the police were at the residence of the accused. A formal complaint was recorded at the police station at noon. It is admitted that the formal report was filed after the funeral was over i.e. in the evening. P.W. 2 has also admitted that before visiting the police station, he had not made any enquiries with the neighbours

of the accused in respect of the cause of injuries sustained by Vaishali. It is also admitted that in the first letter written by Vaishali, she had informed her father that her father-in-law used to assault her upon being instigated by her mother-in-law. In the second letter, Vaishali had called him immediately, however, it is an omission. It is admitted that in the second letter, she had not narrated any specific incident, quarrel or assault. It is also admitted by P.W. 2 that he had ignored the said letter. That soon thereafter, he had received the third letter, informing him that there were quarrels in the house and hence, she was residing at the house of Nandappa. This, also elicited as an omission. It is also admitted that Dattatray and Vaishali had visited his house in 1995 on the occasion of Holi festival. There were cordial relations between them. Subsequently, mother of Vaishali had informed P.W. 2 that Dattatray had told her to keep Vaishali in the maternal house till she learns to conduct herself properly. Vaishali had also informed him about the same. It is stated in the cross-examination that as he had seen his daughter was lying on her stomach, he had formed an opinion that he suspected that she was killed and then set on fire, however, he did not inform accordingly to the police. It is admitted in the cross-examination that P.W. 2 had learnt that on the preceding night, deceased

Vaishali had been for Garbha dance and on the next day, i.e. on the day of incident also, she wanted to go for Garbha dance.

6) P.W. 3 Shashikant Guhagarkar was the Panch for seizure of letter. He has been declared hostile by the prosecution. P.W. 4 Pandurang Khatate is also a Panch for inquest Panchanama. He has also been declared hostile by the prosecution. Similarly, P.W. 5 Rajkamal Redis has also been declared hostile by the prosecution.

7) P.W. 6 Shankar Jadhav is the Panch for seizure for ornaments from the person of the deceased Vaishali. P.W. 7 Vasudeo Khochare is the Panch for seizure of the letter. The Panchanama is at Exhibit 31.

8) It is elicited in the cross-examination that he had accompanied P.W. 2 to Mhasala and the said letter was brought by P.W. 2 from Chiplun. He happens to be the neighbour of Vishwanath.

9) P.W. 8 Priyanka Hegisthe happens to be the wife of original accused no. 2. She has deposed before the court that the marriage of Vaishali & herself were performed on the same day. P.W. 8 was residing with her parents for more than and and half year as she had been abandoned by her husband. Her husband used to assault her under the influence of alcohol. She has further

deposed that when Dattatray was in Saudi Arabia, her in-laws were suspecting that he was sending money to the father of Vaishali and therefore, Vaishali was ill-treated. She has further deposed that Dattatray used to follow the instructions of Vaishali and therefore, there were quarrels in the family. In December, Dattatray had returned from Saudi Arabia. Thereafter, there used to be frequent quarrels between Dattatray and Vaishali. P.W. 8 was residing with her parents as her husband had abandoned her.

10) In the cross-examination, she has admitted that she had learnt about the demise of Vaishali on the 11th day after her death. She had informed the police that Vaishali was ill-treated by her mother-in-law on the ground that Dattatray was sending money to her parents. She has also narrated that after 5 years of marriage, she was ill-treated at the hands of her husband. That before Dattatray went to Saudi Arabia, the couple was residing happily. He went to Saudi Arabia in the year 1992 and till then the relations were cordial. In June, 1995, Vaishali went to her parents residence.

11) P.W. 9 Manisha Redis is the mother of deceased Vaishali. She has deposed before the court that after Dattatray left for Saudi Arabia, Vaishali was residing with her. That at the time of Ganpati festival, Vaishali was sent

to her matrimonial home along with her relatives. Thereafter, Vaishali had informed them by writing letters that she is being harassed by her mother-in-law. P.W. 9 has identified hand writing of Vaishali at Exhibit 34. The parents were informed by Nandappa that there is threat perception to life of Vaishali and therefore, Vaishali was taken back to Chiplun. The father of Vaishali had informed Dattatray about turn of events. The said letter was replied by Dattatray by saying that Vaishali should be sent to Mhasala and that he would make arrangement for sending money and that there will be no ill-treatment to Vaishali. Hence, Vaishali was sent to Mhasala along with her father. It was decided that the things should be resolved and settled after return of Dattatray. Thereafter, Vaishali had informed her parents that Dattatray had taken away all the golden ornaments which was her Streedhan and was assaulted at the hands of Dattatray. At that relevant time, Vaishali was carrying pregnancy for the second time. The original accused no. 3 i.e. mother-in-law of Vaishali was insisting upon the termination of pregnancy. Vaishali had shown her willingness to return to Mhasala and accordingly she was taken to her matrimonial house. Upon arrival, Dattatray i.e. original accused no. 1 had raised a quarrel and had given a punch fight on the nose of Vaishali.

Thereafter, Vaishali had died due to burn injuries. When P.W. 9 went to the house of Vaishali, upon enquiry, her mother-in-law i.e. accused no. 3 had led P.W. 9 to the kitchen where Vaishali was lying dead. According to P.W. 9, because of ill-treatment meted out to her, Vaishali had committed suicide by setting herself ablaze.

12) There are inherent omissions and contradictions in the evidence of P.W. 9, however, on the basis of her substantive evidence, it can be said that there is cogent and convincing evidence to uphold the accused persons liable for offence punishable under section 498 (A) of the Indian Penal Code.

13) P.W. 10 Ramchandra Patil happens to be Medical Officer who had performed autopsy on the dead body of Vaishali. It is not disputed that cause of death was burn injuries.

14) P.W. 11 Nandkumar Pisal is the Panch for spot Panchanama which is at Exhibit 39.

15) P.W. 12 Pradeep Sutar was the tenant of Dattatray. P.W. 12 was living in the adjacent room. P.W. 12 has deposed before the Court that on 03/10/1995, P.W. 12 had been to his house for borrowing a safety pin at about 9.00 p.m. and that Vaishali was getting ready to attend Garbha dance. At about 10.30

p.m., he and his wife had heard the shrieks of a female and therefore they rushed to the house of Dattatray only to see that there are flames in the kitchen. They called upon the neighbours and passersby and thereafter, P.W. 12 learnt about the suicidal death of Vaishali by burns.

16) It is admitted in the cross-examination that Vaishali had got ready for attending Garbha dance.

17) P.W. 13 is the Investigating Officer. He has deposed before the court that initially accidental death was registered and thereafter, on the basis of the information given by the father of the deceased, crime was registered against the accused for offence punishable under sections 498 (A), 306 r/w 34 of the Indian Penal Code. P.W. 13 completed investigation in accordance with Law and had filed the charge-sheet. P.W. 13 has proved the omissions and contradictions in the evidence of all other witnesses. According to him, there was sufficient material to show that Dattatray had assaulted Vaishali and that she was meted with cruelty and ill-treatment at the hands of the accused persons.

18) Upon perusal of the evidence, it appears that Vaishali had informed her parents about the harassment meted out to her by her mother-in-law when her

husband had gone to Saudi Arabia. Similarly, Nandappa had purportedly informed her parents that there is threat perception to the life of Vaishali and therefore, Vaishali was taken by her parents to Chiplun.

19) Cruelty is a state of mind which gives physical as well as mental harassment. Harassment would be a continuous process and a single event may not amount to harassment. A prolonged harassment would amount to cruelty. In the present case, it is apparent that father of deceased Vaishali had informed her husband about the harassment meted out to Vaishali at the hands of her mother-in-law and yet accused Dattatray was insisting upon sending Vaishali to her matrimonial house. The father of Vaishali had accepted the assurance of Dattatray that there would be no ill-treatment meted out to her.

20) Cruelty may take different forms by passage of time. It is necessary that only physical assault or abuse would amount to cruelty. In the present case, things have not stopped after Dattatray had returned. He had taken away the golden ornaments of Vaishali which was her Streedhan. Accused no. 3 i.e. mother-in-law of Vaishali was insisting upon termination of pregnancy. It was quite natural that a would be mother would hurt when she is being coerced to terminate the pregnancy against her will. She was passing through a special

state of mind. She was at that time, carrying 28 weeks of pregnancy. The post mortem notes indicate that the uterus was of 28 weeks., gravid uterus containing male foetus. The very fact that she was being forced to terminate pregnancy was a cruelty in a brutal form and in all probabilities, she had no desire to live any more for the simple reason that she was being forced to reside in her matrimonial house on any and every cost even by her parents. In these circumstances, it is clear that accused/appellants should be held liable for the offence punishable under section 498 (A) of the Indian Penal Code. It is true that it cannot be said that the parents had instigated, facilitated or abetted the commission of suicide. The cruelty was of such a magnitude that victim Vaishali chose to end her life. Hence, the conviction of the appellants for offence punishable under section 498 (A) r/w 34 of the Indian Penal Code. Appellants have undergone the imprisonment of one year. The appeal is pending for almost 20 years and hence, it would not be proper to send the appellants to jail to serve the rest of the substantive sentence imposed upon them. Hence, in the interest of justice, they are sentenced to the period already undergone.

21) Legal fees to be paid by the High Court Legal Services Committee to

the appointed Advocate Ms. Juni Pandey is quantified at Rs. 3000/-.

ORDER

- (i) The Appeal is partly allowed.
- (ii) The conviction of the appellants for the offence punishable under Section 306 read with Section 34 of Indian Penal Code is hereby quashed and set aside.
- (iii) The conviction of the appellants for the offence punishable under Section 498A of IPC is hereby maintained.
- (iv) The appellant Nos. 1 and 2 were in jail from 4.10.1995 to 22.8.1996. The appellant No.3 was in jail from 4.10.1995 to 23.11.1995. The appellants were taken into custody by the Court of Addl. Sessions Judge, Raigad-Alibag on 22.8.1996. They were enlarged on bail on 15.10.1996. Hence, the appellant Nos. 1 and 2 have undergone the imprisonment of one year. They are sentenced to the period already undergone.
- (v) The sentence of fine for the offence punishable under Section 498A of IPC is maintained.
- (vi) The fine amount if paid by the appellants for the offence punishable under Section 306 of IPC be refunded to the appellants.

(vii) Bail bonds stand cancelled.

22) Appeal stands disposed of.

(SMT. SADHANA S. JADHAV, J.)