

SSS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 577 OF 2003

The State of Maharashtra.

... Appellant.

Vs.

Ramakant Dhondu Joshi
and 3 others.

... Respondents

Ms. Veera Shinde Addl. PP for the Appellant.

Mr. Shreeram Shirsat I/b Ms. Deepti Wadkar for the Respondents.

CORAM : SMT. BHARATI H. DANGRE, J.

DATE : 28th JULY, 2017.

P. C. :

1. By the present appeal the State of Maharashtra challenges the judgment delivered by the Judicial Magistrate First Class, Chiplun in Regular Criminal Case No. 16 of 2000 (State of Maharashtra Versus Ramakant Dhondu Joshi and 3 others) delivered on 18th January 2003 by which the Magistrate has acquitted all the four accused persons of the charges punishable under section 498-A r. w. Section 34 of Indian Penal Code.

It is the case of the prosecution that, complaint was filed by the complainant-wife Yogita Ramakant Joshi on 12th October 1996 alleging harassment at the hands of her husband and her in-laws. Reference was also made to specific incident of 4th May 1996 when her husband (Accused No.1) had hit her with kicks and blows and it is alleged

that in his said act he was assisted by complainant's sister-in-law (Accused No. 4). The complaint also made reference to certain incidents which had occurred immediately after the marriage, which was solemnized 12 years back. It was alleged in the complaint that inspite of element discord in the marriage, the complainant was residing with her in-laws sustaining the pressure for considerably long time. The complaint with Guhagar Police Station was investigated and all the four accused persons were charged with Section 498-A r. w. Section 34 of Indian Penal Code. After investigation charge-sheet came to be filed.

The matter was put for trial and on behalf of the prosecution, nine witnesses were examined. The complainant-wife entered into the witness box and narrated her long ordeal about the marital discord, during the subsistence of the marriage, which was solemnized in the year 1985. It was also mentioned that, three children were born out of the wedlock. In the examination-in-chief the complainant-wife stated that the accused no. 1 husband used to abuse and beat her at the instance of accused nos. 2 and 3. She specifically stated that she informed her parents about the harassment and though they attempted to convince the accused, the harassment did not stop. Before the court the complainant also stated that she was beaten by accused no. 4 in the year 1992 and she had disclosed to her parents that she did not intend to stay in her matrimonial house and she thought of committing suicide but was refrained by her sister-in-laws. There is also mention of certain meetings were held to resolve the marital

dispute. In the cross examination the complainant admitted that there was no reporting in respect of incident dated 4th May 1996 and prior to the lodging of FIR on 12th October, 1996 no report was made by the complainant in regard to the alleged harassment by the accused persons and the report was for the first time filed on 12th October 1996. She also admitted that the accused no. 1 had issued a notice on 20th May 1996 requesting her to co-habit with him to which she had replied. The complainant admits that the Accused No.1 had called meeting in the village requesting her to come and co-habit with him in his house. However, after the meeting, she went to the police station alongwith her uncle, an employee of the police department and lodged the FIR on 12th October 1992 on the basis of which, case is registered against accused nos. 1 to 4. The notice sent by the husband and the reply to the same given by the complainant-wife were also exhibited during the course of trial.

2. Note is taken of the fact that the marriage of the complainant with the accused no. 1 is 12 years old and on the date of complaint though it was the case of the complainant that she was harassed by her husband and other in-laws and relatives frequently and there was interference by her parents to settle the issues, neither of the parents of the complainant stepped into the witness box. Prosecution witness no. 2 who is the sister-in-law of the complainant was examined by the prosecution and she had clearly admitted in her cross examination that she had not witnessed any

incident of harassment made by the accused to the complainant. However, she admitted that she was present in the meeting which took place on 12th October, 1996. Except making a bare statement in the examination-in-chief that due to the disturbed mental condition, the complainant would commit suicide and she herself and Anuradha restrained her from doing so, nothing has been stated as to in what manner the complainant attempted to commit suicide. Other prosecution witnesses are some of the relatives of the complainant or the accused no.1 who were party to the meetings which took place for settlement of marriage between the complainant and the accused no.1. However, the said witness did not throw any light upon the case of the prosecution, which the prosecution attempts to prove namely subjecting the complainant to cruelty at the hands of the accused persons.

3. Considering the evidence adduced during the course of trial, the magistrate by his detailed judgment dated 18th January 2003 was pleased to record a clear finding that, mere statement by witnesses that she would be committing suicide is not sufficient to attract the offence punishable under section 498-A of I.P.C. The trial court has observed that the prosecution has not produced any evidence to show on which day the complainant decided to commit suicide and the theory of suicide on account of ill-treatment by the accused person did not find favour with the trial court. The Trial Court in details dealt with the allegations and counter allegations made in the two documents namely notices Exhibited as

Exhibit 27 and Exhibit 28. Exh. 27 is a notice addressed by the accused no. 1 to the complainant-wife and is dated 20th June, 1996 i.e. after the incident of 4th May, 1996 and the reply to the said notice Exh. 28 is dated 25th June, 1996.

A glance at the notices reflect the disturbed relationship, in the backdrop of incident dated 4th May 1996. It appears that the complainant-wife left the matrimonial house after the incident and the husband attempted to pursue her to come back and co-habit. In the rage of this attempt certain allegations have been made by the husband relating back to a decade and attempt was made to demonstrate that the complainant was an irresponsible wife and in normal allegations that she was not interested in subsistence of the marriage. The said notice has been replied in a similar fashion by the wife counter alleging that, it is the conduct of the accused no. 1 and his family members which had driven her to desperation. The said letters however, do not indicate any extreme situation which would warrant to sustain the charge under section 498-A of I.P.C. The said letters are nothing short of a usual wear and tear of matrimonial life.

4. Section 498-A which was introduced in the Indian Penal Code in the year 1983 with the specific object of preventing the women from suffering cruelty at the hands of the husband or relatives of the husband and such acts were made an offence. The meaning of the word cruelty had been set out in explanation in section 498-A and perusal of the

clauses (a) and (b) in explanation clause would reveal that it is that act or conduct of such grave nature which would drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman or it should be an act in form of harassment with a view to solicit an unlawful demand in the form of property, valuable security etc. The conduct which would therefore attract section 498-A should be a something more than a normal wear and tear of marital life or a normal marital discord. There can be no dispute that in a family life, there can be differences, quarrels, misunderstandings and apprehensions but it is the degree which raises it to level of mental cruelty.

5. From the evidence or record, it can be seen that in present case there are periodical differences between the complainant and Accused No.1. However, they continued a relationship for 12 years, begotten 3 children and in this background the stormy incident of 04.05.1997 had taken place. In the present case, a single solitary incident of cruelty or abuse that to after 12 years of marriage would not in my view be sufficient to attract or meet the ingredients of Section 498-A. The complainant in her complaint as well as by entering in the witness box has narrated the details about her marital life of 12 years and has admitted that there was no incident prior to 4th May, 1996 which prompted her to report the said incident to the police or to take any steps under section 498-A or any other provisions under the law against the accused no.1 or the other accused persons. Not only that after the incident dated 4th May 1996,

attempts were made to resolve the marital discord in meetings held between the complainant and the accused persons and some of the relatives on 12th October 1996. It can thus be seen that the complaint is lodged out of frustration and attempt has been made to bring the past incidents of the marital life into forefront and the incident of 4th May 1996 is attempted to be highlighted as the pinnacle of the entire relationship.

6. To establish offence under Section 498-A, the prosecution has to prove beyond reasonable doubt that the husband or his relatives have subjected the victim to cruelty as defined either in clause (a) or clause (b) of Explanation appended to Section 498-A. However, the prosecution has not brought on record any evidence to meet the ingredients of Section 498-A of I.P.C. The complainant in complaint and before the court had utterly failed to prove that the conduct of the accused persons was of such a nature that she was driven to commit suicide or to cause grave injury or danger to her life, limb or health (whether physical or mental). The Ld. Trial Court has analyzed the entire evidence and has rightly arrived at a conclusion that it is not sure whether the act of suicide was even attempted or not as the prosecution has not adduced any evidence to that effect. The prosecution witness No. 2 also failed to narrate any particular incident which would pinpoint to the fact that the complainant was taking the extreme step on account of alleged cruel acts on the part of the accused persons.

7. After hearing the learned prosecutor as well as counsel for the

respondent and with the able assistance, on going through the entire record of the matter, I am of the firm view that the learned Magistrate has taken a balanced view of the relationship shared between the complainant and the accused no.1. The counsel for the respondent has relied upon a judgment of High Court of Gujarat at Ahmedabad in Criminal Appeal No. 207 of 1988 decided on 23rd July 1999 wherein the said High Court has considered the issue whether a solitary incident can be considered to be cruelty or harassment as envisaged under section 498-A of I.P.C.

8. The Court observed as under :-

“The Supreme Court has also taken the same view in the case of State of Maharashtra v. Ashok Chotelal Shukla, 1997 (11) SCC 26 observing that the prosecution has to establish that the accused committed acts of harassment or cruelty as contemplated by Section 498-A, and such harassment or cruelty must be the cause forcing the wife to commit the suicide. What can be deduced from these authorities is that a solitary incident cannot be interpreted to be the sufficient evidence of cruelty or harassment attracting Section 498-A because in that case, incessant, persistent and sufficiently grave cruelty as is likely to drive the woman to a point of desperation leaving her with no option except to think about suicide will be absent. In other words, a single incident will not incite an woman to commit suicide the improvident act, believing that life is now not worth living. Even if in some case it incites, the same will not attract Section 498-A as persistency and incessancy will be lacking. The section when envisages that cruelty or harassment must be unabated, continuous or recurring and unbearable, one or two incidents casually taking place, may therefore, attract another penal provisions of Indian Penal Code, but will not attract Section 498-A

of Indian Penal Code.”

9. It is no doubt true that gradient of the cruelty leading to an action under section 498-A of IPC should be of such grave nature and must be persistent, continuous or recurring and unbearable which would lead to depression or drive her to desperation or she feels a threat to her life, limb or health. It is not every harassment or every type of cruelty that would attract Section 498-A. The view taken by the trial Court is therefore based on the evidence before it and taking into consideration the parameters of an offence under section 498-A the trial Court has rightly acquitted all the accused persons of the offence with which they are charged. It is also informed that during the pendency of the present appeal, accused no.2 i.e. father-in-law Shri Dhondu Dhakta Joshi has expired on 7th April, 2006.

10. By this time it will be settled proposition of law that scope for interference in an appeal against acquittal is very limited and no doubt the High Court can in exercise of its power review, re-appreciate and reconsider the evidence upon which the order of acquittal was founded. But it must be cautioned by the fact that there is a double presumption in favour of the accused persons, firstly the presumption of innocence of accused under the cardinal principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law and secondly the accused having secured acquittal in his favour, the presumption of innocence stands reinforced and re-

affirmed. The scope of interference in the appeal against the acquittal is only when the judgment of Court below is manifestly erroneous or suffers from grave illegality. It is only in such limited situations the High Court would step in and substitute the Judgment of the Trial Court.

11. In the present case, I am of the opinion that no such exercise is warranted as the view of the trial court is based on evidence being properly appreciated and is a reasonable view and hence, no interference is called for.

12. The appeal filed by the State of Maharashtra therefore, deserves to be rejected.

[B. H. DANGRE, J.]