

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

**CRIMINAL REVISION APPLICATION NO.175 OF 2017
IN
CRIMINAL APPLICATION NO.28 OF 2017
WITH
CRIMINAL REVISION APPLICATION NO.175 OF 2017**

Babanrao Dnyandoba Shinde,
Age.42, Occupation : Agriculture,
R/at. Nimani, Taluka Tasgaon,
District Sangli, Maharashtra. ... **Applicant**
V/s.

The State of Maharashtra,
Through Tasgaon Police Station,
District Sangli, State Maharashtra. ... **Respondent**

.....
Mr.Samarth Karmarkar i/b. Mr.Prasad Apte, Advocate for the
Applicant.
Mr.A.R.Kapadnis, APP for the Respondent/State.

....

CORAM : A.M.BADAR J.

DATED : 24th APRIL 2017.

ORAL JUDGMENT :

1 By this revision petition, the revision petitioner/
original accused/husband is challenging the Judgment and Order
dated 12/04/2016 passed by the learned Additional Sessions
Judge, Sangli in Criminal Appeal No.229 of 2009 thereby
confirming his conviction of the offence punishable under Section

498-A of the Indian Penal Code (“IPC” for the sake of brevity), so also the sentence of rigorous imprisonment for three years imposed on him for this offence by the trial Magistrate. Initially, the present revision petitioner along with the co-accused namely Mrs.Jayashree Shinde and Dnyanoba Shinde were prosecuted for offences punishable under Sections 498-A, 494, 323 504 read with Section 34 of the IPC vide Regular Criminal Case No.249 of 1996 and by the Judgment and Order dated 20/08/2009, the learned Judicial Magistrate First Class, Tasgaon was pleased to convict the present revision petitioner along with accused No.2 Mrs.Jayashree Shinde for the offence punishable under Section 498-A of the IPC and they both were sentenced to suffer rigorous imprisonment for three years. Accused No.3 Dnyanoba came to be acquitted of offences alleged against him. The present revision petitioner as well as co-accused Jayashree Shinde were convicted of offences punishable under Section 323 and 504 read with Section 34 of the IPC, but no separate sentence was awarded for those offences. In addition, compensation of Rs.70,000/- was directed to be paid by the revision petitioner/accused No.1 and in default he is directed to undergo rigorous imprisonment for a period of six months. This is how the revision petitioner is coming up before this Court challenging the appellate order of confirmation of his conviction for the offence punishable under Section 498-A of the IPC and sentencing him to suffer rigorous imprisonment for three years apart from payment of compensation and sentence in default.

2 I heard the learned Advocate appearing for the revision petitioner at sufficient length. By taking me through the FIR lodged by the informant/Suvarna Shinde, the learned Advocate argued that marriage of the revision petitioner with first informant Suvarna was solemnized in the year 1993. Allegations levelled against the revision petitioner/accused are to the effect that the informant/wife stayed with him for a period of five days after the marriage and thereafter for a period of two months after 07/11/1994 when there was compromise between the parties in maintenance proceedings before the Lokadalat. He further argued that during this period of two months, there was no instance of ill-treatment to the first informant Suvarna. By taking me through the cross-examination of P.W.No.1 Suvarna, he argued that she stayed at the house of the revision petitioner only for a period of five days after the marriage and thereafter she was not staying with the revision petitioner till there was compromise in the maintenance proceedings. With this, he argued that averment in the FIR dated 19/11/1996 to the effect that after five days, she was subjected to cruelty on account of demand of dowry are patently false. The learned Advocate further argued that entire evidence adduced by the prosecution is hear-say evidence and there is no evidence about physical assault to the first informant/wife. No medical evidence is adduced by the prosecution in support of allegations that the first informant was used to be subjected to cruelty by assaulting and beating her by

the revision petitioner/husband. The learned Advocate further argued that after returning from her matrimonial house, it is averred that the first informant/wife stayed with her aunt, but her aunt is not examined by the prosecution to prove ill-treatment to the first informant/Suvarna. It is further argued that the FIR in question came to be lodged on 19/11/1996 whereas the marriage was solemnized on 12/04/1993 and the first informant/wife left the matrimonial house after five days of marriage. With this, it is further argued that there is delay of about 22 months in lodging the FIR which demonstrate that false and concocted case is sought to be made out by the prosecution.

3 As against this, the learned Additional Public Prosecutor by taking me through the evidence of prosecution witnesses has argued that there is enough evidence to infer cruelty, particularly when the prosecution witnesses have deposed about second marriage of the revision petitioner with accused No.2 Jayashree and the resultant ill-treatment as reflected from the evidence on record.

4 I have carefully considered the rival submissions and also perused the Record and Proceedings. According to the prosecution case, first informant Suvarna Jadhav married the present revision petitioner/accused No.1 on 12/04/1993 and thereafter she started cohabiting with the revision petitioner at

village Nimani in Tasgaon Taluka and Sangli District. After five days of her married life, she was subjected to cruelty by the revision petitioner and his relatives on account of demand of dowry and thereafter she was taken by her father. According to the prosecution case, then the first informant filed proceeding for maintenance which came to be compromised before the Lokadalat on 07/11/1994 and the first informant/wife was then taken for cohabitation to her matrimonial house by the revision petitioner/husband. She was at her matrimonial house for two months, but she was subjected to cruelty by the revision petitioner and other accused persons. It is averred in the FIR that the first informant was subjected to cruelty even by second wife of the revision petitioner. According to the prosecution case, after deserting first informant Suvarna, the revision petitioner/husband had married again with accused No.2 Jayashree Shinde.

5 On the basis of FIR lodged by the informant/wife on 19/11/1996 offence punishable under Sections 498-A, 494, 323, 504 read with Section 34 of the IPC came to be registered with Tasgaon Police Station and after filing of charge-sheet charges for offences alleged against accused persons came to be framed in R.C.C.No.249 of 1996. The charge U/s.498-A of the IPC was specifically explaining the fact that the first informant was used to be subjected to cruelty by accused persons which included accused No.2 Jayashree Shinde – second wife of the revision petitioner.

6 In order to bring home the guilt to accused persons, prosecution has examined in all four witnesses. P.W.No.1 Suvarna Shinde is the first informant and undisputedly the wife of the revision petitioner. P.W.No.2 is Namdev Jadhav. He is father of P.W.No.1 Suvarna. P.W.No.3 Rajaram Salunkhe is uncle of the first informant. P.W.No.4 Shankar Jadhav is also uncle of the first informant. The defence of accused persons as seen from the line of the evidence of prosecution witnesses as well as their statements under Section 313 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for the sake of brevity) is that of total denial. However, the revision petitioner/accused No.1 has categorically accepted the fact that he married Suvarna in the year 1993 and after marriage, Suvarna started residing with him at village Nimani. He has also accepted the fact that Suvarna had filed maintenance application and it was compromised and Suvarna was taken back by him for cohabitation. The revision petitioner/husband in answer to Question No.29 has candidly accepted the fact that he performed second marriage. The revision petitioner/husband has stated in his examination under Section 313 of the Cr.P.C. has stated that he was deceived by the first informant and her parents. According to the revision petitioner/husband, his wife Suvarna is deaf and this fact was suppressed from him at the time of the marriage. It is thus clear from the record that undisputedly the first informant Suvarna is first wife of the revision petitioner/husband and that he married again during

subsistence of his marriage with the first informant i.e. Suvarna Shinde. With this undisputed position, let us examine evidence on record in order to ascertain whether the impugned Judgment and Order of the learned trial Court suffers from perversity or procedural irregularity as evidence cannot be re-appreciated and finding of fact if based on evidence of prosecution witnesses cannot be interfered with in the revisional jurisdiction. Prior to adverting to this aspect, as the charge for the offence punishable under Section 498-A of the IPC is held to be proved against the revision petitioner, let us put on record the definition of term 'cruelty' as found in Explanation to Section 498-A of the IPC. It reads thus :

“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.”

Perusal of this definition of the cruelty shows that subjecting of wife to cruelty includes willful conduct of a husband

of such a nature as is likely to drive a wife to commit suicide or to cause grave injury or danger to her life, limb or health. The definition of the term 'cruelty' includes mental as well as physical injury. It is thus clear that cruelty postulated U/s.498-A of the IPC implies harsh and harmful conduct of certain nature, intensity and persistence. It covers acts causing both physical as well as mental agony, torture as well as tyranny. If it is established that acts of husband are of such a nature so as to put the wife to intense miseries and woes strongly stirring up her feeling that life is not worth living, the offence punishable under Section 498-A of the IPC is made out. Hyper sensitivity to ordinary petulance of married life does not amount to cruelty. Keeping in mind this settled principles for establishing the offence of cruelty, let us examine the evidence on record in order to ascertain whether the finding of commission of cruelty by the revision petitioner and the resultant sentence is based on evidence on record.

7 The FIR lodged by P.W.No.1 Suvarna Shinde on 19/11/1996 is at Exhibit 44. The FIR shows the averments to the effect that after five days of her married life, she was subjected to abuses and beating by the revision petitioner and other accused persons on account of non-payment of dowry in the marriage. It is further stated in the FIR that thereafter father of the first informant had taken her to her parental house. It is well settled that the FIR cannot be treated as substantive evidence, but it can

be used to corroborate or contradict the first informant. The first informant Suvarna in her evidence before the Court has stated that she resided at the house of revision petitioner for about five days after her marriage and thereafter her husband i.e. revision petitioner, father-in-law i.e. accused No.3 Dnyanoba Shinde and sister of her husband started harassing her. As per version of the first informant Suvarna when she was residing at the house of her husband, her husband, father-in-law and second wife of her husband were harassing her on the ground that sufficient dowry was not given at the time of the marriage. Sufficient food was not provided to her and there used to be beating to her. The first informant deposed that there was settlement between her and her husband i.e. revision petitioner in the proceedings filed by her for maintenance and it was agreed that she would be taken back for cohabitation by the revision petitioner. She further deposed that accused persons were not allowing her to enter inside the house, they used to beat her and lastly they told her to go to her parental house. The first informant further deposed that the accused did not come to take her for cohabitation and, therefore, she lodged the report. Cross-examination of this witness reveals that after five days of her married life with her husband, she went to village Manjarde. It was suggested to her that after compromise in maintenance proceedings, she resided for a period of three months with the revision petitioner/accused and this fact is accepted by the first informant/wife. However, she denied that she was not

subjected to cruelty or that all accused persons behaved properly with her. In her cross-examination, it has been brought on record that she thereafter stayed at her parental house itself.

8 Evidence of P.W.No.1 Suvarna as such goes to show that initially she was in company of the revision petitioner/husband for a period of five days and subsequently after arriving at the settlement in the maintenance proceedings, she again stayed with him for a period of three months.

9 How P.W.No.1 Suvarna came to her parental house after her marriage is explained by her father P.W.No.2 Namdev in his evidence. He has stated that after marriage, he himself and his brother had been to the house of accused persons and at that time they demanded dowry of Rs.1,00,000/- and Hero-Honda motorcycle from him. As per version of this witness, then the revision petitioner had left P.W.No.1 Suvarna at his house. Thereafter, this witness accompanied by Dnyanu Vishnu Mohite, Yashwant Salunkhe, Rajaram Salunkhe (P.W.No.3) etc. went to the house of the accused persons to convince them for settlement in the matrimonial dispute, but they did not pay any heed to his request. P.W.No.2 Namdev had categorically deposed that thereafter the revision petitioner/accused No.1 performed second marriage. Then there was settlement between the couple in Lokadalat where the maintenance proceedings filed by P.W.No.1

Suvarna were under reference and at that time the revision petitioner/husband assured to behave properly with P.W.No.1 Suvarna and accordingly he took her for cohabitation. However, as stated by this witness, then again there was ill-treatment to P.W.No.1 Suvarna.

10 Evidence of P.W.No.2 Namdev as such goes to show that P.W.No.1 Suvarna was reached to her parental house by the revision petitioner/husband and then she was again taken back for cohabitation on settlement arrived at before the Lokadalat. She was thereafter subjected to cruelty.

11 P.W.No.4 Shankar Jadhav is uncle of P.W.No.1 Suvarna. His evidence categorically shows that the revision petitioner had performed second marriage with accused No.2 Jayashree. This witness has categorically stated that on two to four occasions, he along with others had been to the matrimonial house of Suvarna for convincing accused persons to take back P.W.No.1 Suvarna for cohabitation. As per version of this witness, after P.W.No.1 Suvarna was taken back for cohabitation by the revision petitioner/husband, he had seen her kept separately in dilapidated house by the revision petitioner/husband. This witness has stated that he has seen ill-treatment to the Suvarna as he had been to the residence of Suvarna. As per version of this witness, it was he who informed parents of Suvarna about ill-treatment to her and then she was brought back by her parents.

As per evidence of this witness also after deserting Suvarna, the revision petitioner/husband had performed second marriage with accused No.2 Jayashree.

12 P.W.No.3 Rajaram - another uncle of informant P.W.No.1 Suvarna happens to have visited the matrimonial house of P.W.No.1 Suvarna with Yashwant Salunkhe and thereafter he did not visit her matrimonial house again. Evidence of this witness appears to be hear-say because as per his version, he came to know about ill-treatment to Suvarna from P.W.No.4 Shankar Jadhav.

13 This is all what was before the Court below in order to infer cruelty to a married woman. Undisputedly, the revision petitioner/accused No.1/husband, after marrying first informant Suvarna had subsequently married another woman named Jayashree (accused No.2). It is seen from the evidence of P.W.No.4 Shankar Jadhav that despite compromise before Lokadalat in the maintenance proceedings initiated by P.W.No.1 Suvarna, though she was taken back for resumption of cohabitation, she was kept separately in a dilapidated house by the revision petitioner/ accused No.1/husband. There, as seen from evidence of P.W.No.1 Suvarna, she was subjected to beating. Evidence of P.W.No.1 Suvarna categorically goes to show that the revision petitioner/accused No.1 was not even allowing her to

enter in their house. Marrying another woman during subsistence of first marriage and keeping first wife separately in a dilapidated house, not allowing her to enter inside the house of her husband where he was residing with his another wife and subjecting her to beating, in my considered opinion, amounts to intentional harsh and harmful conduct of the revision petitioner/husband with requisite intensity and persistence in order to drive a married woman to commit suicide or to cause grave injury or danger to her life, limb or health – mental as well as physical. Mens rea of the Revision Petitioner/accused husband is clearly reflected by his such conduct of the ill-treating his first wife P.W.No.1 Suvarna. In this view of the matter, no perversity or procedural irregularity is seen from the impugned order of the Court below.

14. It is argued that there is a delay in lodging the FIR by P.W.No.1 Suvarna – wife of the revision petitioner/accused and as such, the case of the prosecution is doubtful. It is well settled that the delay in lodging the FIR cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. Such delay only puts the Court on guard to search for and consider if any explanation has been offered for the delay. Once the explanation is offered, the Court is required to see whether the same is satisfactory or not. If the delay in lodging the FIR is explained satisfactorily, then the case of the prosecution cannot be rejected. When there is possibility of embellishment or exaggeration in the version of the prosecution on the count of the

delayed FIR, then it becomes a factor to suspect the case of the prosecution. In the case in hand, the FIR was against the husband and in-laws by the wife. In the tradition-bound Indian society, wife is always reluctant to lodge the FIR against her husband or in-laws even if she is subjected to cruelty by them. There is always an attempt on the part of the married women in Indian culture to save their marriage at any cost. In the case in hand, though the first informant was knowing that after deserting her, the revision petitioner/husband married another woman, she agreed to cohabit with him while settlement of her maintenance proceedings before the Lokadalat. It is further seen from the evidence on record that thereafter she was also subjected to cruelty. Her FIR goes to show that she was waiting with the hope that she will again be taken for cohabitation by the revision petitioner/husband. As her hope could not be materialized, left with no alternative, she lodged the FIR. The informant/wife was trying to save her marriage instead of prosecuting her husband and in-laws. Offence punishable under Section 498-A of the IPC is a continuing offence. Considering the nature of offence and the explanation found in the FIR lodged by informant P.W.No.1 Suvarna, it cannot be said that the FIR lodged by her is delayed making the prosecution case suspect.

15 The revision petitioner/ accused No.1/husband was rightly convicted of the offence punishable under Section 498-A of the IPC and, therefore, accordingly sentenced as per law for

commission of the said offence. The revision petition is thus devoid of merit and the same is dismissed.

16 Subsequently, pending Criminal Application bearing No.28 of 2017 also stands disposed of.

(A.M.BADAR J.)