

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.839 OF 1998

TUKARAM CHANGDEO KANADE)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Nasreen Ayubui, Appointed Advocate for the Appellant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 20th JANUARY 2018

JUDGMENT :

1 By this appeal, the appellant/accused is challenging the judgment and order dated 28th September 1991 passed by the learned 9th Additional Sessions Judge, Pune, in Sessions Case No.319 of 1994, thereby convicting the appellant/accused for the offence punishable under Section 498A of the Indian Penal Code. He is sentenced to suffer rigorous imprisonment of 2 years apart from directing him to pay fine of Rs.500/- and in default, to undergo further rigorous imprisonment for 2 months. Rest of the

three accused persons were acquitted by the learned trial court by the said judgment and order.

2 Briefly stated, it is case of the prosecution that on 24th April 1993, Meera Kisan Illay, resident of Talegaon, Taluka Sangamner, District Ahmednagar, married appellant/accused Tukaram Kanade. It was an arranged marriage, which was solemnized with consent of the bride as well as the bridegroom. The appellant/accused, at the time of his marriage, was serving in Telco Company, and was residing at Lonikand, Pune. After one month of her marriage, Meera started cohabiting with appellant/accused Tukaram Kanade at Lonikand, Pune. Co-accused who are parents and relatives of the appellant/accused were also residing with him. It is case of the prosecution that after her marriage, accused persons including the appellant/accused used to coerce Meera to bring an amount of Rs.20,000/- from her parents and on account of that demand, he used to beat Meera. Mother-in-law of Meera was not providing food to her and she was insisting Meera to do much more physical

work. She was insulting and mentally torturing Meera. Father-in-law of Meera used to abuse her on trivial things and used to threaten her that if she fails to bring the amount of Rs.20,000/- from her parents, she will be divorced. The prosecution further alleged that sister-in-law of Meera also used to subject her to cruelty. Meera used to disclose all these happenings in her married life to her parents when she used to visit her parental house from time to time. Ultimately, according to the prosecution, Meera committed suicide on 14th June 1994. Report of her death (Exhibit 25) on 15th June 1994 was given by her father PW2 Kisan Illay to Sangamner Police Station. Then on 16th June 1994, her brother Sukhdeo lodged First Information Report (FIR) Exhibit 20 with Sangamner Police Station. As the alleged offence took place within territorial jurisdiction of Haveli Police Station, Pune, the said FIR along with papers of accidental death case were sent to Haveli Police Station, where Crime No.148 of 1994 came to be registered against the accused persons including the present appellant/accused Tukaram Kanade.

3 After completion of routine investigation, the applicant/accused along with three co-accused was charge-sheeted for offences punishable under Sections 498A and 306 read with 34 of the Indian Penal Code. They were accordingly charged. In order to bring home the guilt to the appellant/accused, the prosecution has examined in all six witnesses. PW1 Sukhdeo is the First Informant. He is brother of deceased Meera Tukaram Kanade. Kisan Illay – father of deceased Meera is examined as PW2. Dr.Shivaji Mahale, Autopsy Surgeon, is examined as PW3. Exhibit 28 is report of postmortem examination of dead body of Meera Kanade. Police Head Constable Balkrushna Andbale, who recorded report of accidental death case of deceased Meera is examined as PW4. Police Constable Shivaji Joshi who had conducted part of the investigation is examined as PW5. Investigating Officer Police Sub-Inspector Hindurao Godse is examined as PW6. Defence of the accused persons was that of total denial. They examined Heerabai Kand, neighbour as DW1 and Dr.Nirmala Ganla as DW2.

4 After hearing the parties, by the impugned judgment and order, the learned trial court came to the conclusion that the prosecution has failed to prove that death of Meera Kanade, which occurred on 14th June 1994, was suicidal death, and therefore, all accused persons were acquitted of the offence punishable under Section 306 read with 34 of the Indian Penal Code. It is also held that the prosecution has failed to prove that accused nos.2 to 4, who were in-laws and sister-in-law of deceased Meera, had subjected her to cruelty. However, by the impugned judgment and order, the learned trial court concluded that the evidence of the prosecution is sufficient to prove that the present appellant/accused Tukaram Kanade–husband subjected deceased Meera to cruelty and accordingly, he is convicted of the offence punishable under Section 498A of the Indian Penal Code and is sentenced as indicated in the opening paragraph of this judgment.

5 I have heard Ms.Nasreen Ayubi the learned advocate appearing for the appellant/accused. By drawing my attention to the definition of term “cruelty” as stated in explanation to Section

498A of the Indian Penal Code, Ms.Nasreen Ayubi vehemently argued that even if evidence of the prosecution is accepted as it is, then also it fails to meet the standard required by explanation to Section 498A of the Indian Penal Code and therefore, the learned trial court committed grave error in convicting the appellant/accused of the offence punishable under Section 498A of the Indian Penal Code.

6 Shri Gavand, the learned APP, supported the impugned judgment and order of conviction by relying on evidence of PW1 Sukhdeo and PW2 Kisan Illay.

7 I have carefully considered the rival submissions and also perused the record and proceedings including the deposition of witnesses and documentary evidence adduced by the prosecution.

8 The learned trial court by the impugned judgment and order has come to the conclusion that deceased Meera Kanade

died because of Hepatitis-B on 14th June 1994, and her death is not suicidal. All accused persons are acquitted of the offence punishable under Section 306 read with 34 of the Indian Penal Code. Now let us examine whether the appellant/accused Tukaram Kanade – husband of deceased Meera had subjected her to cruelty during her matrimonial life of about 13 months. Explanation to Section 498A of the Indian Penal Code defines “cruelty” and it reads thus :

“Cruelty” means -

- (a) any wilful 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.”

9 For establishing cruelty to deceased Meera, the prosecution has relied on evidence of her near and dear ones

namely, PW1 Sukhdeo – brother and PW2 Kisan Illay – father of deceased Meera. There is no piece of disinterested evidence coming on record from the side of prosecution to infer cruelty to deceased Meera by her husband Tukaram Kanade. Therefore, let us see what her brother and father are deposing in order to ascertain whether the deceased was subjected to physical as well as mental cruelty of requisite intensity and persistence in order to bring home the guilt to the appellant/ accused for the offence punishable under Section 498A of the Indian Penal Code. It is well settled that trivial instances and normal wear and tear of married life do not amount to legal cruelty required for convicting the accused for the offence punishable under Section 498A of the Indian Penal Code. PW1 Sukhdeo – brother of deceased Meera in his evidence has stated that it was after one month of her marriage, his sister Meera started cohabiting with the appellant/accused by residing with him at Lonikand, Pune. Accused nos.2 Changdeo Kanade and accused no.3 Godhabai Kanade, who are parents of the appellant/accused Tukaram were also residing with him. As per version of PW1 Sukhdeo, his sister

Meera came to her parental house on four to five occasions and during her visits, she disclosed to him that her husband and in-laws are not treating her properly. PW1 Sukhdeo further deposed that Meera disclosed to him that her husband and in-laws are demanding an amount of Rs.20,000/-, so that her husband can get a permanent job and they are harassing her for satisfying this demand of Rs.20,000/-. Cross-examination of PW1 Sukhdeo reveals that during initial period of six months of cohabitation of Meera with the appellant/accused, there was no complaint of ill-treatment. This witness candidly admitted that he himself had visited house of the appellant/accused on five to six occasions and on each occasion, he was treated properly.

10 This evidence coming on record from the mouth of PW1 Sukhdeo, thus, goes to show that out of short married life of 13 months of deceased Meera, she had not resided with the appellant/accused for one month, and for further six months, everything was well in her matrimonial life. Thus, now one will have to ascertain whether in remaining six months period of

married life of deceased Meera, whether she was subjected to cruelty by the appellant/accused.

11 During cross-examination of PW1 Sukhdeo, the defence has got proved letters at Exhibits 21 and 23 written by PW1 Sukhdeo to his brother-in-law i.e. the appellant/accused Tukaram Kanade. From all these three letters, it is seen that the relation between PW1 Sukhdeo and his brother-in-law i.e. the appellant/accused Tukaram Kanade were very cordial. The fact that during life time of his sister Meera, this witness PW1 Sukhdeo got proper treatment by the appellant/accused on all occasions when he visited the house of the appellant/accused goes to show that married life of Meera was going on smoothly. PW1 Sukhdeo, who appears to be working in the school and teacher by profession has not explained what he meant by “harassment” by the appellant/accused to his sister Meera. Merely using the word “harassment” is not sufficient to infer cruel treatment to a married woman as envisaged by explanation to Section 498A of the Indian Penal Code. That apart, though as deposed by PW1 Sukhdeo

narrations of Meera to him regarding treatment given to her by the appellant/accused as well as her in-laws i.e. original accused no.2 Changdeo Kanade and original accused no.3 Godhabai Kanade were same, strangely enough, with the same evidence against all these accused persons, the learned trial court has chosen to acquit the in-laws of deceased Meera but convict the appellant/accused.

12 PW2 Kisan Illay, who is father of deceased Meera, has deposed that during her four to five visits to parental house, his daughter Meera disclosed to him that her husband demanded Rs.20,000/- for securing permanent employment and for that purpose, harasses her. This witness further deposed that eleven days prior to her death, Meera had been to his house and told him that her husband and father-in-law had threatened her by uttering not to return, if she failed to bring the amount of Rs.20,000/-. Here also, evidence of PW2 Kisan is as vague as it can be to establish cruelty to a married woman. Losing of normal frame of mind is required for establishing legal cruelty. For that purpose,

the prosecution is enjoined to establish how a married woman was treated by either her husband or in-laws. Using the word “harassment” is not sufficient to enable the court to infer the treatment given by the husband or in-laws to a married woman.

13 To crown this all, the defence has examined Heerabai Kand as defence witness No.1, who is neighbour of deceased Meera and appellant/accused Tukaram Kanade. Evidence of DW1 Heerabai Kand shows that everything was going on smoothly in the married life of Meera with the appellant/accused. This witness has spoken about illness of deceased Meera and the fact that the appellant/accused had provided medical treatment to her. This is also reflected from evidence of DW2 Dr.Nirmala Ganla. Deceased Meera was suffering from Hepatitis-B and she was admitted to the hospital of this witness by her husband.

14 The net result of foregoing discussion reveals that the prosecution has failed to prove that the appellant/accused by his willful conduct has subjected deceased Meera to cruelty as

explained by explanation to Section 498A of the Indian Penal Code. The learned trial court has failed to consider the matter in proper perspective and ignored the requirement of law for establishing the offence punishable under Section 498A of the Indian Penal Code. The impugned judgment and order of convicting the appellant/accused, as such, cannot be sustained, and therefore, the order :

ORDER

- i) The appeal is allowed.
- ii) The impugned judgment and order dated 28th September 1991 passed by the learned 9th Additional Sessions Judge, Pune, in Sessions Case No.319 of 1994, thereby convicting the appellant/accused for the offence punishable under Section 498A of the Indian Penal Code, is quashed and set aside.
- iii) The appellant/accused is acquitted of the offence punishable under Section 498A of the Indian Penal Code. His bail bonds stand cancelled.
- iv) Fine amount, if any, imposed on the appellant/accused, and paid by him, be refunded to him.

(A. M. BADAR, J.)