

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1024 OF 2003

The State of Maharashtra
(At the instance of Meghwadi
Police Station, C.R. No.62/94)

....Appellant
(Orig. Complainant)

V/s.

1. Sayyed Edris Kudalkar (on bail)
2. Edris Harun Kudalkar (on bail)
3. Smt. Hakima B. Edris Kudalkar (on bail)
All residing at Manish Park, 109,
Jijamata Marg, Andheri (East),
Mumbai-400 093.

...Respondents
(Orig. Accused nos.1 to 3)

* * * * *

Mr. Pandurang H. Gaikwad-Patil, APP for the appellant.

Mr. Imtiyaz Ahmed, I. Patel, Advocate for respondents no.1 to 3.

Coram : Sandeep K. Shinde, J.

30th October, 2018.

JUDGMENT :

1. This Appeal under Section 378(1) of the Criminal

Procedure Code, 1973 is preferred by the State against the order of acquittal dated 17th April, 2003 recorded in Sessions Case No. 1089 of 1994 by the learned Additional Sessions Judge, Greater Bombay whereby all the accused were acquitted of the offences punishable under Sections 498A, 306 and 114 of the Indian Penal Code.

2. The accused were prosecuted for subjecting Rubina (wife of accused no.1) to cruelty in furtherance of their common intention and abating her to commit suicide. Rubina married accused no.1 in April, 1991 and suffered a suicidal death on 14th April, 1994 by consuming poison. At the relevant point of time, she was survived by a son who was two years and six months old.
3. The prosecution in support of the charge had examined father, mother and other relatives of the deceased and friend of the deceased as P.W.4. The

evidence has unfolded a fact that Rubina was a graduate and before marriage she was taking tuitions. Her father was heart patient and it appears she was not disclosing the alleged cruelty caused to her by the in-laws of the accused to her father. Be that as it may, the evidence of the mother unfolded the fact that deceased mother-in-law was picking up quarrel for not doing the household work and her husband was not allowing her to do job. It is unfolded in the evidence that her husband used to pick up quarrel as deceased used to wash the clothes in late night hours. On the other hand, the evidence of P.W.4 a friend of deceased has disclosed a fact that, the husband of deceased had extra-marital relations with a girl who was visiting her house, which according to her was the cause for the recurring quarrels between the husband and wife. She also deposed that the accused were demanding Rs.5,000/- from Rubina but since Rubina's father was a retired person, he could not meet

the said demand. She further deposed that Rubina was unhappy in the matrimonial home since the family members were taunting her on petty issues. This witness was residing in the building of deceased Rubina.

4. The Learned trial Judge, upon appreciating the evidence acquitted all the accused of the offences punishable under Sections 498A and 306 of the Indian Penal Code. Against the order of acquittal, the State has preferred this Appeal.
5. Heard Learned APP for the State and Learned Counsel for the accused.
6. Sub-clause (b) of Explanation to Section 498A does not make each and every harassment "cruelty". The harassment has to be with a definite object namely to cause harassment to her or any person related to her to meet the unlawful demand. Thus, mere harassment by

itself is not cruelty. It is only when the harassment is shown to have been committed for the purpose of forcing the woman to meet the demand i.e cruelty, is made punishable under Section 498A.

7. In the case in hand, the evidence is not at all sufficient to prove the ingredients of Section 498A, in as much as, the parents and mother of the deceased said nothing about the demand of Rs.5,000/- by the accused from her daughter and subjected her to harassment for not meeting the said demand. On the backdrop of these facts, the evidence of P.W.4 (friend of the deceased) becomes doubtful and thus cannot be relied upon. Infact, P.W.4 has deposed that there were quarrels between deceased and her husband on account of alleged relations of her husband with one girl but that itself cannot be said to be a reason to hold the accused guilty of the offence punishable under Section 498A. Thus, the reasons and findings recorded by the learned trial

Judge for acquitting the accused of the offence punishable under Section 498A cannot be faulted with. This finding is neither perverse nor contrary to the evidence on record and therefore I decline to interfere with the order of acquittal qua offence punishable under Section 498A of the IPC. Even assuming cruelty is established and the fact of suicide is also established, but that itself is not sufficient to bring home the guilt of committing suicide. Reasonable nexus has to be established between cruelty and suicide. Alternatively, cruelty has to be of such a gravity as it would likely to drive a woman to commit suicide. If suicide is established, it has further to be established that it was occasioned on account of cruelty of a sufficient gravity, so as to lead a reasonable person placed in similar circumstances to commit suicide.

8. The prosecution has failed to prove that, Rubina was subjected to cruelty by the accused. That even

otherwise, there is nothing in the evidence to hold that the accused herein have instigated Rubina to commit suicide. The evidence on record certainly falls short to prove the ingredients of Section 306 of the IPC.

9. The order of acquittal with the finding recorded by the learned Sessions Judge while acquitting the accused of both the offences, is based on evidence. This Court, while sitting in appeal against the order of acquittal, is not supposed to substitute its own opinion unless finding is dehorse the evidence and perverse. In view of this, I do not see any reason to interfere with the order of acquittal. In the result, the Appeal is dismissed and disposed off accordingly.

(SANDEEP K. SHINDE, J)