

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 68 OF 2002

Shivaji s/o. Kundlik Ghumre	.. Appellant
Age. 30 years, Occ. Agri.,	[original
R/o. Pimpargavan, Tq. & Dist. Beed.	Accused]

Versus

The State of Maharashtra	.. Respondent
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Mr.M.A. Tandale, Advocate for the appellant.
Mr.S.N. Morampalle, APP for the respondent/State.

CORAM	:	S.M.GAVHANE, J.
RESERVED ON	:	26.03.2019
PRONOUNCED ON	:	29.03.2019

J U D G M E N T :-

. The appellant – original accused has assailed the judgment and order dated 23.01.2002 passed by the II Additional Sessions Judge, Beed, in Sessions Case No. 5 of 1997, thereby convicting him for the offence punishable under section 498-A of the Indian Penal Code (for short "the IPC") and sentencing him to suffer

rigorous imprisonment for 2½ years and to pay fine of Rs.3000/-, in default of payment of fine to suffer simple imprisonment for one year. He was given benefit of set off under section 428 of the Code of Criminal Procedure for the period from 13.07.1996 to 20.09.1996, while he was in jail.

2. The facts of the prosecution case are that deceased – Shobha who was daughter of informant/complainant – Haribai Ugaley (PW-4), was married to accused, 5 to 6 years prior to her death. On 10.07.1996, the deceased died due to poisoning. On the next day i.e. on 11.07.1996 the complainant – mother of the deceased went to Police Station, Beed (Rural) and her statement was recorded by police alleging that after marriage for a period of six months the accused treated the deceased properly and thereafter he started assaulting, abusing and harassing her. The deceased used to disclose the same to the complainant when she used to come to her parental house. The complainant, her son and other

relatives had convinced and requested the accused to treat the deceased properly and not to assault her. But, there was no change in his behaviour and there was increase in his addiction of consuming liquor and Ganja. Due to said addiction, the accused was often assaulting, abusing and harassing the deceased. On 11.07.1996 in the morning Vithal Agam – another son-in-law of the complainant informed the complainant that the deceased was taken to the Government Hospital at Beed. Thereupon, when the complainant went to the Government Hospital, Beed, found that her daughter Shobha was dead and that she was administered poison, on 10.07.1996 in the evening at about 07.00 pm by the accused. On treating the said statement of the complainant as FIR (Exh.18), Police registered Crime No.95 of 1996 under sections 302 and 498-A of the IPC against the accused and the investigation was commenced.

3. During the investigation the inquest panchanama was prepared. The post-mortem examination was conducted

and the Doctor issued post-mortem report. The accused was arrested and subsequently, he was released on bail. Statements of brother, sister and other relatives of the deceased were recorded. After completion of the investigation, the charge-sheet was submitted in the Court of JMFC, Beed, who then committed the case to the Sessions Court, Beed for trial.

4. The charge was framed against the accused for the offences punishable under sections 498-A and 302 of the IPC. He pleaded not guilty and claimed to be tried.

5. To prove guilt of the accused, the prosecution has examined in all 11 witnesses.

6. Thereafter, statement of accused under section 313 of the Code of Criminal Procedure was recorded. His defence was total denial. According to him, he had grown cotton crop. They sprinkled on the cotton crop on that day. He had gone for taking bath. When he came, he saw

her (deceased) taking meals without washing hands. She told him that she is feeling giddiness. He brought her in Kotha. People gathered and told him to take the deceased to hospital. The accused has not examined any witness in his defence.

7. After considering the evidence adduced by the prosecution and defence of the accused, the Trial Court acquitted the accused of the offence punishable under section 302 of the IPC and convicted and sentenced him for the offence punishable under section 498-A of the IPC, as mentioned in the opening para of this judgment, by the impugned judgment, which is under challenge in this appeal by the accused. Admittedly, there is no appeal by the State, challenging the acquittal of the accused of the offence punishable under section 302 of the IPC. Accused was released on bail by this Court as per order dated 11.02.2002.

8. I have heard Mr. Tandale, learned Advocate for

the accused and Mr. Morampalle, learned APP for the respondent/State and with their assistance I have perused the impugned judgment and evidence adduced by the prosecution.

9. Mr. Tandale, learned Advocate for the accused submitted that for holding the accused guilty of the offence punishable under section 498-A of the IPC, the Trial court has mainly relied upon the evidence of PWs 2,4,5 and 11. There is no consistency in the evidence of these witnesses as regards unlawful demand of money allegedly made by the accused from the deceased. The evidence of these witnesses is not sufficient to state that the harassment allegedly meted out to the deceased by the accused was with a view to force the deceased to commit suicide to term said harassment as cruelty. According to learned Advocate for the accused when the Trial Court has not accepted the evidence adduced by the prosecution, to attract offence under section 302 of the IPC against the accused, said evidence cannot be accepted

and relied upon to hold the accused guilty for the offence punishable under section 498-A of the IPC and mere harassment to a woman does not amount to cruelty as defined in the Explanation (b) to section 498-A of the IPC. The Investigating Officer did not record the statements of neighbours of the accused and as such the prosecution has not examined neighbours of the accused as independent witnesses, who had occasion to witness the alleged cruelty meted out to the deceased by the accused. It is submitted that the prosecution has thus failed to prove offence under section 498-A of the IPC against the accused and therefore he is entitled to be acquitted by setting aside the impugned judgment and order.

10. To support his submissions that mere harassment does not amount to cruelty and the evidence in the present case is not sufficient to attract offence of cruelty against the accused, the learned Advocate for the accused has relied upon the decisions in the case of **Bhagwan Sakharam Said and Anr. Vs. State of Maharashtra,**

2000(4) Mh.L.J.410 and in the case of **Girdhar Shankar Tawade Vs. State of Maharashtra, AIR 2002 SC 2078.**

11. Mr. Morampalle, learned APP for the respondent submitted that the evidence of Pws 2,4,5 and 11 clearly establishes the ingredients of offence under section 498-A of the IPC and the Trial Court has rightly referred the said evidence in paragraphs 9,10 and 11 of the judgment and concluded that the prosecution has proved offence under section 498-A of the IPC against the accused beyond reasonable doubt and rightly convicted and sentenced the accused by the impugned judgment and order and as such according to learned APP, there is no ground to interfere with the impugned judgment and order. It is submitted that the appeal being devoid of merits, same is liable to be dismissed.

12. I have considered the submissions made by the learned Advocate for the accused and the learned APP. As there is no appeal against acquittal of the accused of

the offence under section 302 of the IPC and this appeal is by the accused challenging the conviction and sentence recorded against him for the offence under section 498-A of the IPC, only point which is required to be considered is, "Whether the prosecution has proved beyond doubt the offence under section 498-A of the IPC against the accused?". To prove the said offence of cruelty against the accused, the prosecution has mainly relied upon the evidence of PWs 2,4,5 and 11.

13. Now coming to the evidence of Haribai Ugaley (PW-4) the complainant, who is admittedly mother of the deceased, her evidence is that prior to 4-5 years of incident, the deceased was married to accused. For one year the accused behaved well with the deceased and after one year he started drinking liquor, beating and abusing the deceased. He used to bring her to their house and used to leave her at their house. They used to make the accused understand not to drink liquor and not to beat the deceased. PW-4 further deposed that she and her son

used to advise the accused. Babasaheb (PW-2) brother of Vithal – her another son-in-law and her another daughter Panchfula (PW-5), who were living in the same village i.e. Pimpargavan, used to tell accused not to drink and beat. Accused did not listen to them and remained as it is. According to PW-4, deceased used to come to her, and was saying about abusing and beating by the accused. The accused had brought deceased to their house. They used to keep the deceased for 4-5 days. The deceased told her that her husband demanded money for purchasing vehicle and the deceased told her that the accused demanded Rs.10,000/-. The brother paid the amount and also reached the deceased to the house of accused for their future life and this was happened 7-8 days prior to the incident.

14. In the cross-examination PW-4 states that she does not know why it is not mentioned in complaint Exh.18 that the deceased told them that the accused was demanding Rs.10,000/- for Gadi. Moreover, she stated

that she does not know why it is not mentioned in Exh.18 that Rs.10,000/- were given through her son and her daughter was sent to matrimonial home. She could not assign reason why above facts are not mentioned in complaint Exh.18. Thus, it is clear that the evidence in respect of above facts of PW-4 is amounting to material omission in the complaint/FIR Exh.18 lodged by her and it amounts to improvement while deposing before the Court. Therefore, the evidence of PW-4 that the accused was demanding Rs.10,000/- to the deceased for purchasing Gadi and that said amount was given to the accused by PW-4 through her son and then the deceased was sent to matrimonial home is not believable. Moreover, it has come in the evidence of PW-4 that she has faith in Babasaheb (PW-2). It has further come in her evidence that after cremation was over, they sat in the house of Babasaheb at Pimpargavan. Her relatives, sons and daughters were there and they discussed about the incident and Babasaheb and police brought a paper and directed her to put her thumb impression and accordingly she put her thumb

impression on that paper and thumb impression on Exh.18 – complaint is the same. This evidence shows that after discussion with Babasaheb and other relatives, PW-4 had lodged the complaint afterthought and there is possibility of lodging said complaint by PW-4 at the instance of PW-2 – Babasaheb. Thus, the evidence of PW-4 is not sufficient to infer that the accused caused cruelty to the deceased for unlawful demand of money as deposed by PW-4.

15. Next is the evidence of PW-11 – Balbhim Ugaley, who is son of the complainant and brother of the deceased. His evidence shows that the accused behaved well with the deceased for one year after her marriage and he started drinking and beating the deceased. He was beating the deceased as he was not given Rs.10,000/- for purchasing motor-cycle. According to him, his sister – the deceased told him this fact and thereupon his mother (PW-4) paid Rs.10,000/- to his sister – the deceased and sent the deceased to her marital home. His evidence

shows that the deceased had come to him 5-7 days prior to the incident and amount of Rs.10,000/- was paid 2-3 days prior to the incident and in-spite of giving Rs.10,000/-, the accused harassed the deceased.

16. In the cross-examination, PW-11 stated that he stated to police that 5-7 days prior to the incident the deceased had come to them and stated that she was harassed for demand of money by the accused. But he could not assign reasons of absence of the same in his statement before the police. If really the deceased would have come to his house 5-7 days prior to the incident and she would have disclosed to this witness that she was harassed for demand of money by the accused, he would have definitely disclosed the same to the police. Thus his evidence in this respect is material omission in his statement before police. So also, he has stated that he has not filed any police report in respect of harassment to the deceased. When he is brother of the deceased, and when according to him harassment was

started to the deceased after one year of her marriage with the accused, he would have definitely filed report with the police against the accused about harassment to his sister – the deceased. Therefore, non-filing of any report by him against the accused prior to the incident in the present case shows that for the first time he is saying that there was harassment to the deceased by the accused for demand of money. Another aspect to be noted is that according to this witness, his mother – PW-4 gave amount of Rs.10,000/- to the accused and sent the deceased to her marital home; whereas as referred earlier, his mother PW-4 stated that her son this witness (PW-11) had gone to the house of accused and gave Rs.10,000/- to the accused and reached the deceased at the house of the accused prior to 7-8 days of the incident. Thus, there is inconsistency in the evidence of PWs 4 and 11, as to who paid Rs.10,000/- to the accused prior to 7-8 days of the incident. Thus, the evidence of PW-11 is also not believable and sufficient to infer that the accused caused cruelty to the deceased

for fulfillment of his demand of Rs.10,000/- as alleged by the prosecution.

17. The evidence of PW-2 Babasaheb who is brother of Vithal Agam – another son-in-law of the complainant is that the marriage of the deceased with the accused was solemnized 5 to 6 years prior to the incident. He was mediator in the settlement of the said marriage. Rs.10,000/- were given to the accused in the marriage. The deceased was nicely treated for one or two years. Then accused started drinking and he used to beat the deceased. He used to tell the accused not to drink and the accused was not listening to him. The deceased also used to say and used to cry. On account of bad habit, the accused used to sell articles in the house for money to satisfy his habit and on objection by the deceased, he used to beat the deceased. He also claimed that after start of rains on Wednesday the accused was heavily drunk and he told him that at 9° clock in the morning, not to drink and thereafter went to field along with his family

members. Further, he has deposed about the incident, which took place in Kotha that the accused was sitting on the chest of the deceased. In the cross-examination, he stated that there is distance of 150 ft. approximately between his house and the house of the accused. There are 4-5 houses between his house and house of the accused. To the East of the house of the accused, there is house of Shendale. Gulanbai's house is also to the East. To the West, there is house of Pralhad Divte. His evidence that the accused started drinking and used to beat the deceased has not been specifically challenged in the course of his cross-examination. He has not stated in accordance with the case of the prosecution that the accused was making unlawful demand of Rs.10,000/- from the deceased and therefore he was harassing her. Therefore, when he has not referred to any specific incident of beating to the deceased by the accused, his vague evidence referred to above about the habit of drinking of the accused and the act of beating the deceased is not sufficient to infer that the accused

continuously caused cruelty to the deceased and it was with a view to force the deceased to commit suicide.

18. The evidence of PW-5 – Panchphula Agam – sister of the deceased is that 10 years have been passed after the marriage of the deceased was solemnized and for one year after the marriage the accused treated the deceased well. Thereafter, the accused used to come drunk and beat the deceased and he used to abuse the deceased. She claims that deceased used to tell about harassment to her by the accused, whenever the deceased used to come to meet her in the same village. According to her, she advised the accused not to drink and abuse the deceased - her sister. But the accused did not listen to her advise and used to beat the accused and drink and that was continued for 3-4 years. She has also stated that about 5-6 years ago when she was going to her field, the accused had come with a stone in his hand and he was drunk and she had seen the accused in the said condition in his Kotha. The accused was telling the deceased that

he would kill her with the stone, but she (witness) did not mind the same as it was their daily routine.

19. In the cross-examination PW-5 stated that the deceased was married about 10 years ago of her evidence, which was recorded on 20.12.2001. She deposed that she had stated to Police that she advised accused not to drink and abuse her sister, that the accused used to beat, abuse and drink for 3-4 years, but she could not assign reason of absence of said facts in her statement before police. So also, she stated that she does not remember the day, date and month, when she saw accused with a stone in his hand while she was going to her field. Thus, evidence of PW-5 that the accused abused and beat the deceased and used to drink and that was continued for 3-4 years and that she advised him not to drink and abuse her sister is omission in her statement before police. Therefore, said evidence is not believable. Moreover, she has not stated in accordance with the case of the prosecution that the accused was

causing cruelty to the deceased for unlawful demand of Rs.10,000/- for purchasing two wheeler. Thus, the evidence of PW-5 is also not sufficient to infer that the accused caused cruelty to the deceased.

20. As mentioned earlier, it has come in the evidence of PW-2 that there were houses of several persons near the house of the accused, but none of the said neighbours is examined by the prosecution. In-fact, the prosecution should have examined said neighbours or one of the said neighbours, to bring on record the fact that the accused used to beat and abuse the deceased and used to make demand of money from the deceased, as alleged by the prosecution. Thus, the learned Advocate for the accused has, indeed, rightly submitted that non-examination of the neighbours of the accused by the prosecution is fatal to the prosecution case.

21. For the foregoing reasons, I hold that the evidence of PWs 2,4,5 and 11 is not believable and

sufficient to state that the accused caused cruelty to the deceased for fulfillment of his unlawful demand of Rs.10,000/-. Thus, the evidence of the said witness regarding mere harassment without referring to particular incident is not sufficient to state that the prosecution has proved offence of cruelty punishable under section 498-A of the IPC against the accused. After going through the impugned judgment, it appears that in paragraph Nos.9 to 10, the Trial Court has referred to evidence of PWs 2,4,5 and 11 and on the basis of their evidence held that cruelty, demand and harassment is established by the prosecution. But for the reasons discussed earlier I hold that the finding on point No.1 recorded by the Trial court that the prosecution has proved offence of cruelty under section 498-A of the IPC against the accused is not proper, the same is unsustainable and liable to be set aside and the accused is entitled to be acquitted of the said offence, by allowing the appeal. In the result, following order is passed :

O R D E R

- (i) The Criminal Appeal is allowed.
- (ii) The impugned judgment and order dated 23.01.2002 passed by the II Additional Sessions Judge, Beed, in Sessions Case No.5 of 1997, convicting and sentencing the accused for the offence punishable under section 498-A of the IPC is set aside and the appellant/ accused is acquitted of the offence punishable under section 498-A of the IPC.
- (iii) His bail bond stands cancelled.
- (iv) Fine, if paid, as per the impugned judgment and order by the appellant/accused, be refunded to him.
- (v) Rest part of the impugned judgment regarding disposal of Muddemal property is maintained.
- (vi) Record and proceedings in Sessions Case No.5 of 1997 be sent to the Trial Court forthwith.

[S . M . GAVHANE , J .]