

Mandakini Balasaheb Kalbhor ... Appellant
(Orig. Accused No.3)
Vs.

ALONG WITH
CRIMINAL APPEAL NO.882 OF 2002

The State of Maharashtra ... Appellant
Vs. (Orig. Complainant)

ALONG WITH
CRIMINAL APPEAL NO.922 OF 2002

The State of Maharashtra ... Appellant
Vs. (Orig. Complainant)

Dinesh Balasaheb Kalbhor & Ors. ... Respondents
(Orig. Accused Nos.1 to 4)

...

Mr. Ajay Patil, A.P.P. for the Appellant in Appeal No.882 of 2002 and Appeal No.922 of 2002 and for Respondents in Appeal No.503 of 2002.

Mr. Sanjeev P. Kadam with Mr. Prashant Raul, Ms. Vilasini Balsubramaniam and Mr. Abhijeet Jangle i/b Mr. S.R. Bhosale for the Appellants in Appeal No.503 of 2002 and for Respondents in Appeal No.882 of 2002 and Appeal No.922 of 2002.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.

RESERVED ON : 23rd AUGUST, 2019

PRONOUNCED ON : 4th SEPTEMBER, 2019.

JUDGMENT:- [Per: Smt. Bharati Dangre, J.]

“There is pain in being a woman, yes but there is pride in it too.”

.... Marry Pauline Lowry.

The deceased Vaishali suffered the pain but did not survive to experience the pride of being a woman - a creator, born to create and before this, she exited the world by extinguishing the flame of her life.

2. The important milestone in the life of Vaishali was attained on 08th May, 1998 when she got married to Dinesh (A-1) and like any other plebeian girl, she stepped into the relationship ready to offer love and companionship to Dinesh and in turn expecting the same in return coupled with a fair treatment as wife, acceptance and belonging to the family in which she was married, and hoping of a heavenly abode with her husband and in laws.

This young girl who had dreamed of a happy life and who was on her family way put an end to her life by consuming Dunet methanol in form of an insecticide on 04th November, 1998 and she succumbed to the same on 11th November, 1998.

3. PW-1 Dada Saheb (father of the deceased) lodged a complaint on the very same day on the basis of which, the FIR came to be registered. In the said complaint, he alleged that his daughter on her visit to her parental house, had complained about the cruel treatment inflicted on her by her mother-in-law – Mandakini (A-3), her sister-in-law Rupali (A-4) and Dinesh (A-1). The complainant stated that his daughter had informed that she was subjected to harassment by her mother-in-law on account of the fact that she intended to marry her son to a girl from her parental side and in turn wanted her daughter Rupali to be married into her maternal family but on account of the marriage of the deceased with her son Dinesh, the relationship contemplated was not fructified. He also specifically stated that their daughter had informed them that her mother-in-law had raised a demand of ₹ 2 lakhs and on account of such demand Vaishali was subjected to cruelty both physical and mental, at the hands of all the Accused persons. The complainant also proceeded to state that in the harassment meted out, A-5 who is a maternal uncle of A-1 also joined hands.

On being informed of such a harassment, the complainant himself had approached the in-laws of Vaishali and urged before them that he had already spent an amount of ₹ 12 lakhs on marriage and had also given a

Maruti car at the time of marriage and he made an earnest request to treat Vaishali as their daughter as she was the only daughter of the complainant. Reference is then made to the incident of Diwali when Vaishali visited their house and she informed that after the visit of the complainant, she was subjected to aggressive harassment by the accused persons. The complaint also then makes a reference to a narration of Vijay (PW-8) who had visited Vaishali. On 04th November, 1998, the Complainant and his family members were informed that Vaishali was admitted in Pooja Hospital, Hadpasar and when the complainant and the near relations of the deceased visited the hospital, she was found in an unconscious condition and on enquiry from A-1 Dinesh - the husband, he had informed that Vaishali had a verbal altercation with his mother and sister Rupali on the earlier night and as a consequence of the said fight, she had consumed the insecticide. Based on this information, FIR was registered under Section 498-A, 304B and 306 IPC.

4. The deceased who succumbed to the poisonous substance on 11th November, 1998 was examined initially by Dr. Dilip Mane (PW-3) when she was brought to the hospital at around 5.25 A.M. on 4th November, 1998. After recording the history of consumption of poison and on noting that Vaishali was in a critical condition having suffered a cardiac arrest, respiratory gasps, she was advised to be referred to a more well equipped hospital with necessary facilities as she required an urgent indoor tracheal intubation. Vaishali was then attended to by Dr. Makrand Joshi (PW-7) in the Rubi Hall Clinic where she was admitted in ICU. She

was given treatment of intubation and while she was undergoing the treatment on 11th November, 1998, at 8.00 A.M. she breathed her last. The postmortem of the dead body was carried out by Dr. Prashant Patil (PW-10) who reserved his opinion awaiting the report of the chemical analyzer. On receipt of the said report, he opined that the death of the deceased was due to methanol poisoning.

5. On completion of investigation, Prabhakar Jadhav (PW-11) filed a charge-sheet by adding Section 302 IPC in the light of the response received by him from the medical officer vide Ex-61 in which PW-10 had mentioned about the injuries on the body of the deceased.

6. The matter was committed to the Additional Sessions Judge, Pune, who framed the charges against the accused persons under Section 498A read with Section 34 IPC and he also framed a charge under Section 302 read with Section 34 IPC, in the alternative, a charge under Section 306 and Section 304B IPC. All the accused persons pleaded not guilty and, therefore, came to be tried in the Court of Sessions Judge, Pune in Sessions Case No.78 of 1999.

7. To establish the charge under Section 498A and 304B IPC, the prosecution examined the mother (PW-4), brother (PW-8) and a friend of the deceased viz. Vandana (PW-6) apart from the complainant who was examined as PW-1. All the aforesaid witnesses deposed in sync to establish the offence punishable under Section 498A IPC as well as the offence punishable under Section 306 IPC.

8. With the assistance of learned counsel for the Accused Mr. Sanjiv Kadam and learned A.P.P., we have perused the evidence adduced before the Sessions Court. The distillate of the deposition of the witnesses supporting the prosecution case established that after the marriage of the deceased was solemnized with A-1, within a period of six months, the deceased committed suicide and the aforesaid prosecution witnesses had narrated in great detail, the ordeal undergone by the deceased. The web of the allegations was woven around the harassment to which the deceased was subjected to. All the prosecution witnesses in detail set out that the deceased Vaishali was treated with indifference and suffered harassment on account of demand of dowry. The harassment was in the form of taunts and her unacceptability in the house. It also speaks of the deceased being ridiculed by the mother-in-law and her behaviour was reiterated by the other members of the family including the husband of the deceased. The parents of Vaishali tried to pacify the in-laws and also asked her to 'wait' in the hope that things will go fine one day and it was too early to complain things in a typical Indian scenario. The expectation of the parents was that she needs to be settled in the house of her in-laws and the everyday quarrels were part and parcel of her marital life, which would cease one day. The mother of the deceased (PW-4) had deposed that Vaishali used to keep silent and she was unhappy. The close friend – Vandana (PW-6) also deposed about the ill-treatment at the hands of her husband and parents-in-law and particularly the fact that it had aggravated since the time when PW-1 had sought to intervene.

The deceased who was unhappy on account of the harassment could see no hope and she took the desperate step to escape the unbearable suffering and pain which she was subjected to in an attempt not to put an end to her life but to end the traumatic ordeal which she had to undergo within a short span of her marriage life. She was full of pessimism and inspite of the fact that she had narrated her woes to her parents, she was persuaded to live with the family and she continued to suffer the darkest moments of her life overshadowing the joyous and the good moments which she was looking forward as a newly wedded young girl and all her aspirations and dreams were shattered. A sense of hopelessness and deep feeling of helplessness encircled Vaishali and she could see no solution to the problems faced by her and the only viable option left to her was to end the miseries and that is how she took a bold decision to inflict violence on herself and destroy the ray of hope in her life by ending it.

9. The prosecution through cogent and reliable evidence brought before the Court in the most natural way through the near and dear ones of Vaishali was successful in establishing the willful conduct of the Accused persons and it relied upon the conduct which is of such nature and magnitude which drove Vaishali to commit suicide. Section 498-A came to be inserted to suitably deal not only with the cases of dowry death but also cases of cruelty to married woman by her in-laws. The *raison d'être* of Section 498A being to prevent the torture being inflicted on a married woman by her husband or his relations and it is not

restricted to only in relation to the demands of dowry but it also intended to deal with cruelty inflicted upon a woman in the form of a willful conduct which is of such 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. Such willful act or conduct is necessarily to be the proximate cause in order to bring home the charge under Section 498-A IPC.

10. Relying on the evidence brought on record by the prosecution, the Additional Sessions Judge acquitted all the accused of the offences punishable under Sections 302 and 304-B IPC. Accused No.3 – Mandakini is convicted for the offence punishable under Section 498-A and for the offence punishable under Section 306 IPC and have been sentenced to suffer rigorous imprisonment for one year for conviction under the former and rigorous imprisonment for three years on being convicted under Section 306 IPC and to pay fine of ₹ 5,000/-, in default of payment of fine, to suffer further rigorous imprisonment for six months. Accused - Dinesh, Balasaheb, Rupali and Vilas are acquitted of offences punishable under Sections 306 and 498-A read with Section 34 IPC.

11. We have perused the judgment of the trial court and note that the Sessions Judge has grossly erred in not considering the evidence brought on record as against A-1 Dinesh, husband of the deceased, who was also party to the ill-treatment inflicted to the deceased. The prosecution witnesses have consistently maintained the stand that the deceased was

subjected to harassment at the hands of her mother-in-law and her husband – Dinesh (A-1) and she was subjected to physical and mental cruelty at the hands of Accused persons. The narration of harassment is consistent in the testimony of all the prosecution witnesses and though the Accused persons have been acquitted under Section 304-B IPC, which sets out as to when a death of a woman would amount to “dowry death”. There is a succinct distinction between the offences under Section 304-B and 498-A IPC. For an offence being brought within the purview of dowry death, it is imperative on part of the prosecution to establish that the death of the woman is caused within seven years of her marriage and only when it is established that before her death she was subjected to harassment or cruelty by her husband or any relative for or in connection with the demand for dowry. However, in case of Section 498-A IPC, the husband or the relative of the husband who subject a woman to cruelty are liable for punishment and the meaning of the term ‘cruelty’ is set out in clauses (a) and (b) to Explanation appended to the said section, which contemplate to mutually exclusive contingencies. Thus, Section 498-A and Section 304-B IPC make out two distinct offences. The cruelty defined in Explanation to Section 498-A IPC may be the same which is contemplated under Section 304-B IPC. However, under Section 498-A IPC cruelty itself is made punishable. The fact that the learned Sessions Judge has acquitted the Accused of the offences punishable under Section 304-B IPC do not necessarily entail the consequence of Section 498-A IPC being not established. Since the prosecution has brought on record the cogent and reliable evidence which attribute a specific role to A-1

Dinesh, who was also party to the ill-treatment and in fact he was the person who could have prevented Vaishali being subjected to cruelty at the hands of his mother. PW-1 father, PW-4 mother, PW-8 brother and PW-6 friend of the deceased have, in unequivocal terms, deposed that Vaishali had categorically stated that she was subjected to harassment at the hands of her husband, who also joined in the choir. She was being abused, ill-treated and on her fortnightly visits to her paternal house she tried to vent her suffering but she was persuaded by her parents to bear the same. The evidence unerringly establishes the enormity of callousness inflicted and silently borne by Vaishali and it gave birth to a conviction that there is no sunlight, pasturage or meadow to be found in her life. The negative thoughts propelled by the brutality and bestiality inflicted by the mother-in-law and the silence of the husband and his participation along with the mother-in-law subjecting her to physical and mental torture and the risk of certainty of grave injury and danger to her life, limb and health, battered Vaishali and she chose to take the extreme step.

12. The husband, the only son to whom Vaishali was married played a positive role in the harassment of Vaishali which drove her to commit suicide and this willful conduct of the husband has escaped the attention of learned Sessions Judge, who has acquitted him of the offence punishable under Section 498-A IPC. The offence punishable under Section 498-A IPC is not only attracted when there is harassment with a view to coerce a woman to meet an unlawful demand of any property or

valuable security but it also gets attracted when the willful conduct of any person is likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb and health whether physical or mental. A young life is lost and the parents of the deceased Vaishali are made to muse over their actions and repent for persuading Vaishali to return to her matrimonial home and asking her to be patient. The object of introducing stringent provision in the IPC in the form of Section 498-A being to deal with such willful conduct, which led to the death of Vaishali, according to us, should not escape the clutches of law and according to us, such conduct as also the persons who inflict such conduct actuating a young married women to end her life, needs to be penalised particularly when the evidence brought on record establish such a conduct. The legislature has by amending the penal code and Evidence Act made penal law more strident for dealing with and punishing offences against married woman and such law need not only act as a deterrent but must also punish those guilty of such acts and conduct.

13. We are informed by Mr. Kadam that A-2 Mandakini who was sentenced to three years imprisonment for the offence punishable under Section 306 IPC and for one year for the offence punishable under Section 498-A IPC, was incarcerated only for five days.

14. For the reasons recorded above, we uphold the conviction and sentence imposed on Accused No.2 - Mandakini and resultantly dismiss Criminal Appeal No.503 of 2002. We also dismiss the appeal being

Appeal No.882 of 2002 filed by the State seeking enhancement of sentence imposed on Mandakini. Being satisfied that Accused No.1 Dinesh, the husband, who was erroneously acquitted by the trial court of the offence punishable under Section 498-A IPC and for the reasons which we have recorded above, we issue notice to Accused No.1 - Dinesh for affording him an opportunity of hearing on sentence and direct listing of appeal on Friday i.e. on 05th September, 2019.

(SMT. BHARATI DANGRE, J.)

(CHIEF JUSTICE)