

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.589 OF 1998

Pandurang Ganpat Thalkar,]
 R/at, 9, Neelkanth Apartment, Opp.]
 Raymond Company, Thane – 400 606.] ... Appellant

Versus

The State of Maharashtra,]
 (To be served through the Learned Public]
 Prosecutor, High Court, Appellate Side,]
 Bombay.] ... Respondents

Mr. Amit A. Mane, appointed advocate, for the Appellant.

Mr. Y.Y. Dabake, A.P.P. for the State.

...

CORAM : MRS. BHARATI DANGRE, J.

RESERVED ON : 23RD JUNE, 2021.

PRONOUNCED ON : 30TH JUNE, 2021.

JUDGMENT:-

1. The Appellant, who was impleaded as Accused No.1 in a crime invoking Sections 498A and 306 of the Indian Penal Code (“IPC”) and charged subsequently for the same, came to be tried by the Additional Sessions Judge, Thane, along with three other

accused persons and stand convicted for the aforesaid offence. On his conviction under Section 498A of the IPC, he is sentenced to suffer RI for 2 years and to pay fine of Rs.500/- and, in default, to undergo RI for one month. Along with other accused persons i.e. Accused Nos.2, 3 and 4, he was acquitted for the charge under Section 306 read with Section 34 of the IPC and Accused Nos.2, 3 and 4 were also acquitted of the charge under Section 498A of the IPC. The Appellant is aggrieved by his conviction under Section 498A of the IPC and the sentence imposed.

2. Deceased Shobha is the wife of the Appellant and the marriage between the two was performed two decades back and, they were cohabiting in Thane with one son and two daughters born out of the wedlock. The fateful day on which Shobha set herself on fire and sustained burn injuries is 24/11/1994. Being present in her matrimonial home, she woke up early in the day, made tiffin for her school going son and when the son left for school at 6.00 a.m., she went to the bed again. After sometime, her daughter Kirti woke her up and, thereafter, some altercation took place between Accused No.2, her mother-in-law and the daughter of the deceased. As Accused No.2 pushed her daughter, she approached to her mother, Shobha being upset over the said act of Accused No.2. The deceased questioned the Accused No.2 and, in turn, Accused No.2 started hurling abuses at her and slapped her. Accused No.2 asked the deceased to leave the house, which

tormented the deceased. Accused No.2 created ruckus in the house and went out and raised false alarm that the deceased and her daughter Kirti were assaulting her. This incident caused stress to the deceased and she took the extreme step of setting herself on fire by pouring kerosene on her person. At the time when this spat was occurring in the house, according to the version of the prosecution, the Appellant was present in the house. On Shobha sustaining burn injuries, he carried her to Singhania Hospital, Thane and, on information given by the doctor, the police arrived. Shobha sustained 100% burn injuries.

3. On being admitted in the hospital, Shobha gave three Dying Declarations; her first Dying Declaration was recorded by the Police Sub-Inspector, Vartak Nagar Police Station, on 24/11/1994 at 9.30 a.m., with a certificate from the doctor that the patient was in a condition to give statement. The said Dying Declaration is exhibited as Ex-59. The second Dying Declaration was recorded by the Special Executive Magistrate at 12.00 noon, on being certified that the patient is in a condition to give statement. The said Declaration is exhibited as Ex-25. The third Dying Declaration, which is exhibited as Ex-60 came to be recorded by the API at 12.30 noon in the presence of the member of Mahila Rakshata Samiti, Vartak Nagar, Thane. The three Dying Declarations, according to the prosecution, is the spindle around which the case of the prosecution revolves and contain the

allegations levelled against the accused persons and all the accused were charge-sheeted on the basis of the said Dying Declarations.

4. Apart from relying upon the Dying Declarations, the prosecution unfolded its case before the court through its two key witnesses - PW-5 Lahu, the father of the deceased and PW-4, the daughter of the deceased. After sustaining the burn injuries, deceased Shobha was administered treatment, but succumbed to the burn injuries on 4/12/1994 and the cause of death was opined as shock due to 100% burns. I will refer to the contents of the Dying Declarations and their authenticity, which has been proved by the medical officer examined by the prosecution, who had deposed that the patient was in a fit condition to give the statements and the officer recorded the statement, a little later.

5. I would refer to the testimony of PW-4 Kirti, the daughter of deceased Shobha. PW-4 Kirti is 20 year-old girl and she states before the court that the relationship between her father and her mother were strained and her father used to beat her mother often under the influence of liquor. She proceeded to state that her mother was serving in one Balwadi and she used to work hard by waking up at 4.00 a.m. and on completing her household work used to leave for Balwadi. PW-4 Kirti has also spoken of the ill-treatment meted out to her mother, by her grandmother, but I need not refer to the said ill-treatment as the grandmother (Accused

No.2) already stands acquitted. With precision, PW-4 Kirti has narrated about the happenings of 24/11/1994 when her mother got up early and prepared tiffin for her brother. She also referred to the spat, which took place between herself and her grandmother, in which her mother got embroiled and being anguished, she poured kerosene on her person. PW-4 states that when her mother took this extreme step, Accused No.2 kept on saying that she cannot do anything and nothing can happen to her and treated her threats as normal. She also deposed that her father, Accused No.1 was sleeping at that time and she tried to extinguish the fire by taking her mother to the bathroom. By that time, the neighbours also arrived there. In the cross-examination, the witness was extensively examined on the cause of discord and the manner in which the deceased was subjected to ill-treatment by Accused No.2, her grandmother and Accused Nos.3 and 4, the sisters of Accused Nos.1, who were residing separately.

6. As far as the involvement of the Appellant is concerned, PW-4 Kirti has deposed that her father, the Appellant was working in Raymond Company and getting salary but, he did not pay the same for catering to the household expenses. She stated that her mother used to arrange for the expenses and used to draw a meager salary of Rs.2,500/- per month, out of which, her mother used to arrange for the money required for the education of all her siblings. While narrating the incident, which took place when her mother set

herself on fire, the witness denied the suggestion that her father poured water on her mother to extinguish the fire and stated that she helped her mother to extinguish the fire.

7. Another witness examined by the prosecution, is the father of deceased Shobha, aged 79 years, who has deposed that his daughter was serving in Kindergarten of Thane Municipal Corporation and the relationship between Shobha and her husband was strained and there used to have quarrels very often and Shobha used to come to his house and tells him that her husband consumes liquor and abuses and thrashes her. She also narrated the harassment meted out to her by her mother-in-law and sisters-in-law. PW-5 Lahu has produced on record some letters written by Shobha and he has identified her signatures. The letters received by him by post are exhibited as Ex-31, Ex-32, Ex-33 and Ex-34 along with envelopes in which they were received being Ex-35 to Ex-37. He relied upon the said letters to establish the harassment faced by her daughter in her matrimonial house. He admits of visiting the matrimonial house of Shobha and pacifying her at times. This witness is also extensively cross-examined on the point of financial arrangement in the family and, particularly, qua Accused No.2 Chemabai, the mother-in-law of the deceased. He deposed that whenever he used to come to Thane, he used to visit his daughter at Raymond Chawl and denied the suggestion that he intermittently used to meet Shobha and/or that she did not write letters to him and that she did

not complain any harassment.

8. The prosecution has relied upon the letters and the counsel for the Appellant would argue that the letters are very stale, being of the years 1984, 1986, 1987 and 1988 whereas the incident had taken place at a much later point of time i.e. in 1994. I will deal with the said argument at a little later, but at present focus on the letters. In the first letter dated 15/07/1984, deceased Shobha writes about her husband again resorting to his drinking habit and she complains that, every night he returns home being drunk and when she attempts to stop him, he questions her and utters that he is not drinking with her father's money. He also threatened her that she is free to report the incident to anyone but, nobody would come to her rescue. Deceased Shobha writes that she is sending the letter since her father had told her that she should write to him if she is subjected to any ill-treatment.

The second letter is dated 05/03/1986, where she informed him about her husband creating trouble in the house on consuming liquor and also not reporting to duty. She requests her father to bring fees of her daughter Kirti and also get her books and copies. On 17/06/1987, the deceased again complained of the addiction of her husband and writes that after drinking, he does not report for work and writes about her battering husband. She refrains from writing any details and requests that he should come and verify the prevailing situation and that he had broken of the articles in the

house. She also pens that if he is desirous of meeting his daughter alive, he should come at the earliest or otherwise he will find her dead.

Another letter exhibited is dated 14/07/1998, where she again narrates her woes and requests her father to come promptly as he is the only support for her and, her brother, only hope. The aforesaid letters speak volumes.

9. Learned counsel appearing for the Appellant had argued that the letters are antiquated and much period has passed after they were written. Perusal of the said letters would reflect the consistent conduct of the Appellant being an alcoholic, subjecting the deceased to beating on being drunk, being abusive to her and the scenario continue for over four years when the letters were addressed. In despair, she sought assistance from her father and her helplessness could be seen when she is demanding money and assistance from her father and requesting him to come to her rescue. The harassment meted out to her is spelt out from the said letters. The father of the deceased has spoken about the continuous harassment meted out to his daughter by her husband on consuming liquor and then abusing and clobbering her. PW-5 deposes that he used to meet his daughter, whenever he used to visit Thane and on such visit, Shobha used to narrate the ill-treatment meted out to her by her husband. There is no challenge to the said version of PW-5.

10. PW-4, who is not only the daughter of the deceased, but also the daughter of the Appellant, deposed that the relationship between her father and mother was strained and the father used to beat her mother under influence of liquor. The said statement of PW-4 also goes unchallenged. It is these two witnesses, who were close to the deceased, have spoken of the harassment, which the deceased underwent over a period of time, at the hands of the Appellant since he was habituated to consumption of liquor. The reason for harassment apparently being the consumption of liquor, the deceased patiently continued the marital tie for 20 years. On the fateful day, when a squabble took place in the house, fed up with the conflict and confrontation in the house, she set herself on fire. The letters brought on record by the father of the deceased, no doubt, relate back to 5 years, prior to the incident, but the testimony of the daughter (PW-4) and the father of the deceased PW-5 speak of the continuous harassment to the deceased at the hands of the Appellant. The allegations levelled go unchallenged and there is no denial or any suggestion given that the Appellant has given up drinking and had stopped the harassment or ill-treatment to his wife on consumption of liquor. The consistency in the behaviour of the Appellant clearly makes out a charge of cruelty attracting Section 498A of the IPC.

11. For the purpose of Section 498A of the IPC, cruelty has been

set out as 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. The conduct of the Appellant would squarely fall within the four corners of cruel treatment, which would make it punishable under Section 498A of the IPC. Cruelty can be physical or mental and merely because a woman has tolerated the harassment at the hands of her husband for a long period of time, it cannot be said that his behaviour has ceased to be cruel. Here is a woman, who suppressed her feelings and emotions stirring inside her on account of the harassment and ill-treatment at the hands of her husband, but when she is unable to escape the cruel treatment and is unable to put an end to the said treatment, she takes the extreme step of putting an end to her life. The cruelty being spread over a period of time does not make a woman numb so that she did not suffer the agony, discomfort meted out to her and the conduct continues to be cruel though it continued as a normal feature of married life of Shobha. For this reason, the submission of learned counsel for the Appellant that the letters are stale and cannot be relied upon, and deserves a rejection.

12. Coming to the version of the deceased herself, which surfaces from her statement recorded and exhibited in the form of Dying Declarations, the prosecution again gains support from the same. PW-2, the Medical Officer, who examined deceased Shobha in the

afternoon of 24/11/1994 found her to be conscious and able to give statement. Accordingly, she gave an endorsement on the statement recorded by the police. She deposed that she had examined the patient before and after recording of the statement. She also deposed that she was present while recording the statement, but on minor particulars like the exact time when the patient was admitted, the doctor who gave medicines to the patient, etc., which she was unable to answer, do not in any way, create any doubt on her credentials or her testimony. PW-3, the Special Executive Magistrate, who has recorded the statement of deceased Shobha in 'question and answer' format, deposed that he had recorded the statement after the doctor PW-2 took him towards the patient, who was admitted in the burn ward and the doctor examined the patient and found her to be conscious and able to speak and, after disclosing his identity to the patient, he recorded the statement. The extensive cross-examination did not shake the credibility of this witness or of his statement.

In the statement recorded, when asked about how did she sustain the burn injuries, Shobha, in great detail, has narrated the incident which took place in the morning and clearly states that her husband abuses and assaults her after consuming liquor. She categorically states that she had set herself on fire being fed up with the harassment administered to her by her mother-in-law, sister-in-law, their husbands and her own husband. In the Dying Declaration, which is exhibited at Ex-60 recorded by API, she has

named her husband as one of the culprit and stated that on account of harassment meted out to her by him, she had set herself on fire. In the statement at Ex-59, deceased Shobha had deposed that when the spat began in the morning of 24/11/1994, her husband was at home, but made no attempts to resolve the dispute and being fed up, she poured kerosene on her person and set herself on fire. There is no inconsistency in the said three statements, which are recorded by following the procedure. The doctor has made a remark on the said certificate and has also deposed that deceased Shobha was in a fit and conscious condition to give statement. The two statements are recorded by the police, whereas one statement is recorded by the Special Executive Magistrate, who have no animosity or reason to inculcate the Appellant. Similarly, the Investigating Officer, who has conducted the entire investigation has also no reason to implicate the present Appellant, but it is on the basis of the evidence collated by him and put in the form of charge-sheet and further since the said evidence inspired confidence, the Appellant stood convicted by the impugned judgment. The impugned judgment has appreciated the evidence brought on record by the prosecution through reliable witnesses and through the dying declarations recorded before Shobha succumbed to the burn injuries and do not warrant any interference. The Appellant is already acquitted of a grave charge under Section 306 of the IPC and he has been found guilty of subjecting deceased Shobha to cruelty. The trial court has shown

leniency and has imposed a sentence of 2 years RI, whereas Section 498A of the IPC provides for punishment with imprisonment for a term which may extend to 3 years. The Appellant has already escaped with a lesser punishment than the maximum prescribed and, in my considered opinion, since he has made out no case for setting aside the order of conviction, the sentence imposed also meets the same fate. Upholding the impugned judgment and sentence, the appeal is dismissed.

13. I appreciate the sincere efforts taken by Mr. Amit S. Mane, the learned appointed advocate for the Appellant. The High Court Legal Services Committee, Mumbai, is directed to pay his fees as per rules, within four weeks from the date of receipt of this order.

(MRS. BHARATI DANGRE, J.)