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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1126 OF 2005

The State of Maharashtra

...Appellant

Versus

- 1) Gautam Bhaurao Ubale
- 2) Bhaurao Rambhaji Ubale
- 3) Shalubai Bhaurao Ubale
- 4) Walmik Bhaurao Ubale
- 5) Kum. Sulochana Bhaurao Ubale

...Respondents

**WITH
CRIMINAL REVISION APPLICATION NO.90 OF 2005**

- 1) Gautam Bhaurao Ubale
- 2) Bhaurao Rambhaji Ubale
- 3) Shalubai Bhaurao Ubale
- 4) Walmik Bhaurao Ubale
- 5) Kum. Sulochana Bhaurao Ubale

...Applicants

Versus

The State of Maharashtra

...Respondent

....

Mr. N.B. Patil, APP for the Appellant.

Mrs. Manjula Rao, senior counsel with Ms Kokila Kalra for Respondent
Nos.1 to 5 in APEAL/1126/2005 and for Petitioners in REVN/90/2005.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 24th NOVEMBER, 2021.

ORAL JUDGMENT:-

. The Applicants in Revision Application and the Respondents in
Criminal Appeal were the accused in Regular Criminal Case No.37 of

1999 filed before the learned Judicial Magistrate, First Class, Manmad City. They shall be hereinafter referred to as 'the accused'.

2. Pursuant to the FIR lodged by Vandana Ubale, crime was registered against all the accused for offence punishable under Section 498-A r/w 34 of the IPC. Accused No.1 was husband of Vandana. Accused Nos.2 and 3 are the parents of accused No.1 and the accused numbers 4 and 5 are the siblings of accused No.1. The Complainant – Vandana alleged that she was treated well for about a month and thereafter the accused started demanding colour TV and a motor cycle. She alleged that the accused ill treated her and subjected her to physical and mental cruelty. She left her matrimonial home on 01/02/1999 & lodged the complaint on 16/05/1999 alleging ill-treatment and cruelty.

3. The accused pleaded not guilty to the charge and claimed to be tried. The prosecution in support of its case examined the complainant (PW1) and her parents i.e. PW2 and PW3. Statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, 1973. Their defence was of total denial and of false implication. After considering the evidence on record the learned Judge vide judgment dated 25/02/2003 held the accused guilty of offence

punishable under Section 498-A r/w. Section 34 of IPC and sentenced to suffer simple imprisonment for one year with fine of Rs.1,000/- each i/d simple imprisonment of one month. The accused challenged the order in Criminal Revision Application No.9 of 2003 before learned Ad-hoc Additional Sessions Judge, Malegaon. By judgment dated 22/02/2005 the learned Judge maintained the conviction but reduced the sentence to imprisonment till rising of the Court with fine of Rs.1,200/- each i/d. to undergo simple imprisonment for one month. The accused have challenged in Revision Application No.90 of 2005 whereas, the State has filed the Appeal for enhancement of the sentence.

4. Heard Mrs. Manjula Rao, senior counsel for the accused and Mr. N.B. Patil, APP for Respondent-State. I have perused the records and considered the submissions advanced by learned counsel for the respective parties.

5. It is not in dispute that the Complainant-Vandana and the accused no.1 were married on 11/10/1998. PW1 – Vandana left her matrimonial home on 01/02/1999 and since then she was staying with her parents. She has deposed that from 15/10/1998 till 01/02/1999, the accused ill-treated her for not getting a motorcycle and a colour T.V. She

has alleged that the accused would starve her and drive her out of the house. She has admitted that she had not lodged any complaint against the accused during this period. She has admitted that during this period i.e., between 15/10/1998 till 01/02/1999, she had visited her parents several times and that the accused had brought her back to the matrimonial home. She had admitted that she did not visit her matrimonial home since 02/02/1999.

6. PW1 – Vandana has admitted that she had issued a legal notice dated 02/03/1999 at (Exhibit-38) calling upon the accused nos.1 and 2 to pay Rs.50,000/- and to return her jewelry and other items given to her at the time of her marriage. The accused had replied to the said notice vide reply dated 23/03/1999 at Exhibit-57 wherein the accused had denied the allegations made against them and had further alleged that PW1 had made false allegation as the accused No.1 was not ready to reside separately. The accused refused to pay the amount of Rs.50,000/- demanded by PW1. It was only after the accused refused to pay the money and meet other demands made in the legal notice that PW1 filed the FIR on 16/05/1999.

7. Be that as it may, PW1 has alleged that accused No.5, sister of

accused No.1, who was 19 years of age at the time of the incident had tried to set her ablaze. She had also made omnibus allegations of ill-treatment and assault against the other accused. In her cross examination, she has stated that she is unable to state the date, month and the year when the accused No.5 had tried to set her ablaze. She has further stated that she has medical certificate to indicate that she had sustained injury during the period between 15/10/1998 to 01/12/1999. She expressed her willingness to produce the certificate, but in the very next sentence, she admitted that she does not have any medical certificate to show that she had sustained injury during this period.

8. PW2, father of the complainant has deposed that the accused treated Vandana well for about a month after marriage. Thereafter, they demanded motorcycle and colour T.V. and ill-treated Vandana for not meeting their demand. PW2 does not corroborate the evidence of PW1 – Vandana that the accused No.5 had tried to set her ablaze. He has stated that the accused nos.1, 2 and 3 had assaulted Vandana. It may be mentioned that PW1 has not levelled such allegations against her husband & his parents. PW3, mother of the complainant has made a general statement that all the accused were assaulting and ill-treating the Complainant.

9. The evidence on record reveals that the Complainant had resided in the matrimonial home for a period of about 3 months. Thereafter, she had left the matrimonial home and issued a legal notice to accused nos.1 and 2. The grievance raised in the complaint is that the accused nos.1 and 2 had not kept their promise of constructing a new residential premises and provide all amenities and facilities to PW1 and her husband. The notice also states that they had induced PW1 in marrying accused no.1 falsely stating that he was in permanent employment in TELCO company with a high salary. It is also alleged that the mother-in-law of PW1 was suffering from mental disorder which was causing tremendous stress and apprehension in her mind.

10. As noted above, PW1 has demanded Rs.50,000/- and it was only when accused refused to pay the money, PW1 lodged the complain against all the accused. There is considerable delay in lodging the complaint which has not been satisfactorily explained. The demand of dowry and allegations of ill-treatment made before the Court are substantially different from the allegations made in the notice. Moreover, there is no consistency in the evidence of prosecution witness. Furthermore, the evidence is not corroborated by any independent witness. The evidence adduced by the prosecution does not prove that

the complainant was subjected to cruelty as defined in clause (a) or (b) of Explanation to section 498A of IPC. Hence, the conviction and sentence under section 498A cannot be sustained.

11. Under the circumstances, revision is allowed. Impugned judgment and order dated 22/02/2005 passed in Revision Application No.9 of 2003, is hereby quashed and set aside. Accused Nos.1 to 5 are acquitted of offence punishable under Section 498-A r/w 34 of the IPC. Bail bonds stand discharged. Fine amount, if any, be refunded to the accused. The Appeal is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)