

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 312 OF 2009

- 1) Vishwanath s/o Vithoba Charode,
Aged about 65 years,
Occupation – Agriculturist,
R/o Meth (Hiraji), Tahsil – Karanja (G),
District – Wardha.
- 2) Shewantabai w/o Vishwanath Charode,
Aged about 60 years,
Occupation – Housewife/Agriculturist,
R/o Meth (Hiraji), Tahsil – Karanja (G),
District – Wardha.

.... **APPELLANTS**

VERSUS

State of Maharashtra,
through Police Station Officer,
Karanja (G), District – Wardha.

.... **RESPONDENT**

Mr. S.V. Deshmukh, Counsel for the appellants,
Mr. N.S. Rao, Addl.PP for the respondent/State.

CORAM : ROHIT B. DEO, J.
DATED : 21st OCTOBER, 2021

ORAL JUDGMENT :

The appellants are assailing the judgment dated 15-5-2009 rendered by the learned *Ad hoc* Additional Sessions Judge-2, Wardha in Sessions Trial 138/2008 whereby the appellants-original accused 1 and 2 are convicted for offence punishable under Section 498-A read with

Section 34 of the Indian Penal Code (IPC) and are sentenced to suffer simple imprisonment for one year and to payment of fine of Rs.500/- (Rupees Five Hundred) and in default, to suffer further simple imprisonment for one month, and are further convicted for offence punishable under Section 306 read with Section 34 of the IPC and are sentenced to suffer simple imprisonment for three and half years and to payment of fine of Rs.1,000/- (Rupees One Thousand) and in default, to suffer further simple imprisonment for three months.

2. Accused 3 to 6, who faced trial alongwith the appellants, are acquitted.

3. The appellants shall be referred to as the accused hereinafter.

4. The accused are the father-in-law and mother-in-law respectively of deceased Kavita, who unfortunately committed suicide by consuming poison on 08-10-2007. Kavita's marriage was solemnized with Devanand, the son of accused, on 06-5-2006.

5. The gist of the prosecution case is thus :

(i) Kavita started living with Devanand and the accused. Few days after the marriage, the accused and the acquitted co-accused,

who are Rajeshwar Charode-the elder brother-in-law, Rajeshwar's wife Smt. Yogita Charode, Sudhakar Dole-who is the husband of sister-in-law and Smt. Anusaya Dole-who is the sister, started ill-treating Kavita to compel her to bring money from her parents. Kavita requested her brother to give her certain amounts and he obliged by giving her Rs.10,000/- (Rupees Ten Thousand) in order to ensure that she is not ill-treated. On 07-10-2007 the accused physically assaulted Kavita and her husband Devanand and the said incident was narrated by Kavita to her brother Anandrao telephonically. Kavita consumed poison at 7-00 p.m. on 08-10-2007. She was admitted at the Sevagram Hospital where she succumbed at 9-00 p.m.

- (ii) Initially enquiry under Section 174 of the Criminal Procedure Code, 1973 (Code) was initiated. However, since the brother of the deceased lodged report on 12-10-2007 alleging ill-treatment to Kavita, offence punishable under Sections 498-A and 306 read with Section 34 of the Indian Penal Code was registered.
- (iii) The investigation proceeded on the usual lines and the culmination thereof led to the submission of the final report under Section 173 of the Code in the Court of the Judicial Magistrate who committed the case to the Sessions Court.

- (iv) The learned Sessions Judge framed Charge (Exhibit 15). The accused abjured guilt and claimed to be tried in accordance with law. The prosecution examined seven witnesses. PW 1-Anandrao Kalokar is the brother of the deceased and the informant, PW 2-Rameshwar Kalokar is the father of the deceased, PW 3-Anusaya Kalokar is the wife of Anandrao Kalokar, PW 4-Sitabai Kalokar is the mother of the deceased, PW 5-Govinda Kalokar is the brother of the deceased, PW 6-Devanand is the husband of the deceased, and PW 7-Mahadeo Gawale is the Investigating Officer. The accused did not step into the witness box nor did the accused examine any witness in defence. The tenor of the cross-examination and the statements under Section 313 of the Code suggest that the defence is of total denial and false implication.
- (v) The learned Sessions Judge was pleased to convict the accused as afore-stated while acquitting the co-accused.
- (vi) The learned Sessions Judge recorded a finding that the accused did subject Kavita to cruelty. The learned Sessions Judge observes that accused 1 asked Kavita to bring certain amount from her parents and despite Kavita bringing the amount, accused 1 was not satisfied and he abused Kavita and her father and assaulted her by means of a cot. The learned Sessions Judge found that accused 2 quarrelled with kavita on the fateful day,

which drove Kavita to commit suicide.

6. I have heard the learned Counsel Mr. S.V. Deshmukh for the accused and the learned Additional Public Prosecutor Mr. N.S. Rao for the respondent-State and with their able assistance the record is scrutinized.

7. PW 1-Anandrao has deposed that after six months of the marriage, the accused started troubling Kavita and that he gave Kavita Rs.10,000/- (Rupees Ten Thousand) which Kavita in turn gave to accused 1. PW 1 then states that after three months, accused 1 again asked Kavita to bring Rs.3,000/- (Rupees Three Thousand), which PW 1 did not give since he was in no position to do so. It is then deposed that after Kavita went back to her matrimonial home, without Rs.3,000/- (Rupees Three Thousand) which accused 1 wanted her to bring, all the accused started abusing her and after fifteen days, Kavita committed suicide.

In the cross-examination, it is brought on record that Kavita and her husband Devanand started residing separately after six months of the marriage. Substantial portion of the cross-examination is devoted to bringing on record that due to certain issues touching the partition of the ancestral property, there were disputes within the family and after

Kavita and her husband started residing separately, they were not on talking terms with the accused. PW 1 admits that there was no telephone facility available at the residence of the accused and that he is not in a position to disclose the month in or the date on which he paid Rs.10,000/- (Rupees Ten Thousand) to Kavita. It is brought on record that in the report lodged, PW 1 did not specifically mention that the amount of Rs.10,000/- (Rupees Ten Thousand) was paid to accused 1.

8. The evidence of PW 1 is of scant assistance to the prosecution. In the examination-in-chief, an extremely vague and general allegation is made that all the accused abused Kavita and that she consumed poison due to the harassment. Apart from the fact that PW 1 is not in a position to disclose even the month muchless the date of the payment of Rs.10,000/-(Rupees Ten Thousand), which is a substantial amount, no details of the alleged harassment are mentioned. Pertinently, it is brought out in the cross-examination that Kavita and her husband Devanand started residing separately after six months of the marriage and that they were not on talking terms with the accused.

9. PW 2-Rameshwar claims to have paid Rs.4,000/-(Rupees Four Thousand) to Kavita, three months after PW 1 allegedly paid Kavita

Rs.10,000/-(Rupees Ten Thousand). Notably, it is not the version of PW 1 that amount of Rs.4,000/- (Rupees Four Thousand) was paid by his father to Kavita. *Au contraire*, the version of PW 1 is that the amount which Kavita was asked to bring from her parents was Rs.3,000/- (Rupees Three Thousand) and that he was not in a position to pay the said amount. PW 2 then deposed that there was a partition between Devanand and the accused and that there were disputes *inter se* between Devanand and accused 1, 2 and 3 on the issue of harvesting *soyabean*. A general allegation is made by PW 2 that accused 1 to 3 assaulted Devanand, Kavita tried to shield her husband and she too was assaulted. PW 2 has deposed that on the next day of the assault Kavita and Devanand went to the hospital at Kondhali. Devanand, however, refused to lodge report. According to PW 2, the said incident occurred on 07-10-2007 and after returning from the hospital, there was further altercation between Kavita and Devanand on one hand and the accused on the other and due to the said quarrel, Kavita consumed poison.

In the cross-examination, an admission is extracted from PW 2 that in the initial six months of the marriage when Kavita resided jointly with the accused, there was no dispute. PW 2 admits that Devanand was annoyed with the accused since he perceived that the partition was not fair. The witness is not in a position to disclose the month in or the date on which he allegedly paid Kavita Rs.4,000/-(Rupees Four

Thousand).

The evidence of PW 2 on the aspect of the alleged payment of Rs.4,000/- (Rupees Four Thousand) to Kavita does not inspire confidence. As noted supra, this is inconsistent with the version of PW 1. The only untoward incident which PW 2 refers to is the alleged assault emanating from property dispute, and the quarrel which allegedly took place between Kavita and her husband and the accused.

10. PW 3-Anusaya, who is Kavita's sister-in-law, has deposed that her husband paid Rs.10,000/- (Rupees Ten Thousand) to Kavita. PW 3 has again a different version as regards the second demand. While PW 1 states that the second demand was of Rs.3,000/- (Rupees Three Thousand) and PW 2 claims that Rs.4,000/-(Rupees Four Thousand) were demanded, PW 3 states that Kavita asked for Rs.5,000/- (Rupees Five Thousand) which was the amount, which the accused allegedly wanted. PW 3 then speaks of the alleged assault, the details of which she claims to have learnt from her husband. The hearsay testimony need not detain me, since such evidence is clearly inadmissible.

PW 3 admits that till Kavita and her husband started residing separately, there was no ill-treatment. PW 3 admits that Kavita and the accused were not on talking or visiting terms.

11. PW 4-Sitabai claims that her son Anandrao paid Kavita Rs.10,000/- (Rupees Ten Thousand) and then four to five months from the said payment, her husband paid Kavita Rs.4,000/- (Rupees Four Thousand). In the examination-in-chief, there is a bald statement that even after the payment of Rs.4,000/- (Rupees Four Thousand) to Kavita, she was harassed.

12. PW 5-Govinda has deposed that Kavita was treated well for the initial five to six months and then the accused started troubling her. PW 5 speaks of the payment of Rs.10,000/-(Rupees Ten Thousand) to Kavita by his elder brother Anandrao. PW 5 comes up with a slightly different version and claims that when PW 1 enquired with Kavita, she disclosed that Rs.10,000/-(Rupees Ten Thousand) was needed by the accused for constructing the house of accused 6. PW 5 then speaks of the payment of Rs.4,000/- (Rupees Four Thousand) allegedly made by his father to Kavita and then alleges that since Kavita and her husband were assaulted, Kavita consumed poison.

Like the other witnesses, PW 5 is also not in a position to disclose the month in or the date on which Rs.10,000/- (Rupees Ten Thousand) was paid to Kavita. Significantly, PW 1 who allegedly paid Rs.10,000/- (Rupees Ten Thousand) to Kavita, has not deposed that he enquired with Kavita and was told by her that the amount of Rs.10,000/-(Rupees

Ten Thousand) was needed by the accused to construct the house of accused 6.

13. PW 6-Devanand is the son of the accused and the husband of Kavita. The notable feature of Devanand's evidence is that despite the pinpointed court questions, Devanand does not speak of the alleged payments of Rs.10,000/-(Rupees Ten Thousand) or then Rs.4,000/-(Rupees Four Thousand) by PW 1 or PW 2 to Kavita. Indeed, Devanand disclaims knowledge of such payments or then the alleged demands of the accused. PW 6 speaks of the separation from the joint family and then of the incident which occurred on the issue of harvesting *soyabean*. PW 6 has deposed that accused 1 objected when PW 6 and Kavita wanted to harvest the *soyabean*. According to PW 6, when he tried to harvest his field, he was dealt one stroke with stick. PW 6 has deposed that accused 1 started abusing Kavita's parents and when she protested, she was assaulted with a cot. Notably, PW 6 does not speak of he and Kavita having gone to the hospital after the alleged assault. PW 6 has deposed that after the altercation, he and Kavita went to the market and Kavita returned home early since she boarded a bus and PW 6 returned in a friend's vehicle. PW 6 has deposed that when he returned home, a quarrel was ongoing between Kavita and accused 2 and both were levelling certain allegations against each other. PW 6

has deposed that he asked Kavita to bring water for accused 2 and Kavita responded by stating that accused 2 was acting and that, as a fact, it was Kavita who had consumed poison due to the harassment meted out by accused 1 to her and Davanand.

It is brought out in the cross-examination that PW 6 was annoyed with the accused since accused 1 was avoiding to measure the agricultural land which fell to Devanand's share in the partition.

14. PW 7 is the Investigating Officer. It is brought out in the cross-examination that he did not record the statements of the neighbours or the relatives.

15. In my considered view, the evidence on record is not sufficient to establish that Kavita was treated with cruelty within the meaning of Explanation (a) or Explanation (b) of Section 498-A of the IPC and it is, therefore, axiomatic, that the accused could not have been convicted either under Section 498-A or Section 306 of the IPC.

16. Section 498-A of the IPC is the only section in Chapter XX-A introduced in the IPC by the Criminal Amendment Act, 1983. Section 498-A reads thus:

“498-A. Husband or relative of husband of a woman subjecting her to cruelty.— *Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

Explanation.— For the purpose of this section, “cruelty” means—

(a) any wilful 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; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

17. The cruelty which is envisaged under Section 498-A of the IPC may not be cruelty contemplated by other statutory provisions. Conduct which may constitute matrimonial cruelty or offence may not necessarily constitute cruelty within the meaning of Explanation (a) or (b) of Section 498-A of the IPC. Explanation (b) is concededly not attracted since it is not even the case of the prosecution that Kavita was subjected to ill-treatment or harassment in order to coerce her or her family to fulfill any illegal demand. In order to demonstrate that the conduct of the accused constitutes cruelty within the meaning of Explanation (a), the prosecution was obligated to prove (i) the conduct was wilful (ii) the wilful conduct was of such a nature as was likely to

drive Kavita to commit suicide or (iii) the wilful conduct was of such a nature as is likely to cause grave injury or danger to life, limb or health (whether mental or physical) of Kavita.

18. It would be apposite to refer to the following observations of the Apex Court in ***Manju Ram Kalita v. State of Assam, 2009 (2) SLJ SC 1036*** and in particular on the observations of the Apex Court in paragraphs 19, 20, 21 and 22, which read thus:

“19. In Smt. Raj Rani v. State (Delhi Administration); AIR 2000 SC 3559, this Court held that while considering the case of cruelty in the context to the provisions of Section 498-A I.P.C., the court must examine that allegations/accusations must be of a very grave nature and should be proved beyond reasonable doubt.

20. In Sushil Kumar Sharma vs. Union of India, AIR 2005 SC 3100, this Court explained the distinction of cruelty as provided under Sections 306 and 498A IPC observing that under Section 498-A cruelty committed by the husband or his relation drive woman to commit suicide etc. while under Section 306 IPC, suicide is abated and intended. Therefore, there is a basic difference of the intention in application of the said provisions.

21. In Girdhar Shankar Tawade v. State of Maharashtra, AIR 2002 SC 2078; this Court held that “cruelty” has to be understood having a specific statutory meaning provided in Section 498A I.P.C. and there should be a case of continuous state of affairs of torture by one to another.

22. “Cruelty” for the purpose of Section 498-A I.P.C. is to be established in the context of S. 498-A IPC as it may be a different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out

as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty.

The cruelty, which is statutorily defined under Section 498-A of the IPC must be as a wilful conduct which is likely to drive the woman to commit suicide or which is likely to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. The wilful conduct must be persistent and/or continuous. The wilful conduct, in order to constitute cruelty within the meaning of Explanation (a) of Section 498-A of the IPC must be, at least in close proximity of time to the incident. An aberration or stale incident, deplorable as the conduct or incident may be, would not constitute cruelty as is statutorily defined.

19. It would be relevant to refer to the enunciation of law by the Apex Court in ***Girdhar Shankar Tawade v. State of Maharashtra***, AIR (2002) 5 SCC 177.

“3. The basic purport of the statutory provision is to avoid “cruelty” which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word “cruelty” as is expressed by the legislature: whereas Explanation (a) involves three specific

situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury; whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498-A."

"17. As regards the core issue as to whether charges under Sections 306 and 498-A of the Indian Penal Code are independent of each other and acquittal of one does not lead to acquittal on the other; as noticed earlier, there appears to be a long catena of cases in affirmation thereto and as such further dilation is not necessary neither are we inclined to do so, but in order to justify a conviction under the later provision there must be available on record some material and cogent evidence. Presently, we have on record two inconsistent versions of the brother and the cousin, as such no credence can be attributed thereupon – the documentary evidence (namely, those three letters), in our view, falls short of the requirement of the statute: even on an assumption of the fact that there is no contradiction in the oral testimony available on record, the cousin goes to the unfortunate girl's in laws' place and requests the husband to treat her well – at best some torture and a request to treat her well. This by itself would not bring home the charge under Section 498-A. Demand for dowry has not seen the light of day".

If the evidence of the prosecution is tested on the anvil of enunciation of law by the Apex Court, the conduct of the accused which is branded as cruelty by the prosecution, and which untenable contention of the prosecution found favour with the learned Sessions Judge, cannot constitute cruelty as is statutorily defined.

20. The versions of the witnesses, who have deposed that Kavita was asked to bring certain amount from her parental home, is inconsistent. Devanand, who has deposed against his parents, has disclaimed knowledge that such demand was made muchless that any amount was paid by PW 1 to Kavita. Moreover, there is absolutely no evidence on record giving any details of the alleged ill-treatment. A general allegation that all the accused ill-treated Kavita does not take the case of the prosecution any further. Indeed, the genesis of the prosecution does not appear to be ill-treatment to Kavita due to the expectation of Rs.10,000/- (Rupees Ten Thousand) or then Rs.4,000/- (Rupees Four Thousand) from her parental home. The genesis of the prosecution appears to be an internecine dispute which is the only incident to which PW 6-Devanand has referred. It is difficult to record a finding that there was any intent to drive Kavita to commit suicide.

21. In my considered view, the judgment of conviction impugned is manifestly erroneous. The prosecution has miserably failed to bring home the charge under Section 498-A or Section 306 of the IPC and the learned Sessions Judge committed a grave error in convicting the accused, given the state of evidence on record.

22. The judgment impugned dated 15-5-2009 rendered by the

learned *Ad hoc* Additional Sessions Judge-2, Wardha in Sessions Trial 138/2008 is quashed.

23. The appellants-accused are acquitted of offence punishable under Sections 498-A and 306 read with Section 34 of the Indian Penal Code.

24. The bail bonds of the accused shall stand discharged.

25. Fine, if any, paid by the accused shall be refunded to them.

26. The appeal is allowed accordingly.

JUDGE

adgokar