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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1534 OF 2003**

The State of Maharashtra ... Appellant
Vs.
Mohan Bapurao Salte & Ors. ... Respondents

Mr. H. J. Dedhia APP for the Appellant-State.
None for the Respondents.

CORAM : S. M. MODAK, J.

DATED : 29TH NOVEMBER 2022.

P.C:-

1. Heard learned APP Mr.Dedhia for the Appellant-Complainant.
2. There is no one present on behalf of the Respondent No.4/accused/husband. Though before the trial Court there were four accused persons, this appeal is admitted only against accused No.4 as per the order dated 1st September 2004. When the leave is granted there was appearance of accused no.4 through learned Advocate Mr. J. B. Mishra and Mr. S. D. Bhosale but they have not filed note of appearance in the Appeal. Furthermore, communication dated 4th May 2007 received from the Collector Office, Satara, mentions that the Respondent-accused was not found at given address.
3. However, when this Court has heard preliminary submission made on behalf of learned APP, this Court found that no purpose will be served by keeping the Appeal pending only for taking steps against

accused No.4, hence, the Appeal is heard.

4. Learned APP took me through the judgment of the trial Court. Accused Nos.2 and 3 are in-laws of the first informant Chandrakala Salte whereas accused No.4 is husband of the first informant and accused No.1 is brother-in-law. The marriage of the first informant with accused No.4 was performed on 8th March 1986 and except accused No.2-Parubai Salte, all three accused were residing at Bombay for their occupation. The first informant used to stay with her mother-in-law at Village Saltewadi, Taluka Patan, District Satara. The husband used to visit native place for co-habitation. Such co-habitation continued till June 1997, and thereafter she started cohabiting with her parents whereas the FIR is lodged on 7th January 1999, and the offence under section 498-A of the Indian Penal Code came to be registered against all accused persons.

5. The reason for ill treatment is demand of Rs.25,000/- for installation of a shop. Whenever the husband used to visit the native place, at the instance of mother, accused No.4 used to beat the first informant. The trial Court concluded that all incidents of harassment does not fall within meaning of "cruelty" given in explanation of section 498-A of the Indian Penal Code. The prosecution examined five witnesses :-

- (i) The first informant – Chandrakala (PW 1),
- (ii) His brother- Sunil (PW 2),
- (iii) Banubai, mother of the first informant (PW 3),
- (iv) Ananda, father of the first informant (PW 4) and
- (v) The Investigating Officer B. N. More (PW 5).

6. After appreciating evidence, the trial Court concluded that three relatives of the first informant were not eye witnesses. They got knowledge of cruelty from the first informant. The trial Court disbelieved evidence of the first informant for various reasons including not lodging the FIR in June 1997, when she left the matrimonial house whereas the FIR is lodged in January 1999. The trial Court also referred to averments in the application filed claiming maintenance therein. She has admitted that she resides with her parents since June 1997, whereas in the FIR, she has stated that on 5th April 1999, she was driven out of matrimonial house. The trial Court found inconsistency in between two versions on the point of period from which she is residing separately. That's why the trial Court has not considered her as trustworthy witness.

7. It is true that evidence in matrimonial matter cannot be appreciated, strictly, just like appreciation of evidence in other penal offences. It is true that the delay in lodging the FIR is fatal to prosecution, if no explanation is offered. It is but natural for the first informant to wait for considerable time so that differences can be sorted out. So the delay has to be considered from that perspective. However, in this case there is not only delay but the first informant has come out with the theory of she being driven out of house on 5th April 1999. This does not find place in the maintenance application.

8. The trial Court also disbelieved her on the point of incident that took place at the time of lodging of FIR. She states that she filed FIR along with her brother and one women representative, however, it is

not supported by their evidence including evidence of brother.

9. As stated above the other three relatives were not eye witnesses. The discussion about evidence of PW 2, PW 3 and PW 4 find place in paragraph 27 to paragraph 34. I have perused them. The trial Court noticed inconsistency in between evidence of these three witnesses on the one hand and the first informant on the other hand. After perusing the judgment, this Court finds that the findings are not perverse but they are probable conclusion after appreciating the evidence. This Court did not find that the trial Court has appreciated evidence without considering the settled principles of appreciation of evidence.

10. It is not that every harassment or every matrimonial dispute that falls within purview of cruelty as per section 498-A of the Indian Penal Code. Only those instances as provided under explanation (a) and (b) of section 498-A of the Indian Penal Code are legally punishable acts of cruelty. Unfortunately, that has not happened in this case and that's why all accused have been acquitted. There is no merit in the Appeal and hence it is dismissed.

(S. M. MODAK, J.)