

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

CRIMINAL APPEAL NO. 218 OF 2006

The State of Maharashtra

...Appellant

vs.

Shantaram Tukaram Sarfare
2/7 Ganesh Kunj, Kondivita,
J. B. Nagar, Andheri (E),
Mumbai – 59.

...Respondent

Ms. S. S. Kaushik - APP for the Appellant/State

Mr. Chetan Akerkar - Advocate for the Respondent No. 1

CORAM : S. M. MODAK, J.

DATE : 13th DECEMBER, 2022

JUDGMENT :-

1. Heard learned APP Ms. S. S. Kaushik and learned Advocate Mr. Chetan Akerkar for the Respondent-Accused.

2. Respondent is acquitted by the Court of Metropolitan Magistrate, 10th Court, Andheri, Mumbai for the offence punishable under Sections 498A and 494 of the Indian Penal Code on 14/07/2004. He faced the trial for the allegations that he used to beat his wife-P.W. No. 1-Sandhya. The Respondent-accused also used to consume liquor and he has developed illicit relationship with one Shaila Patil-P.W. No. 6. Even there is allegations that he has married

with said Shaila. On account of this background, the matrimonial life was not happy. Sandhya and Respondent married with each other in the year 1972 in Mumbai. They stay together at Dadar and Santacruz and thereafter, they have cohabited together at M.I.D.C., Andheri. On some occasions, the Respondent-accused went to the extent of beating her physically. Finally, she could not sustained the harassment and on 01/07/1996, she lodged complaint with M.I.D.C. Police Station, Andheri.

3. She was also examined by the Doctors attached to the Cooper Hospital on 12/06/1995 and 12/07/1996. The investigation has resulted in filing of the charge-sheet. The Respondent faced trial for the offences mentioned above. The prosecution examined eight witnesses. Copies of their evidences are there in the paper book. On reading them, it reveals that except the evidence of P.W. No. 1- Sandhya, the evidence of all other witnesses were recorded in a cryptic manner. It may be for the reason that those witnesses have not given the details or it may be due to the approach by learned Metropolitan Magistrate. The same approach continued when learned Metropolitan Magistrate gave judgment. It consists of only two pages. Even though it is true that there is special provision

under Section 355 of the Criminal Procedure Code wherein learned Metropolitan Magistrate may dispense with normal particulars in the judgment. But it does not mean that it is unreasoned.

4. Learned APP has taken me through the evidence of above said witnesses and the judgment. What I find is that even though the first informant-Sandhya has given the evidence in detail, when the question of collaboration has come either in the form of evidence of neighbour or in the form of medical evidence, there are certain lacunaes. P.W. No. 2 Smt. Cycil D'souza and P.W. No. 3 – Smt. Kismatidevi are two neighbours. However they have expressed ignorance about the relationship in between Sandhya and the Respondent-accused.

5. When I have perused the medical evidence, it consists of the evidence of :-

P.W. No. 4- Dr. Sandeep Padgaonkar,

P.W. No. 7 -Dr. Shri Shamrao Gamare and

P.W. No. 8- Dr. Suresh Madne.

All are attached to the Cooper Hospital. Dr. Gamare has examined her on 12/7/95 whereas the certificate was issued by Dr. Madane on 3/9/96. There is some confusion about the date of examination that is 12/9/95 (as stated by Dr. Madane) or on 12/9/96 as stated by Dr.

Gamare. Though Dr. Gamare examined her, certificate is not issued by him but it was issued by Dr. Madane on the basis of register. Though Dr. Gamare has described certain injuries, according to him the injured may be pretending. Whereas Dr. Padgaonkar deposed in respect of examining Sandhya on 01/07/1996. He examined her on the basis of referral by the Police. There also he has said about pretending by Sandhya. One may be surprised to note that even though Sandhya was referred to the Medical Officer, the Respondent-accused is not charged either for the offence punishable under Section 323 or Section 324 of the Indian Penal Code.

6. P.W. No. 5 is PSI Rajmane attached to the M.I.D.C. Andheri Police Station. He has recorded the F.I.R. lodged by Sandhya on 01/07/1996 and he has also completed the investigation. Certain omissions are pointed out to him during cross-examination. Prosecution has also taken pains in examining P.W. No. 6 – Shaila Patil against whom there is allegation of bigamy. She has not supported the case of prosecution.

7. When I have perused the evidence of P.W. No. 1-Sandhya, she has deposed certain instances. Though she has quoted one incident of visiting the house of Shaila Patil at night time, there is no

corroboration in the form of evidence of the witnesses residing in the neighborhood.

8. Learned Metropolitan Magistrate has observed that there is no allegation of harassment on account of demand of dowry. Even though it is true, learned Metropolitan Magistrate was wrong in interpreting the provisions of Section 498A of the Indian Penal Code (there is no demand for dowry) still it is true that if the harassment is of such nature as to drive the woman to commit suicide it comes within the purview of Section 498A of the Indian Penal Code. After reading her evidence, what I find is that there are certain improvements made by her. So also her testimony is not corroborated by any neighbours.

9. Learned Advocate for the Respondent-accused submitted that in fact the Respondent has filed Divorce petition on the ground of cruelty and though it was dismissed by the Family Court, Division Bench of this Court has granted divorce by judgment dated 12th January, 2018. Copy is tendered on record and marked as 'Annexure – A'. I have perused it. There are details of cases pending in between both the spouses. Even Sandhya has asked for the Divorce but she was not successful. She is getting maintenance of Rs. 3,000/- as

reflected in para no. 8(v) judgment of the Division bench.

10. Learned Advocate for the Respondent-accused submitted that the maintenance obligation is being fulfilled by his client and there is application for enhancement which is pending. He also submitted that the matrimonial house is demolished and there is building constructed and one flat is allotted in which Sandhya is residing.

11. The Respondent-accused has undertaken for continuance of stay of Sandhya there and that is reflected in the operative order point no. (v) .

12. For the above discussion, I do not find that there is any reason to interfere in the impugned judgment. Let the Respondent-accused to fulfill his commitment towards the maintenance and his commitment in respect of that flat.

13. For the above observations, there is no merit in the appeal and the Appeal is dismissed.

[S. M. MODAK, J.]