

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPEAL NO.106 OF 2009

State of Maharashtra, Through Police
Station Officer, P.S. Shivaji Nagar,
Khamgaon, Dist. Buldhana.

.... Appellant

// VERSUS //

Santosh s/o Purushottam Purohit,
Aged 38 years, School No.3, R/o
Shivaji Ves, Khamgaon, Distt.
Buldhana.

... Respondent

Shri V.A. Thakare, APP for the State / Appellant
Shri V.K. Paliwal, Advocate for the Respondent.

CORAM : ANIL S. KILOR, J.

DATED : 05/07/2022

ORAL JUDGMENT :

This appeal takes exception to the judgment and order passed by the Additional Sessions Judge, Khamgaon, in Sessions Case No.37 of 2007 dated 21.11.2008, convicting the respondent-Santosh w/o Purushottam Purohit, for the offence punishable under Section 498A of the Indian Penal Code (for short “the IPC”)

2. The prayers made in this Appeal are as follows:

“i. Call the record of Additional Sessions Judge, Khamgaon in Sessions Case No.37/07 decided on 21.11.2008 for kind perusal of this Hon’ble Court.

ii. enhance the sentence of imprisonment awarded to the accused/respondent by the Additional Sessions Judge, Khamgaon in S.C. No.37/07, as per the provision of Section 498-A of Indian Penal Code.

3. On perusal of the prayer clauses, it can be seen that the present appeal is filed for enhancement of sentence of imprisonment awarded to the accused/respondent while convicting him under Section 498A of the IPC.

4. The brief story of the prosecution is that, the deceased Anita, the wife of the respondent, was burnt by an accident in the night of 27.02.2007 at about 24 hours. The deceased was hospitalized and her dying declaration (Exh.29) was recorded on 28.02.2007 at 2.50 hours by the Executive Magistrate.

5. Thereafter, the Police Sub-Inspector, Akola on the next day morning independently recorded the statement (Exh.30) of the deceased Anita. According to this statement, when she was making tea in the midnight at 24 hours, she burnt by accident.

6. On 22.03.2007, the father of the deceased Anita namely, Lalchand Manaklaji Chhagani, (PW-1) lodged a written report (Exh.32), alleging that for last four to five years Anita’s husband, the respondent was meting out

cruelty by means of beating and abusing her. It is further alleged that the respondent used to beat her with a view to coerce for fetching money from her father for purchasing rickshaw. He further alleged that his daughter Anita could not endure such torturous conduct for years together, she committed suicide by pouring kerosene on her person.

7. It is further alleged that she gave statement that she was burnt accidentally under pressure of the respondent and other accused persons and especially, because of their threat with respect of career of two minor children.

8. Thus, the gist of the prosecution case is that, the deceased Anita committed suicide owing to constant illtreatment and torture from the accused persons, including the respondent for their demand of money.

9. I have heard the learned APP and Shri Paliwal, learned counsel for the respondent/accused.

10. The learned APP submits that the learned trial Court while convicting the respondent under Section 498A of the IPC, has sentenced him to suffer imprisonment till rising of Court and to pay fine of Rs.25,000/-, in default to suffer rigorous imprisonment for one year.

11. It is submitted that the said sentence needs to be enhanced considering the seriousness of offence and the evidence brought on record by the prosecution to establish the guilty beyond doubt.

12. It is submitted that the learned trial Court has not considered the oral as well as documentary evidence in right perspective while imposing the punishment.

13. Shri Paliwal, learned counsel for the respondent/accused, submits that no legal infirmity has been committed by the learned trial Court while sentencing the respondent to suffer imprisonment till rising of Court and to pay fine of Rs.25,000/-. Accordingly, he submits that no interference is required in this appeal and accordingly, he prays for rejection of the present appeal.

14. To consider the rival contentions of the parties, I have perused the record and proceedings and also the impugned judgment and order passed by the learned Additional Sessions Judge.

15. At this juncture, it is necessary to refer to Section 498A of the IPC, which reads thus:

“498A. 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.”

16. Since the appeal is for enhancement of the sentence under Section 498A of the IPC, I restrict the scope of the present appeal to the extent, whether the findings recorded by the learned trial Court, imposing the sentence to suffer imprisonment till rising of Court, is just and proper. For this purpose, paragraph Nos 11, 12 and 13 of the impugned judgment, are relevant, which are as follow:

“11. The discussion supra, leads to only conclusion that conduct of accused Santosh was absolutely cruel towards his wife Anita. It can reasonably and sufficiently be gathered that because of his conduct, marital life of Anita with him was not happy and she might be depressed. The accused No.1 Santosh even did not listen to his parents’ advice when they wanted to interfere and convince him not to beat or abuse Anita. What it discerns from report at Exh.50 is that the accused Santosh slapped them. It indicates; as to how accused Santosh was aggressive and not in a mood to listen to anybody or take care of his wife. The ill-treatment might have reached to such an

extent causing Anita to commit suicide. In my sincere view, it would be unwise to expect any direct evidence of an ill-treatment by accused No.1 Santosh to deceased Anita if such an ill-treatment inside the house and within four walls, had been a regular feature. The neighbours are not supposed to know about it. It also may be said that probably because of good culture Anita might not have made propaganda of an ill-treatment to her by her husband, in the neighbourhood. Therefore, I hold that the offence under Sec. 498A of I.P.C. is duly proved against accused No.1 Santosh only. At this stage, accused No.1 Santosh is made aware of this finding and asked to make submission if any on the point of sentence.

He submitted that he has two minor children. They need him very much for their care and welfare. So if he is detained in jail, there may be an adverse effect on the children too. More-so, there is no record of his bad antecedents and therefore, he be shown leniency and be released on probation of good conduct.

12. Sociological jurisprudence studies the phenomena of crime, the mind of criminal, the causes of crime, the remedies therefore, the effect of punishment and so on. The punishment involves the infliction of pain or forfeiture. It is the infliction of a penalty, chastisement or castigation by the judicial arms of the State. If the sole purpose behind punishment is to cause physical pain to a wrong doer, it serves little purpose. However, if punishment is such as leads him to realize the gravity of the offence committed by him, and to repent and atone for it thus neutralizing the effect of his wrongful act it may be said to have achieved the desired effect. Therefore, while inflicting punishment I do make an allowance on the nature And gravity of the crime perpetuated by the accused, his age and also the pacification of the victim.

13. So far as the demise of his wife is concerned, it may be construed as a case of domestic violence normally prevalent in the society but remained invisible in the public domain. I already observed in the body of judgment that attitude and conduct and especially the addition of accused Santosh drove his wife Anita to commit suicide. It however, cannot be ignored that the accused sincerely attempted to extinguish the fire and save his wife. In that attempt, he received injuries to his thighs and hands. This indicates that he never intended that his conduct towards his wife would result into suicide of his wife. It has also been observed by me that in the dying declaration and statement recorded by police, deceased Anita

unequivocally stated that she had caught fire while warming Dal. I discussed under what circumstances and as to why he could have made such statement giving a clean-chit to the accused. One of the reasons in my opinion could have been the welfare of the children. She might have thought about the welfare of her children who are in the custody of accused Santosh. After losing mother, the minor children have the only shelter of their father the present accused Santosh. In the circumstances, I think that sentence of imprisonment just to keep him behind the bars for some period, would serve no fruitful purpose of punishment. So making an allowance on all these facts and especially the care and maintenance of children, the punishment of T.R.C. and heavy fine would meet the ends of justice.”

17. The learned trial Court while imposing punishment has considered various factors, namely that the accused sincerely attempted to extinguish the fire and to save his wife and in that attempt, he received injuries to his thighs and hands. This indicates that he never intended that his conduct towards his wife would result into suicide of his wife.

18. The further consideration was that the dying declaration and the statements of the deceased Anita, recorded by the police, states that she had caught fire while warming Dal. Though, the possibility of welfare of children was there for giving clean chit to the respondent.

19. The learned trial Court therefore, considered the fact that after losing the mother, the minor children have the only shelter of their father i.e. the respondent and thus, considering all these aspects, awarded sentence to imprisonment till rising of Court.

20. In the circumstances, I do not find any perversity or illegality in the said approach adopted by the learned trial Court. Moreover, it is a well settled principle of law that only because another view is possible, the view taken by the learned trial Court, cannot be interfered with.

21. Thus, in the above referred backdrop, I find no substance in the merit of the appeal. Accordingly, it is **dismissed**.

[ANIL S. KILOR, J.]