

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.615 OF 2002

1. Manik Ramrao Jadhav
Age : 50 years, Occu.: Agriculture,
R/o.: Lakhampur Laman Tanda,
Tal. Renapur, Dist. Latur
2. Ramesh Manikrao Jadhav,
Age : 25 years, Occu.: Agriculture,
R/o.: As above. ... APPELLANTS

VERSUS

The State of Maharashtra ... RESPONDENT

Advocate for the Appellants ...
: Ku. Tanvi V. Jadhav h/f
Mr. Subodh P. Shah
Advocate for Respondent - State : Mr. P. M. Kulkarni
....

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 13/09/2023

PRONOUNCED ON : 01/11/2023

JUDGMENT :

1. The appellants, who are the original accused, have challenged their conviction under Section 498A r.w. 34 of IPC at the hands of the learned First Ad-hoc Additional Sessions Judge, Latur (hereinafter referred to as 'the learned trial court') vide judgment and order dated 24/09/2002 in Sessions Case No.66 of 2001 by

way of this appeal. Both the appellants / accused are convicted under Section 498A r.w. 34 of IPC and sentenced to suffer R.I. for 3 years each and to pay fine of Rs.1,000/- each, in default to suffer R.I. for two months each.

2. According to the prosecution story, one Manisha i.e. daughter of PW-1 Raosaheb Bhau Rathod, got married with the present appellant No.2 on 19/04/2000. Appellant No.1 is her father-in-law. Both the appellants / accused treated Manisha properly for about six months after the marriage, but thereafter, appellant No.2 started keeping an evil eye on her and used to outrage her modesty with intention to establish sexual relationship with her. Appellant No.2 i.e. husband of Manisha also used to illtreat her at the instigation of appellant No.1. Out of the said wedlock, Manisha had given birth to one female child in the month of April, 2001. Manisha used to tell about the ill-treatment, which she suffered from the appellants / accused to her parents and other relatives whenever she comes to her parental house. After birth of daughter, she had stayed at paternal house and then again went to the matrimonial house. However, one month prior to the lodging of the FIR, appellant No.1 had caught her hand with intention to establish physical relations with her. Then on the festival of Rakhi-

Pournima, appellant No.2 alongwith Manisha, had come to the house of PW-1 and at that time also Manisha had told PW-1 about the behaviour of appellant No.1. However, PW-1 somehow convinced Manisha and sent her to matrimonial house. Then on 19/08/2001 PW-1 learned that Manisha due to ill-treatment from the appellants / accused, consumed poison and thereafter taken to Ambajogai Civil Hospital. When PW-1 immediately rushed to the said hospital, he came to know that Manisha died in the hospital. As such, on 20/08/2001 PW-1 lodged report Exhibit-13 against the present appellants / accused and accordingly crime was registered against the appellants / accused under Sections 354, 306, 323, 498A r.w. 34 of IPC. The investigation machinery conducted the investigation and ultimately filed charge sheet against the appellants / accused for the offence as stated above. Thereafter, the learned trial court conducted the trial and convicted both the appellants / accused for the offence punishable under Section 498A r.w. 34 of IPC only.

3. The learned counsel for the appellants / accused submitted that there was absolutely no evidence in respect of the charge under Section 498A r.w. 34 of IPC against the appellants / accused. Moreover, deceased Manisha had also not stated to her

parents or other witnesses the particulars of incidents of ill-treatment. She pointed out that only relatives of deceased Manisha, have been examined by the prosecution and there is no independent evidence in respect of the alleged ill-treatment of deceased Manisha. She pointed out that the learned trial court has already acquitted the appellants / accused from charge under Sections 306, 354, 323 r.w. 34 of IPC but on the same evidence, wrongly convicted them under Section 498A r.w. 34 of IPC. As such, she prayed for total acquittal of the appellants / accused. She also relied on judgment of this court reported in **2012(4) Bom.C.R.(Cri.) 796 in the case of Mahendra Baliram Kamble vs. State of Maharashtra.**

4. On the contrary, the learned APP strongly opposed the submissions made on behalf of the appellants / accused and supported the impugned judgment and order. According to him, the prosecution has examined in all eight witnesses and all of them have corroborated on each and every aspect. He pointed out that the conduct of father-in-law i.e. appellant No.1 of keeping an evil eye on the deceased definitely comes under explanation (a) of Section 498A of IPC regarding cruelty. As such, he prayed for dismissal of the appeal.

5. Heard rival submissions. Also perused the entire documents and oral evidence on record alongwith impugned judgment and order. Also considered the citation relied upon by the learned counsel for the appellants / accused.

6. It is significant to note that both the appellants / accused were initially charged for the offence punishable under Sections 306, 498-A, 323 r.w. 34 of IPC and there was also allegation against appellant No.1 for the offence punishable under Section 354 of IPC. However, it is also significant to note that the learned trial court has already acquitted the appellants / accused from the charge under Sections 306 and 323 r.w. 34 of IPC. Moreover, appellant No.1 has also been acquitted from the charge under Section 354 of IPC. Thus, it appears that on the basis of same evidence, the appellants / accused are convicted only under Section 498A r.w. 34 of IPC. The commission of suicide by consuming poisonous material by deceased Manisha, is not at all in dispute. Therefore, it is to be seen only whether the evidence on record is convincing for conviction of the appellants / accused under Section 498A r.w. 34 of IPC.

7. So far as the evidence of prosecution is concerned, the prosecution has examined in all eight witnesses. However, for the

charge under Section 498A of IPC against appellants / accused, the evidence of PW-1, PW-3, PW-4 and PW-7 is material since it is related to the ill-treatment of deceased Manisha. However, on going through the evidence of these witnesses there are certain contradictions among their versions while deposing before the court. PW-1 Raosaheb, who is the father of deceased Manisha, has deposed as per the complaint Exhibit-13 lodged by him. Further, PW-3 Jaising, who is a distant relative of the deceased also deposed about the alleged ill-treatment of Manisha at the hands of the appellants / accused. However, while deposing before the court, he has made additional statements. Though father of deceased Manisha came with a story that Manisha told him that appellant No.1 was keeping an evil eye on her and appellant No.2 used to ill-treat her at the instigation of appellant No.1, however, this PW-3 Jaising has come out with new theory that Manisha had told him that both the appellants / accused ill-treated her on account that she was not able to do agricultural as well as household work. On the other hand, PW-4 Chandabai, who is also a distant relative of Manisha, has stated completely different story. She in the chief-examination itself has stated that Manisha did not disclose anything about appellant No.2 / accused No.2 i.e. her husband before her. Her evidence appears to be only in respect of ill-

treatment of Manisha by appellant No.1. She has even took side of appellant No.2 by stating in the chief-examination that appellant No.2 had told her that he would convince appellant No.1 not to keep an evil eye on Manisha or otherwise he would reside separately. Thus, it appears that she was not having any grudge against appellant No.2 i.e. husband of the deceased. Further, PW-7, who is mother of deceased Manisha, has also tried to improvise the story. According to her, PW-1 i.e. her husband had gone to the house of Manisha two days prior to her death and when he returned back, he told her that Manisha was weeping and the appellants were still ill-treating her. This fact is never stated by PW-1 Raosaheb in his evidence. Therefore, there are different versions on record about the alleged ill-treatment of Manisha through these witnesses. Therefore, it has to be seen that such type of evidence is sufficient for the conviction of the appellants / accused for offence punishable under Section 498A of IPC.

8. The learned counsel for the appellants / accused heavily relied on the judgment in the case of ***Mahendra Baliram Kamble*** (*supra*). On going through the said judgment, this court has discussed about the nature of cruelty which is sufficient to convict the accused under Section 498A of IPC. In the instant case, there

is no ill-treatment of deceased Manisha at the hands of appellants / accused on the ground of fulfillment of any unlawful demand relating to the dowry and therefore, the nature of cruelty in the instant case must be according to the explanation (a) of Section 498A of IPC. For quick reference Section 498A of IPC alongwith explanation (a) has been reproduced herein below:

*"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 willful 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."

9. On going through the aforesaid explanation it is the mandate of Section 498A of IPC that conduct of the accused must be 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. In the instant case, the prosecution is claiming that appellant No.1 was keeping an evil eye on deceased Manisha with sexual intention and the appellant No.2 - husband of Manisha at the instigation of appellant No.1, used to beat her. However, despite alleged disclosure of such incident to her relatives by deceased Manisha, no complaint of such ill-treatment was lodged by her relatives prior to the incident. Moreover, though such act of outraging of modesty of deceased Manisha has been claimed by the prosecution at the hands of appellant No.1, but surprisingly the learned trial court has acquitted him from the said charge under Section 354 of IPC. Not even this, but so far as allegations of beating are concerned, both the appellants / accused are also acquitted for the offence punishable under Section 323 r.w. 34 of IPC.

10. This court in the judgment cited supra, has already observed that when the appellants / accused are acquitted from the offence punishable under Section 306 of IPC, then the explanation (a) of

Section 498A of IPC cannot be helpful for prosecution. Here in this case also the learned trial court did not find any reliable and trustworthy evidence for convicting the appellants / accused under Section 306 of IPC. As such, the nature of cruelty as contemplated in explanation (a) of Section 498A of IPC which leaves no option to the deceased to commit suicide, is not established in the instant case. Moreover, it appears that the allegations made against the appellants which formed base for charging them for the offence under Sections 323 and 354 of IPC are also used for the convicting them for the offence punishable under Section 498A of IPC specially when they are acquitted from the offence under aforesaid Sections. Thus, it appears that when no charge under Section 323 or 354 of IPC was established against the appellants / accused, the same evidence and facts cannot be used for convicting them for the offence punishable under Section 498A of IPC. Moreover, as discussed above, there are many contradictions and improvements in the evidence of prosecution witnesses namely PW-1, PW-3, PW-4 & PW-7. Therefore, the same is not sufficient to establish the cruelty to deceased Manisha at the hands of the appellants as contemplated in explanation (a) of Section 498A of IPC. Therefore, all these facts give an impression that the prosecution has not proved its case beyond reasonable doubt and therefore, the

appellants / accused are entitled for benefit of doubt under such circumstances. In view of the same, following order is passed.

ORDER

1. The appeal is hereby allowed
2. The impugned judgment and order dated 24/09/2002 in Sessions Case No.66 of 2001 passed by the learned First Ad-hoc Additional Sessions Judge, Latur, is hereby set aside only to the extent of conviction of the appellants for the offence punishable under Section 498A r.w. 34 of IPC.
3. The appellants / accused are acquitted from the offence punishable under Section 498A r.w. 34 of IPC in Sessions Case No.66 of 2001 and their bail bonds stand cancelled.
4. Fine amount, if paid by the appellants / accused, be refunded to them.
5. The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)