

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 686 OF 2002

Nitin Pandurang Sable

Age : 28 yrs, occ : service

R/o Khed, Taluka Karjat,

District Ahmednagar.

Appellant

Versus

The State of Maharashtra

Respondent

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Mr. Satej S. Jadhav a/w Mr. Niraj Chudiwal, Advocates for the
appellant.

Mrs. D.S. Jape, A.P.P. for the respondent – State.

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CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 1st September 2023

Judgment pronounced on : 7th September 2023

Judgment :

1. The appellant i.e. the original accused has challenged the judgment and order dated 16.11.2002 passed in Sessions Case No.26/2002 by the learned 1st Adhoc Additional Sessions Judge, Ahmednagar (hereinafter referred to as “the learned trial Court”), whereby he has been convicted for the offence punishable under Section 498-A of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 10,000/- in default to suffer simple imprisonment for one year.

2. The case of prosecution is that one Manisha Pandurang Randhavat i.e. the daughter of PW-2 Pandurang Randhavat and sister of complainant PW-1 Raju Randhavat, got married with the appellant on 09.05.1997. The appellant was residing at village Akhoni, Taluka Karjat, District Ahmednagar and serving as a Teacher in Zilla Parishad Primary School at village Khed of the same Taluka. He used to attend his service by doing up-down on motorcycle from his village. The appellant treated Manisha properly only for a period of six months after the marriage and thereafter started ill-treating her by beating and keeping her hungry. He used to take doubt about her character. He also used to demand an amount of Rs. 25,000/- from Manisha for payment of motorcycle which he had already purchased. He was also demanding certain amounts for construction of house. According to the complainant, Manisha used to tell all these facts to her parental house on telephone. Due to such harassment, the complainant, his parents alongwith Pandurang Eknath Rode and Ramdas Bhausahab Jangle of their village had gone to the house of appellant for persuading him not to harass Manisha. At that time the appellant had assured in presence of these persons that he would treat Manisha properly in future. However, the ill-treatment on

account of demand of money at the hands of appellant continued. The complainant even paid certain amount to the appellant, but the appellant asked Manisha to bring the remaining amount.

3. Thereafter on 01.12.2001 at about 11.30 a.m. complainant's cousin Anil informed him that Manisha sustained burn injuries at her residential house on 30.11.2001 at about 10.00 p.m. and was admitted to the hospital at Baramati. When the complainant went to the Government Dispensary at Baramati, he found his parents and sister already arrived there. Father-in-law of Manisha was present in the said hospital, but the appellant was not there. At that time Manisha told him that on the day of incident there was Mutton Party arranged by the appellant and his two colleague teachers were invited for dinner. All of them consumed liquor and Manishan then served food to them. However, when those teachers left the house, the appellant scolded Manisha as to why she served more Mutton to one of his colleagues and raised suspicion that Manisha was having an affair with the said teacher. Then on the same day when Manisha slept, the appellant poured kerosene on her person and set her on fire, and therefore, Manisha

sustained 96% burn injuries. Then the complainant on 06.12.2001 lodged complaint against the accused, however, since Manisha died on 10.12.2001, the investigating machinery added charge under Section 302 of I.P.C. in Crime No.186/2001 which was already registered against the appellant for the offences punishable under Sections 498-A and 307 of I.P.C. After completion of investigation, the concerned Investigating Officer filed charge-sheet against the appellant/accused and after conducting the trial, the learned trial Court convicted the appellant for the offence punishable under Section 498-A of the I.P.C. and sentenced him as aforesaid. However, the learned trial Court acquitted the appellant from the charge under Section 302 of the I.P.C.

4. Learned Counsel for the appellant/accused submits that the learned trial Court has already acquitted the appellant/accused of the offence punishable under Section 302 of I.P.C., but on account of the alleged harassment, has convicted him wrongly, despite there being so many contradictions and omissions in the evidence of complainant PW-1 Raju and PW-2 Pandurang i.e. the father of deceased Manisha. He pointed out that the omissions could not be confirmed since the prosecution failed to examine the

Investigating Officer. According to him, the panch witness has not supported the prosecution and on non-examination of Investigating Officer, the fact of written dying declaration which is not on record, could not prove the suggestion that it was favourable to the appellant/accused. He pointed out that though it was stated by the complainant that Manisha used to tell him about the alleged ill-treatment at the hands of appellant on telephone, but neither the appellant nor the father of deceased Manisha were having telephones at their residences. He pointed out that the alleged demands for money are not proved and it was extremely important to note that despite having knowledge of the incident and so called dying declaration of Manisha on 01.12.2001 itself, the complainant did not lodge any report immediately and lodged the same belatedly on 06.12.2001. These facts clearly indicate that lodging F.I.R. against the appellant/accused was an afterthought.

5. On the contrary, the learned A.P.P. supported the judgment of the learned trial Court and submitted that the complainant as well as father of deceased have corroborated each other on the aspect of demand of certain amount by the appellant. He pointed out that the complaint itself indicates

that the appellant was demanding amount of Rs. 25,000/- for construction of house. As such, he prayed for dismissal of the appeal.

6. Heard rival submissions. Also perused the entire oral and documentary evidence on record.

7. Admittedly, the appellant/accused was initially facing charges under Sections 498-A and 302 of I.P.C., but the learned trial Court has already acquitted him of the charges under Section 302 of I.P.C. Further, it is not disputed that Manisha died on 10.12.2001, after being admitted to the hospital at Baramati after the incident which took place on 30.11.2001. Since the appellant/accused has already been acquitted from the charges under Section 302 of I.P.C., there is no need to discuss the evidence to that effect. Therefore, I will consider the evidence of witnesses of prosecution only in respect of the allegations about ill-treatment of deceased Manisha at the hands of appellant and demand of certain amount, which is necessary to constitute the offence under Section 498-A of I.P.C.

8. It is evident that the prosecution has examined only three witnesses out of which PW-3 Hanumant Shelke is

the panch witness. It is extremely important to note that the prosecution has not examined the Investigating Officer, and therefore, on the aspect of ill-treatment and alleged demand of money, there is evidence of only two witnesses i.e. PW-1 Raju Pandurang Randhavat and PW-2 Pandurang Tukaram Randhavat who are respectively brother and father of deceased Manisha. The learned Counsel for the appellant has vehemently argued that the evidence of PW-1 Raju and PW-2 Pandurang is full of contradictions and omissions and despite such contradictions and omissions, the learned trial Court wrongly convicted the appellant. On the contrary, the learned A.P.P. has submitted that these two witnesses have already corroborated each other on material aspects namely ill-treatment and demand of money, and therefore, the appellant is rightly convicted for the offence punishable under Section 498-A of I.P.C. In the light of these submissions, let us scrutinize the evidence of PW-1 Raju and PW-2 Pandurang.

9. PW-1 Raju is the brother of deceased Manisha and he is examined at Exh.15 who had lodged complaint (Exh.16). On the aspect of ill-treatment and demand of money this witness has specifically stated that Manisha was treated properly only for about six months and thereafter ill-

treatment to her at the hands of the appellant/accused started. According to him, the appellant used to beat and keep her hungry and he was also taking suspicion on her character. According to him, his sister used to tell him about such ill-treatment by making phone calls. He had also tried to convince the appellant by visiting his house alongwith his parents and Pandurang Rode and Ramdas Jangle of his village. He stated that though the appellant in presence of these persons had assured to treat Manisha properly in future, but his ill-treatment continued thereafter. This witness has stated that the appellant demanded a sum of Rs.25,000/- for paying the price of the motorcycle purchased by him. He specifically stated that he had already given an amount of Rs. 10,000/- to the appellant, but the appellant again demanded the amount of Rs. 10,000/- for the house. However, in cross-examination PW-1 Raju has admitted that before the marriage when they verified the information about the appellant/accused and his family members, it was found that the appellant and his family persons were good. Further, it has also come on record that the appellant was already having house and motorcycle prior to his marriage with Manisha. Moreover, PW-1 Raju has also clearly admitted in his cross-examination that he did not state to the police at

the time of lodging complaint that the appellant was demanding an amount of Rs. 25,000/- for purchasing motorcycle. Moreover, he has also admitted that he was not having any documentary proof for showing that he had paid a sum of Rs. 10,000/- to the appellant. Further, he could not recollect the date on which he had paid the aforesaid amount. He further admitted that the fact of demanding Rs. 10,000/- by the appellant after payment of earlier amount of Rs.10,000/-, to the appellant, is not mentioned in his complaint.

10. Further, though the father of deceased Manisha i.e. PW-2 Pandurang Randhavat has deposed about such ill-treatment to Manisha, similarly to PW-1 Raju, but there are certain discrepancies as regards the demand allegedly made by the appellant. PW-2 Pandurang has stated that accused used to demand a sum of Rs. 25,000/- for vehicle and for house. Thus, he has not stated anything about further demand of Rs. 10,000/- by the appellant and after getting the said amount from PW-1 Raju, additional demand of Rs.10,000/-. Though this witness has also stated that he alongwith the complainant, Pandurang Rode and Ramdas Jangle had gone to persuade the appellant for not to ill-treat

Manisha, but the prosecution has not examined any of these independent persons namely Pandurang Rode and Ramdas Jangle. In the cross-examination PW-2 Pandurang has already admitted that he was not having telephone at his house. Moreover, he has specifically admitted that in his police statement he did not state that the appellant was demanding a sum of Rs. 25,000/- for vehicle and house. He also admitted that he did not state to police that he had asked his son Raju i.e. PW-1 to give money to the appellant.

11. Thus, considering the evidence of both PW-1 Raju and PW-2 Pandurang on the aspects of ill-treatment and demand of money, which constitute the offence under Section 498-A of I.P.C., it is evident that the allegations to that effect are come on record in the form of omissions. Thus, it appears that both these witnesses have improvised their stories with intent to frame the appellant. Though they stated that Manisha used to tell about the alleged ill-treatment and demand to them on telephone, but in the cross-examination it has come on record that neither the appellant nor the parents of deceased Manisha were having telephone at their residences. It is extremely important to note that the learned trial Court has observed in the

judgment that there was facility of Public Telephone Booth in the village and from there Manisha could have told her father and brother about her ill-treatment. However, the father of Manisha was also not having telephone at his residence, and therefore, such possibility as observed by the learned trial Court, appears highly improbable.

12. Further, it is extremely important to note that the incident had taken place on 30.11.2001 and PW-1 Raju as well as PW-2 Pandurang were aware of the same on the very next day i.e. on 01.12.2001. Moreover, it was their case that Manisha had already told PW-1 Raju as to how the appellant took suspicion on her character and set her ablaze. However, despite the said facts, no complaint was lodged against the appellant/accused by the brother and father of deceased Manisha till 06.12.2001. PW-1 could not assign any reason as to why the complaint was not lodged immediately. On the other hand, father of Manisha i.e. PW-2 Pandurang has given admission that he was feeling like filing the complaint, but was not in a position to file the same as he was not sure for what the complaint was to be filed. All these facts have definitely created doubt about the prosecution story. The evidence of PW-1 Raju as well as PW-2 Pandurang is full of

contradictions and omissions and it does not satisfy the test to determine the cruelty as contemplated in Section 498-A of I.P.C. for convicting the appellant/accused.

13. Thus, considering all these aspects, it appears that conviction recorded by the learned trial Court against the appellant/accused under Section 498-A of I.P.C. is not proper. The learned trial Court has definitely ignored the various admissions and omissions in the evidence of PW-1 Raju and PW-2 Pandurang and wrongly held that both of them corroborated each other on material aspects. The Investigating Officer is also not examined by the prosecution, who could have brought the omissions and contradictions on record. Therefore, considering all these aspects, the finding of the learned trial Court convicting the appellant/accused under Section 498-A of I.P.C. is not in consonance with the evidence on record, and therefore, it has to be held that the prosecution has not established guilt of the accused beyond all reasonable doubts. In view of the same, the following order is passed.

ORDER

- (i) The appeal is hereby allowed.
- (ii) The judgment and order dated 16.11.2002 passed by the learned 1st Adhoc Additional

Sessions Judge, Ahmednagar in Sessions Case No.26/2002 convicting the appellant / accused for the offence punishable under Section 498-A of the Indian Penal Code, is quashed and set aside.

- (iii) The appellant / accused is hereby acquitted of the offence punishable under Section 498-A of the Indian Penal Code in the said case.
- (iv) The fine amount, if paid by the appellant, be refunded to him.
- (v) The bail bonds of the appellant stand cancelled.
- (vi) Appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)