

rajshree

Digitally
signed by
RAJSHREE
KISHOR
MORE
Date:
2023.04.19
18:12:37
+0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.195 OF 2002

WITH

INTERIM APPLICATION NO.1181 OF 2023

IN

CRIMINAL APPEAL NO.195 OF 2002

Deepak Dnyandeo Londhe & Ors.] .. Appellants

vs.

State of Maharashtra & Anr.] .. Respondents

Mr.Sachin Dhakephalkar for the Appellans.

Ms.Anamika Malhotra, APP for the State.

CORAM : BHARATI DANGRE, J

DATE : 12th April, 2023

JUDGMENT :

1] The present Appeal is filed by four accused, who stood convicted under Section 498A and 323 of the Indian Penal Code vide Judgment dated 06.02.2002, passed by the 1st Adhoc Additional Sessions Judge, Solapur in Sessions Case No.216/2001.

Upon conviction, Accused No.1 is sentenced to suffer RI for 2 years and fine of Rs.5000/-, whereas, Accused Nos.3 to 5 are sentenced to suffer RI for 1 year and fine of Rs.1000/-.

All the accused, on being convicted for committing offence punishable under Section 323 of the IPC, are sentenced to suffer RI for 3 months each.

The substantive sentences are directed to run concurrently.

In the trial, Accused No.2 came to be acquitted of the charge and no Appeal has been filed against his acquittal.

2] Appellant No.1 Deepak Londhe expired during the pendency of the Appeal and as such the appeal is being prosecuted only by appellant Nos.2, 3 and 4 i.e. original Accused Nos.3, 4 and 5.

Accused No.3 is the father-in-law, Accused No.4 is the mother-in-law and Accused No.5 is the sister-in-law of the complainant, who set the investigating machinery into motion, when she lodged report with Sadar Bazar Police Station, Solapur, which was referred to Barshi Police Station, where CR No.37/2001 came to be registered and offence under Section 498A, 323, 504 and 506 of the IPC was invoked against five accused persons.

On completion of investigation, the charge-sheet was filed. During the period of trial, all the accused persons came to be released on bail.

3] Based on the allegations in the complaint, the accused persons were charged for subjecting the complainant to cruelty by their willful conduct, which was alleged to be of such a nature, to drive her to commit suicide or to cause grave injury or danger to her life, limb or health, and with a view to coerce her to meet unlawful demand of money and motorcycle etc. and thus committed an offence under Section 498A of the IPC. They came to be charged for voluntarily causing hurt to the complainant. The charge in the alternative was also framed under Section 312 and 313 of the IPC for causing miscarriage of the complainant, who was found to carry a pregnancy.

Charge was also framed under Section 506 of the IPC, against all the accused persons.

4] On being subjected to trial, the accused persons pleaded not guilty and preferred to be tried.

In order to bring home the guilt of the accused persons, prosecution examined 9 witnesses, out of whom two witnesses residing in the neighbourhood i.e. PW 1 and PW 3 turned hostile.

The star witness of the prosecution is the complainant who stepped into the witness box as PW 2 and deposed about solemnization of her marriage with Accused No.1 on 14.05.1996, where, her parents incurred expenses of marriage for both the sides, to the extent of Rs.30,000/-.

In her longish deposition before the Court, the accusation faced by the present Appellants who are prosecuting the Appeal, are required to be segregated, since largely the allegations are levelled against her husband Accused No.1, who is unfortunately not alive to prosecute the Appeal.

When the deposition of PW 2 is carefully read, it is reflected that, after solemnization of the marriage, for a period of about 15 days, they resided at original village of the accused persons, but since her husband was working as Junior Engineer in Latur, she started cohabiting with him from June 1996 to February, 1997 and used to stay in a rented house. The accusations are levelled against the husband by deposing that, after two months of marriage, he started abusing and beating her since the 'Manpan' was not properly done in the marriage. In the whole episode a general and vague accusation is levelled against Accused Nos.2 to 4, that they used to come at her matrimonial house every now and then and used to instigate her husband to make

demands and cause cruelty.

The second set of accusation faced by accused Nos.1 and 3 is about demanding a sum of Rs.60,000/- for the purpose of purchase of motorcycle, when Accused Nos.1 to 4 visited her in the hospital, after she delivered a male child on 14.04.1997. The allegation levelled is that, the complainant was threatened that if the demand is not fulfilled, her husband would be married to another woman.

The third set of accusation are vague and general in nature, where, a collective role is attributed to all the accused, of ill-treating, abusing, beating and not providing food and milk to herself and her child and also taking jibe at her. The accusation in specific is only that all other accused persons were instigating Accused No.1 to beat her in night.

5] As against Accused No.5, who is sister-in-law of the complainant, the complainant has deposed that, she secured admission for D.ED. Course in a college at Barshi and a room was hired for herself, her husband and child, but her husband was serving at Latur and he used to come up and down to Barshi while the complainant continued to stay there and attend the college.

The accusation faced by accused No.5 is that, she was asked to stay alongwith the complainant alongwith her two children to assist her, but she was not doing any domestic work and the entire work was left to the complainant. It is also alleged that, whenever the husband of the complainant used to come home, she used to instigate him and thereafter both, Accused Nos.1 and 5, used to beat the complainant and at times kept her outside the room. Once again a general allegation is made that, Accused Nos.2 to 4 were often coming there and making demand of Rs.60,000/- and abusing and beating her.

6] Throughout her deposition before the Court, the complainant speak about her strained relationship with her husband (Accused No.1) and when things could not be worked out, a meeting was arranged for amicable settlement and in presence of the accused persons, an assurance was given that she would be maintained properly in their house and once again she started residing with her husband at Tembhurni.

At this juncture also, a collective role is attributed to all the accused persons of ill-treating her and putting her to starvation and of abusing and beating. Serious allegations are levelled against the husband, of assaulting her, as he was addicted to liquor.

7] It is alleged that in January, 1999, Accused Nos.2 to 5 drive her alongwith Accused No.1 and the child, out of their house and thereafter, she started residing in a rented premises and her parents used to arrange for the expenses of her residence, as at that time, her husband was without any job. Once again, when he secured employment in B & C Department at Barshi, she was pregnant for second time and they hired a room in Solapur. But, according to the complainant, her harassment at the hands of her husband continued.

There is also allegation of miscarriage on account of beating by accused No.1, but in any case, in this episode, the other accused persons are not roped in.

8] The complainant is subjected to extensive cross-examination and it has come on record that Accused Nos.3 and 4 i.e. mother-in-law and father-in-law were working as teachers in a primary school at Tadvale and from the said admission, it can be inferred that they were residing at their work place and never resided with the complainant.

In the cross-examination, several material omissions are also brought on record and particularly about the abuses and beating on the ground that no 'Manpan' was done in the marriage and also pertinently about Accused Nos.2 to 4, that they were visiting and instigating Accused No.1 to make demands and cause cruelty to her.

In the cross-examination, she admit that husband and wife used to exchange letters and it can be inferred that the relationship between the couple was normal. She categorically admit that from 03.10.1997 to 26.07.1998, she was residing with her husband and excluding the period of her residence in the hostel, she was residing with her parents in Solapur.

In the cross-examination, defence has successfully brought on record the normal relationship shared between Accused No.1 and complainant and to some extent it has been established that, Accused No.1 encouraged her to persuade her degree in B.ED.

9] Two letters written by the complainant to her parents describing her cordial relationship, speak of marital discord, but the accusation levelled are against the husband i.e. Accused No.1 and the only accusation that too vaguely, is levelled against Accused Nos.3 and 4, about not taking cognizance of her husband's addiction to liquor and taunting her that if she is not ready and willing to cohabit with him, she has liberty to leave him.

The version of the complainant is corroborated through her cousin brother PW 6 Pruthviraj Bhutale, who has deposed in sync with the complainant.

Another witness PW 5 Bhagwant Shinge, residing in the neighbourhood of the parents of the complainant, also stepped into witness box and he threw some light upon the existing discord between

the complainant and her husband and he speak of the compromise that was arrived as a consequence of which, she started cohabiting with her husband.

10] Dr.Jagdish Kale from Civil Hospital, Solapur, is examined as PW 4, who examined the complainant in the backdrop of the history of assault dated 30.04.2000, 29.04.2000 and 28.04.2000 and who gave the history of abortion before 8 days due to the assault.

In any case, this witness do not implicate Accused Nos.3 to 5, who at the most could have been said sufficient to indict her husband. Same is the case of PW 7 Dr.Subhash Londhe, who examined the complainant when she complained of abortion.

11] PW 8 ASI Sharnappa Gumthapure, has proved the omissions in the statement of the complainant and specific omission that Accused Nos.2 to 4 were instigating Accused No.1 to make demands and particularly following omission :-

“It was not stated by the complainant that Accused Nos.2 to 4 were instigating Accused No.1 to make demands and from the parents of the complainant and to cause cruelty to her as no ‘Manpan’ was made.”

12] The provisions in form of Section 498A, are introduced in the Indian Penal Code, with an intention to prevent torture of a women by her husband or his relatives and such an act of subjecting a woman to cruelty, is made punishable. The term ‘cruelty’ has been assigned two distinct connotations through the explanation clause appended to the said Section and in first instance, it contemplate, any willful conduct, of such a nature as is likely to drive the woman to commit suicide or to

cause grave injury to life, limb or health (whether mental or physical). In the second case, it contemplate harassment of the woman with a view to coerce 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.

13] In order to establish the charge under Section 498A of the IPC, allegations must be specific and would fall in either of the two contingencies stipulated in the explanation to Section 498A of the IPC. Bald allegations without any specifications with intent to rope all the relatives of the husband would not justify invocation of Section 498A of the IPC.

The Hon'ble Apex Court in the case of ***Kahkashan Kausar alias Sonam & Ors. vs. State of Bihar & Ors.***¹ while dealing with vague and omnibus allegations levelled against in-laws have held that, the Court should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths and must keep in mind that the relatives of the husband should not be roped in, on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.

Their Lordships held as under :-

“17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, it is revealed that general allegations are levelled

1 (2022) 6 SCC 599

against the appellants. The complainant alleged that "all accused harassed her mentally and threatened her of terminating her pregnancy". Furthermore, no specific and distinct allegations have been made against either of the appellants herein i.e. none of the appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High Court, we have not examined the veracity of allegations made against him. However, as far as the appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution."

14] In the light of the authoritative pronouncement, when the material brought on record before the learned Judge against Accused Nos.3 to 5 is perused, the allegations are bereft of any necessary particulars and testimony of PW 5 and PW 6 who have spoken in sync with the complainant, cannot be believed as a truthful version, as they are interested witnesses.

The grievance of the complainant is against her husband, as it can be seen from her narration in the complaint, as well as her deposition before the Court coupled with the said accusation, she has levelled some bare allegations against the father-in-law, mother-in-law and the sister-in-law.

In fact, the role attributed to the sister-in-law (Accused No.5) is bare minimal, as it can be seen that the allegations are all trifle in nature. The complainant barely stayed in the company of the Accused Nos.1 to 3, as they were resident of Tadvale and she accompanied her husband at his work place, whenever he was in service and further resided at distinct places in Barshi when she was persuading her education.

15] The learned Judge in the impugned Judgment, failed to appreciate the lacuna in the case of prosecution and has committed

grave error in convicting the Appellants i.e. the father-in-law, mother-in-law and sister-in-law for the offence under Section 498A of the IPC, when the prosecution has failed to prove the necessary ingredient of subjecting her to harassment with a view to coerce her for meeting unlawful demand or they being found guilty of willful conduct of such a nature which was likely to drive the complainant to commit suicide or to cause grave injury to her life, limb or health.

In absence of aforesaid ingredients being brought on record through reliable and cogent evidence, the impugned Judgment is liable to be set aside as against Appellant Nos.2, 3 and 4. On the death of Appellant No.1, the Appeal stand abated.

As a result of the aforesaid discussion, the Judgment and order dated 06.02.2002 passed by the 1st Adhoc Additional Sessions Judge, Solapur, in Sessions Case No.216/2001 is quashed and set aside. Appellant Nos.2, 3 and 4 stand acquitted of the charges levelled against them. Their bail bonds stand cancelled.

Appeal is allowed in the aforesaid terms.

In wake of disposal of Criminal Appeal No.195/2002, Interim Application No.1181/2002 does not survive and stands disposed off.

[BHARATI DANGRE, J]