

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

CRIMINAL APPEAL NO. 279 OF 1997

Chandrabhan Kashinath Andhale ...Appellant
Versus
The State Of Maharashtra ...Respondent

....

Ms. Shubhada D. Khot a/w Ms. Priyanka Chavan, Advocate for the Applicant.

Mr. Y. M. Nakhwa, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 5th JULY, 2023.

PER COURT:

1. The Appellant is convicted for the offence under Section 498-A of Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for three months and to pay fine of Rs.1,000/- vide Judgment and order dated 21st April, 1997 passed by 3rd Additional Sessions Judge, Nashik in Sessions Case No.192 of 1996.

2. The prosecution case is as under :-

The complainant (PW-1) is the daughter of PW-3 Shankar Awhad. He marriage was performed with Accused No.1 on 4th May, 1993. The Accused No.1 (Appellant) was serving as a Police Constable at Mumbai. The Accused Nos.2 and 3 are parents of

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Accused No.1. Accused Nos.4 and 5 are his brothers. The family of the Accused is basically agriculturist. They were staying at village Khambale. The Accused No.1 was residing at Mumbai with his sister. He did not take his wife (PW-1) to Mumbai. He used to visit Khambale once in a month. The parental home of PW-1 was in village Dapur. After marriage PW-1 started residing at Khambale with Accused Nos. 1 to 5. The Accused demanded television and amount of Rs.2,00,000/- for purchasing a flat and motorcycle. Initially for a period of about four months the complainant was treated well by Accused. Subsequently, she was harassed and illtreated. On 27th May, 1995 the Accused No.1 came from Mumbai. He questioned PW-1 whether she has brought money, since she had not brought money she was assaulted with fists and kicks. She was abused. She was dragged near the newly constructed well which did not have parapet wall. The well was about 45 feet deep. The Accused No.1 pushed PW-1 down into the well. She suffered some minor simple injuries on her body. She became unconscious. She was admitted in hospital. She regained consciousness on 29th May, 1995. Thereafter, she lodged the First Information Report (for short 'FIR') for offences under Section 307, 498-A r/w 34 of IPC vide C.R. No.43 of 1995. The complainant was referred for medical examination. She had suffered some minor injuries. Investigation

was conducted and on completing it charge-sheet was filed.

3. Charge was framed against the Accused Nos. 1 to 5 vide Order dated 30th November, 1996 for committing offences under Section 498-A r/w 34 of IPC against Accused Nos. 1 to 5 and Section 307 of IPC against Accused No.1 (Appellant).

4. The Accused Nos. 2 to 5 were acquitted of all the charges. Accused No.1 (Appellant) was acquitted for offence under Section 307 of IPC however, convicted for offence under Section 498-A of IPC. While acquitting the Appellant for offence under Section 307 of IPC the Court has disbelieved the prosecution case that the Appellant had pushed the complainant in the well with an intention to kill her.

5. The prosecution has examined PW-1 (Complainant), PW-2 Indubai Awhad (Mother of complainant), PW-3 Shankar Awhad (Father of complainant), PW-4 Gajiram Pawar (Medical Officer), PW-5 Bhagwant Sarwar (Medical Officer), PW-6 Kailas Kale (Investigating Officer).

6. Learned Advocate for Appellant submitted as under :-

- i. The prosecution has failed to prove the charge under Section 498-A of IPC.

ii. The Appellant has been acquitted for offence under Section 307 of IPC.

iii. Part of the version of the complainant was disbelieved by the trial Court and it is difficult to rely upon her evidence to convict the Appellant. The Appellant is working in Police Department and he was residing at Mumbai. The complainant was residing at her matrimonial home alongwith other family members. This was the reason for falsely implicating the Appellant and others.

iv. The complainant had implicated five persons in the FIR and all of them were tried for offence under Section 498-A of IPC. The Appellant was tried for additional offence under Section 307 of IPC. The involvement of Accused Nos. 2 to 5 on the charge of causing cruelty to the complainant (PW-1) has been disbelieved by the Court and they are acquitted.

v. The evidence of complainant and the other witnesses does not inspire confidence to establish that the Appellant has caused cruelty of any nature to the complainant.

vi. Several letters written by the complainant were adduced in evidence during her cross-examination at the

instance of the defence. The period covered by these letters would indicate that the relations between the complainant and Appellant were of cordial nature and therefore the question of causing any physical or mental cruelty to the complainant does not arise.

vii. The evidence adduced by the prosecution suffers from serious discrepancies and it is not sufficient to convict the Appellant for the offence under Section 498-A of IPC.

7. Learned APP submitted that the evidence of complainant refers to the nature of illtreatment caused to her by the Appellant. There is no reason to disbelieve her version about harassment caused to her by Appellant. She was abused and assaulted. There was demand of Rs.2,00,000/- for purchasing the flat and motorcycle. There was demand of television which was provided by the brother of the complainant. There was continuous harassment by the Appellant to complainant which has resulted in physical and mental cruelty. The prosecution has proved the charge under Section 498-A of IPC. The appeal must fail. The conviction may be confirmed.

8. I have scrutinized the evidence on record. It is required to be noted that the prime allegation against the Appellant is about

incident dated 27th May 1995 wherein PW-1 was allegedly assaulted by the Appellant and pushed in a newly constructed well. However, the defence has been able to bring on record, material aspects which would disbelieve the version of the complainant. The trial Court has given finding that the prosecution has failed to establish the charge under Section 307 of IPC. The Court has disbelieved the prosecution case qua incident dated 27th May, 1995 wherein allegedly the PW-1 was pushed in the well. Considering the discrepancies in evidence the trial Court has acquitted the Appellant for offence under Section 307 of IPC. It is also pertinent to note that the co-accused were acquitted for the offence under Section 498-A of IPC. It was alleged that Accused Nos. 1 to 5 had caused cruelty to her and thereby committed offence under Section 498-A of IPC. However, the prosecution case *vis a viz*. Accused Nos. 2 to 5 has not been accepted by the trial Court and they are acquitted for an offence under Section 498-A of IPC. The case of the prosecution for commission of offence under Section 307 of IPC has been discarded by the trial Court. The charge of cruelty to the complainant at the instance of Accused Nos. 2 to 5 is not accepted by the trial Court and they are acquitted. Thus, the version of complainant, her father and mother examined by prosecution, speaks volumes of doubt in the light of the observation of the trial

Court wherein their case has not been accepted *in toto*. The question is whether the Appellant can be convicted for an offence under Section 498-A of IPC.

9. From the evidence it is apparent that the marriage between the Appellant and PW-1 was performed on 4th May, 1993. The FIR was lodged on 29th May, 1995. The last letter written by the complainant (PW-1) to the Accused is dated 5th April, 1995. The letters written by the complainant to the Accused No.1 are exhibited in evidence. From the contents of these letters it is apparent that the complainant had no grievance against the Appellant and her relations with all the Accused were cordial. Her deposition about illtreatment is therefore suffers from doubt.

10. On scrutiny of examination-in-chief and cross-examination of all the witnesses examined by the prosecution. I am of the considered opinion that the prosecution has failed to prove any charge against the Appellant.

11. PW-1 Smt. Sharada Chandrabhan Andhale (complainant) has stated that in the marriage the Accused No.1 had stated that unless television of presented, he would not perform marriage with her. Due to insistence of Accused No.1 her father gave a black and white T.V. to Accused No.1 which was in the house of her father

thereafter marriage was solemnized. The Accused Nos. 1 to 5 are residents of village Khambale. After the marriage she went to reside with her husband at village Khambale. The Accused No.1 was staying at Mumbai. He used to visit Khambale every month. Accused Nos. 2 and 3 have agriculture at Khambale. After the period of about four months from the date of marriage the Accused demanded the amount of Rs.2,00,000/- for purchasing flat in Mumbai and motorcycle. After the marriage she used to visit her parental home. Her father expressed inability to satisfy the demands of Accused. Accused No.1 assaulted. Others abused her. All the Accused threatened her with death. She pulled on with them with the hope that wisdom will prevail upon them in future. Her younger uncle had been to Khambale on 18th May, 1995. She was taken to Pune. She came back to Sinnar on 25th May, 1995 and again she had visited her parental home on 26th May, 1995. On 27th May, 1995 Accused No.1 came from Mumbai. He asked about money. Since she did not bring the amount she was assaulted her neighbour Sindhubai intervene. The other Accused abused her. Accused No.1 dragged her towards well. It was 45 feet deep and water level was about two feet. She was pushed into the well by Accused No.1. She was unconscious. She do not know who rescued her from the well. After regaining consciousness on 29th

May, 1995 she found that her father was present in the hospital. FIR was lodged with the Police. She was injured due to fall in the well on her head, back, waist and legs. From the aforesaid evidence it can be seen that the complainant had alleged that there was demand of money by the Accused and incident of assault dated 27th May, 1995. However, as stated hereinabove from the contents of the letters proved in evidence at the instance of defence it does not appear that PW-1 had any grievance against the Accused of whatsoever nature. Her version therefore appears to be concocted. The PW-1 has referred to one Sindhubai as a person who intervened during the assault by Accused No.1 on 27th May, 1995. However, prosecution has not examined the said witness. In fact no other witness except the parents of complainant with regards to the alleged illtreatment has been examined by the the prosecution. The incident of dated 27th May, 1995 as portrayed by the complainant has been disbelieved by the Court while acquitting the Appellant for an offence under Section 307 of IPC. It is also relevant to note that most of the time Accused No.1 was residing in Mumbai. The complainant has admitted that she was frequently visiting her parental home and during the span of two years she has written several letters which does not reflect the alleged pain suffered by her. This circumstances also indicate that the version of

the complainant cannot be accepted as truth. In the cross-examination PW-1 has stated that the black and white television was purchased by her brother in 1992. There is no receipt of purchase of the said television. The case of the complainant is that the television was handed over to the Accused. However, there is no evidence on record to corroborate her version that the television set was found at residence of the Accused. She has further stated that she used to send letters to her husband at Mumbai. She admitted letters which were exhibited in evidence as Exhibit Nos. 26, 27, 28, 29. She admitted the handwriting and contents of the letters. She admitted that in all these letters she has never complained against any person. She did not complaint to Accused No.1 against Accused Nos. 2 to 5 when he used to visit Khambale. After her marriage the sinking of the well was started by Accused. There are no wells near her house. Note book was shown to her which contains the accounts of sinking of well written by her. It was marked as Exhibit-30. She admitted that she was the only literate person in the house at that time. In the light of circumstances noted hereinabove, it is difficult to give a finding that the prosecution has succeeded in proving the charge under Section 498-A of IPC against the Appellant. The writings in the letters the notings made in the note book would indicate that there could not

be any illtreatment to the victim on account of demand of money. If the Accused had demanded an amount of Rs.2,00,000/- and her father was not in a position to satisfy the demand, the complainant ought not to have written several letters the last letter being of May-1995.

12. PW-2 Indubai Awhad is the mother of complainant. She has referred to demand of television and amount of Rs.2,00,000/- and that the complainant was illtreated by Accused. Her evidence is in the nature of hearsay. In the cross-examination she has stated that television was purchased by her son one year prior to marriage of PW-1. She has no documentary evidence to show that television was purchased by them.

13. PW-3 Shankar Awhad is the father of PW-1 he has reiterated the version of PW-2. In the cross-examination he stated that he has no evidence about purchase of television. Suggestions put to him were denied by him. He admitted that he was associated with political party and one doctor Pawar is also associated with the same party.

14. PW-4 Gajiram Pawar is a Medical Practitioner, he stated that on 27th May, 1995 he was in hospital. One lady was in the hospital. She was admitted in the hospital. She gave treatment to the said

patient. Patient regained consciousness. On 25th September, 1996, she told him that her husband had assaulted her and threw her into the well in domestic dispute. In the cross-examination he stated that he is associated with the political party. He admitted that the father of PW-1 is also member of the said political party. He stated that he has not specified the exact nature of head injury. Age of injury is not written. If a person falls in the well in unconscious condition and rests at the bottom of the well in that condition, the water level being 3 feet deep, the patient is more likely to die.

15. PW-5 Bhagwant Sarwar is the Medical Officer who examined PW-1. He has referred to the injuries noticed on the person of PW-1 which were in the nature of swelling of contusion and abrasion. In the cross-examination it is stated that normally a patient will not become unconscious with the nature of injuries suffered by the complainant. Chances are always more of suffering grievous injury if the patient falls into the well from a height of 40 to 45 feet.

16. It is pertinent to note that in Paragraph No.7 of the Judgment the trial Court has observed that there is no witness to the incident of 27th May, 1995. The complainant has referred to one Sindhubai as a person in whose presence she was assaulted by Accused No.1. However, her name does not appear in the FIR nor she has been

examined by the prosecution. It is the claim of PW-1 that she was unconscious for three days and she does not know who took her out of the well. It is her claim that she become unconscious in the well itself. No person who took her out of the well is examined. There is only evidence of PW-1. There is no corroboration to her evidence. Section 307 of IPC is very serious offence and it entails serious punishment for convicted Accused. Hence, great care and caution have to be exercised. Admittedly, the well was 45 feet deep and it had a rock bottom besides only 2 or 3 feet deep water. This means if PW-1 pushed the complainant in the well she would sustain grievous injury. However, she had received simple injury and minor injuries which could have been caused to her during preceding beating. If she was in the well in an unconscious condition she could have died due to asphyxia due to drowning. Hence, these circumstances ways in favour of Accused persons.

17. PW-6 Kailas Kale was working as P.S.H.O. of Vani Police Station. He investigated the offence. He recorded statements of witnesses. Collected certificate from Dr. Pawar and filed charge-sheet. In the cross-examination he deposed that he had taken search of the house of Accused. He did not find any black and white television or any other T.V. He did not come across any single

eye witness to the incident of beating. During investigation he came to know from other persons that PW-1 was conscious when taken out from the well. The evidence of this witness creates doubt about the version of complainant and her parents that television was given to the Accused. It is also apparent that the investigation indicated that PW-1 was conscious in the well and he could not find any witness to corroborate the version of complainant for about assault dated 27th May, 1995.

18. The cumulative effect of several discrepancies as noted hereinabove are sufficient to give a finding that the prosecution has failed to establish the charge against the Appellant and he deserves to be acquitted.

19. Learned counsel for the Appellant has filed the affidavit of Appellant stating that divorce decree was passed by the Civil Court at Nashik by dissolving the marriage between the Appellant and PW-1 by consent. Of course this is circumstance which has come into existence after the conviction.

20. In view of the aforesaid observations the appeal is required to be allowed and conviction under Section 498-A of IPC has to be set aside by acquitting the Appellant/Accused.

ORDER

- i. Criminal Appeal No.279 of 1997 is allowed;
- ii. Impugned Judgment and order dated 21st April, 1997 passed by 3rd Additional Sessions Judge, Nashik in Sessions Case No.192 of 1996 convicting the Appellant for offence under Section 498-A of IPC is set aside and the Appellant is acquitted;
- iii. Appeal stands disposed off.
- iv. Although Ms. Shubhada Khot has appeared in this matter being appointed by the Appellant, learned Advocate Ms. Priyanka Chavan was appointed by this Court vide order dated 18th November, 2021 and she has appeared alongwith learned Advocate Ms. Khot and assisted the Court in adjudicating this appeal. Appropriate professional fees as per the rules be provided to learned Advocate Ms. Priyanka Chavan.

(PRAKASH D. NAIK, J.)