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

CRIMINAL APPEAL NO. 673 OF 2004

The State of Maharashtra
(Through Sahakarnagar
Police Station)

...Appellant

vs.

1. Naupat Fulchand Waghrecha
Age : about 29 Years, Occu. : Business.
2. Dilip Fulchand Waghrecha
Age : about 37 Years, Occu. : Business.
3. Sau. Gunwantabai Kantilal Waghrecha
Age : about 37 Years, Occu. : Household.
4. Sau. Bharti Khetraj Waghrecha
Age : about 36 Years, Occu. : Household.
[As per order dated 8th December, 2006,
Leave is dismissed against Accused
Nos. 2, 3 and 4].
5. Fulchand Achalras Waghrecha
Age : about 77 Years, Occu. : Well-to-do.
[As per order dated 25th August, 2021,
Accused No.5 is abated].
6. Sau. Vimalabai Fulchand Waghrecha,
Age : about 65 Years, Occu. : Household. ...Respondents

Mr.Y.Y.Dabke – APP for the Appellant-State.
Mr.Mainak Adhikary, Advocate for Respondent Nos. 1 and 6.

CORAM : S. M. MODAK, J.
DATE : 2nd MARCH, 2023

JUDGMENT :-

1. Heard learned APP Shri.Y.Y.Dabke–APP for the Appellant State and learned Advocate Shri.Mainak Adhikary, Advocate for the Respondent No.1-husband and Respondent No.6-mother in law.

2. The Appeal was admitted on 8th December, 2006 against them and Respondent No.5. However, Respondent No.5 – father in law expired. Respondent Nos. 1 and 6 are the husband and mother in law of the deceased Minal Naupat Waghrecha. Respondent No.2 is the brother in law and Respondent Nos. 3 and 4 are the sister in law of the deceased. Against them, the Appeal is not admitted. All these Respondents were charged for the offences punishable under Sections 498-A, 306 read with 34 of the Indian Penal Code, 1860 [“IPC”].

3. There was an ill-treatment on account of not giving sufficient dahej, demanding sofa-set table and cupboard, some harassment at the time of performance of cesarean on the deceased and demand for the ornaments and money for construction of house. The trial Court by well reasoned judgment, acquitted all the Respondents for the reason that the evidence on the point of above instances of harassment is not trustworthy. One of the reasons for

arriving at this conclusion is delay in lodging of FIR. The deceased Meenal has put an end to her life by hanging in the matrimonial house on 11th October, 2003. Whereas, FIR came to be registered on 17th October, 2003. Even though, earlier there were opportunities to inform the Police about the harassment, however, it was not informed. That is why, the trial Court held that the delay is fatal to the Prosecution.

4. Learned APP Shri.Dabke has taken me through the evidence of six witnesses. According to him, the duration of the cohabitation can be divided into following duration :-

- (a) Initial period of six months after the marriage.
- (b) After the delivery of child.
- (c) The incident narrated on telephone on 8th October, 2003.
- (d) The incident of hanging on 11th October, 2003.

5. He has attempted to contend that case under Section 306 of IPC is made out. However, he has not pressed that point much. According to him, case is certainly made out under Section 498-A of IPC and it is submitted that the judgment can be interfered with by the Appellate Court.

6. According to learned Advocate for two Respondents, there is minimum scope for interference by the Appellate Court and in support of that, he relied upon the judgment in case of ***Suman***

Chandra V/s. Central Bureau of Investigation¹ and more specifically, the observations in Para No.3 of the said judgment. If the demand is fulfilled, then there is no question of harassment. For that purpose, he relied upon the observations in case of ***Bakshish Ram and Another V/s. State of Punjab***² and more specifically, observations in Para No.7. What are the parameters to be considered prior to concluding about the proof of an offence under Sections 498-A and 306 of IPC, he relied upon the judgment in case of ***Sushil Kumar Sharma V/s. Union of India***³ and ***Manju Ram Kalita V/s. State of Assam***⁴.

7. It is true that when there is a judgment of acquittal, the presumption of innocence is reinforced. So, if the Appellate Court has to reverse the said judgment, it may be reversed only when there is a perversity in the finding that is to say, a particular piece of evidence is not considered or not appreciated properly. The Appellate Court is not justified in interfering with the judgment of acquittal just because another view is possible.

8. The duration of cohabitation in between the deceased and Accused No.1 was for a period of almost two years. After the marriage, she stayed with the Respondents at Sahakarnagar in the

1 2021 DGLS(SC) 1250

2 2013 DGLS(SC) 194

3 2005 DGLS(SC) 519

4 2009 DGLS(SC) 972

bungalow owned by her father in law. Earlier to marriage, she was also residing at Pune. Through the middleman, Shri.Nagori that marriage was fixed. Both the parties were aware about the background and financial condition of each other. The father in law of the deceased owned a bungalow of two stories and he was a businessman having two shops. As said above, for initial period of six months, the deceased Meenal was not having any complaint against the family members of the Respondent No.1. The marriage was performed and expenses were borne by her father and there were exchange of ornaments and other things. There was no case that these ornaments were exchanged in view of insistence. But, it seems that they were the customary exchanges. As said above, the reasons of harassment are on account of insufficient dahej, certain demand for the furniture, demand for certain ornaments and money for the purpose of construction of house. There were certain dispute on account of performance of cesarean. It was performed at Telang Hospital. Even though, these material witnesses i.e. PW No.1-Babulal, PW No.2-Harakchand, PW No.4-Premchand and PW No.5-Rajani have stated that the Accused No.1 and his relatives quarreled with them on account of cesarean, it has come in the evidence that in fact, the Respondent No.1 has consented for the cesarean and it

was specifically told by PW No.4-Premchand i.e. father in law. Even the medical officer PW No.3-Dr.Atul who has carried out the post mortem has also said that such cesarean can be performed only on the advice of the doctor. So, I do not think that quarrel which happened on account of cesarean may be one of the instances / harassment as contemplated under Section 498-A of IPC.

9. So far as the other demands are concerned, they failed to meet the requirements of Section 498 of IPC either for the reason that they are by way of improvement or they are not corroborated by the other witnesses. PW No.1-Babulal is the brother of the deceased Meenal. Though he said about the demand of sofa-set and other articles, he admits that he has not said that fact before the Police. On 8th October, 2003, he has not received any phone. Even, he went to the extent of saying that nothing happened on 8th October, 2003. He never visited the house of his sister. His evidence is not of any use to the Prosecution. Even, during the course of cross-examination, he has said that after the marriage, both the spouses have gone for honeymoon for 15 days' and two months earlier to that incident, even they have travelled to Rajasthan for a tour. Even he has admitted about the custom of giving certain ornaments to the daughter at the time of delivery.

10. PW No.2-Harakchand is the another brother. There is much emphasis on a telephone call made by the deceased on 8th October, 2003. This PW No.2-Harakchand and PW No.4-Premchand i.e. the father of the deceased talked to Meenal on that date. With Harakchand, Meenal demanded money for the purpose of construction of the house, whereas, when she talked with her father-Premchand, she demanded for gold and silver ornaments as early as possible. There is a serious objection taken on behalf of the Respondents as to whether really Meenal talked to her father. Assistance of the evidence of PW No.5-Rajani is also taken. According to her, Meenal talked to her husband on 8th October, 2003. Whereas, PW No.2-Harakchand during cross-examination has replied that he do not remember whether he has made reference of making arrangement of money for the purpose of construction of house during the telephonic talk on 8th October, 2003.

11. PW No.4-Premchand is the father of the deceased. He has also made a reference of the call on 8th October, 2003 and call on 11th October, 2003. On 11th October, 2003, he got information from the Respondent No.4-Bharti, another Accused, told them to come immediately and not to tell anybody. PW No.4-Premchand and PW No.2-Harakchand went to the matrimonial house and noticed that

the deceased was lying on a ground without wearing a saree on first floor of the house. They were shocked. From there, the body of the deceased was taken in ambulance to the hospital and after post mortem, the rituals were performed in the house of the Respondents only. They have not objected for performing the rituals by the Respondents.

12. The evidence of PW No.5-Rajani does not throw much light about the harassment. She has only said that the acquitted Accused No.4-Bharti told her husband to come alone only and not to bring any other person.

13. As said above, there is inconstancy in between the PW No.2 and PW No.4 on the point of demand. One has said that there is a demand for money for construction of a house, whereas, another has said that there is a demand for ornaments. All these witnesses are residing in one house. If there is a simple call on 8th October, 2003, these witnesses need to tell the same facts.

14. No doubt, Meenal has died due to unnatural death. An offence under Section 306 of IPC can be made out only when there is an abetment to the commission of the offence. PW No.3-Dr.Atul during cross-examination has said that what is the general condition

of a lady who is performing the cesarean. He has explained it by terming it as postpartum depression. As the Appeal is not admitted for the offence under Section 306 of IPC, I am not discussing it.

15. However, the delay in lodging of FIR is certainly a relevant consideration. There were two statements recorded of the father. One is on 12th October, 2003 and another is on 17th October, 2003. There is a discussion by the trial Court which can be considered as FIR. That is to say, it is Exhibit-23 dated 12th October, 2003 or Exhibit-25 dated 17th October, 2003. Always the information given first in time is considered as FIR. In a statement dated 12th October, 2003, the father has expressed some doubt though he has not elaborated the reasons. One can understand that he was under the shock on 12th October, 2003 but earlier to 17th October, 2003, there was several opportunities for the father to narrate what is the real story according to him. There are instances which are brought on record which suggest that the relatives of the deceased had an occasion to meet the Police. However, no such complaint was lodged as lodged on 17th October, 2003. Even, the API- Bapurao Bhat was present on 11th October, 2003 at the spot and even he went to the house of the first informant on 15th October, 2003. However, earlier to 17th October, 2003, they have not said anything about the

harassment and its reasons. It certainly creates doubt about the authenticity of the version informed to the Police on 17th October, 2003.

16. The delay in FIR is not always fatal. If satisfactory explanation is there, it can certainly be accepted. The trial Court found that there is no satisfactory explanation given for delay in lodging of FIR. I agree with that. If there was call on 8th October, 2003, thereby making a certain demand, that was recent incident prior to 11th October, 2003 and the relatives could have informed to the Police on earlier occasion, but it has not happened. It was suggested that this FIR was lodged after due deliberation.

17. So, I am not inclined to accept the contention of learned APP that case is made out for an offence under Section 498-A of IPC. As said above, about the demand on 8th October, 2003, there is no consistency in between two witnesses. The altercation on account of cesarean does not fall within the meaning of '*cruelty*'. Except above, there are no other circumstances. Just saying that "*you come alone*" does not fall within the definition under Section 498-A under Clauses (a) and (b). As there is a case of demand of certain articles, clause (b) of Section 498-A is relevant. But, as stated above, there is

no satisfactory evidence about these demands. Hence, it will not fall under clause (b) of Section 498-A of IPC.

18. For the above discussion, I do not feel that the findings by the trial Court are perverse and there is need of interference at the instance of this Court.

19. There is no merit in the Appeal. Hence, dismissed.

[S. M. MODAK, J.]