



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 785 OF 2023

Rama @ Madhuri Laxman Punekar,
Age : 35 years, Occu. : Nil.,
R/o. Nideban, Tq. Udgir,
Dist. Latur.

... Appellant
(Orig. Informant)

Versus

1. Laxman Baburao Punekar,
Age : 30 years, Occu. : Driver,
2. Baburao Gyanoba Punekar
Age : 64 years, Occu. : Labour,
3. Simantabai W/o. Baburao Punekar,
Age : 60 years, Occu. : Household,
4. Nagnath S/o. Baburao Punekar,
Age : 34 years, Occu. : Household,
5. Vishnudas S/o. Baburao Punekar,
Age : 25 years, Occu. : Labour,

All Resident of Saki Naka, Mumbai.

6. The State of Maharashtra,
Through Udgir Rural Police Station,
Udgir, Tq. Udgir, Dist. Latur.

... Respondents
(Resp. Nos.1 to 5 are
Orig. Accused.

...

Mr. Ajinkya Reddy, Advocate for Appellant.
Mr. G. D. Kale, Advocate for Respondent Nos.1 to 5.
Mrs. Ashlesha S. Deshmukh, APP for Respondent No.6 – State.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 16th APRIL, 2024

PRONOUNCED ON : 23rd APRIL, 2024

JUDGMENT :

1. Judgment and order of acquittal dated 23.09.2019 passed by Additional Sessions Judge, Udgir in Criminal Appeal No. 12 of 2012, arising out of judgment and order of learned Judicial Magistrate First Class, Udgir passed in R.C.C. No. 267 of 2008 dated 25.04.2012 is hereby challenged by original informant.

FACTS LEADING TO TRIAL ARE AS UNDER

2. Appellant was married with respondent no.1 in 2003. After marriage, she went to cohabit with husband and in-laws at Saki-Naka, Mumbai. Husband was a driver in MSRTC. For a year also, she was treated properly, but thereafter she was ill-treated on account of demand of Rs.1,50,000/- for purchasing house. For their such demand, they kept her starved, beat, threatened and abused her. Mediation and intervention at the hands of relatives failed. Finally, when her personal articles i.e. gold ornaments were forcibly removed and driven out of the house, she was constrained to file complaint, on the basis of which, Udgir police registered crime bearing no.152 of 2008 against husband and in-laws for commission of offence under section 498-A, 323, 504, 506 read with section 34 of Indian Penal Code (IPC) and trial was conducted before learned Judicial Magistrate First Class, Udgir, vide R.C.C. No. 267 of 2008.

At trial, prosecution adduced evidence of in all five witnesses and relied on documentary evidence, which came to be appreciated by learned Judicial Magistrate First Class, Udgir, who reached to a conclusion that, prosecution had proved commission of offence under sections 498-A and 506 read with section 34 of IPC only and convicted all five accused, awarding sentence and to pay fine.

3. Aggrieved by the judgment and order of conviction, husband and in-laws moved appellate court i.e. court of Additional Sessions Judge, Udgir, who after hearing both sides, held that, the findings and conclusion reached at by learned Judicial Magistrate First Class, Udgir are erroneous and finally allowed the appeal by its judgment and order dated 23.09.2019.

Feeling aggrieved by the order of acquittal, informant has taken exception to the same by filing instant appeal on various grounds mentioned in the appeal memo.

SUBMISSIONS

On behalf of Appellant :-

4. Learned counsel for appellant would point out that, after a year of cohabitation, informant appellant was subjected to

ill treatment for not complying to their demand of money of Rs.1,50,000/- for purchasing house. Learned counsel pointed out that, husband and relatives i.e. in-laws of informant including informant were all housed in the small room admeasuring 8 x 8 ft. Therefore, after one year of marriage, they started demanding money to purchase new house. On account of non fulfillment, ill treatment began. They kept informant starved, beat her, did not allow her to talk with her parents, made her do extra work. She tolerated their treatment and did not inform her patents just to save the marriage.

5. Learned counsel pointed out that, only when it became unbearable, complaint was lodged with Women's Grievance & Redressal Cell. All attempts were made to due understanding to accused to mend their ways and treat informant properly, but there was no improvement. There was continuous beating and harassment. He pointed out that, finally when her ornaments were forcibly removed and when she was driven out of the house, she was constrained to lodge complaint. Though she did not approach police authorities at earlier point of time, she used to promptly report to her parents and relatives about the maltreatment meted out to her. They all are examined in trial court. Finding the version of informant and relatives consistent and inspiring

confidence, learned counsel submits that, trial court correctly appreciated the evidence and applying correct law recorded the guilt. That, there was no infirmity or perversity so as to interfere.

6. According to him, learned appellate court failed to appreciate the evidence in correct perspective and misapplied the law in the case of *Preeti Gupta v. State of Jharkhand*; AIR 2010 SC 3362, which was the judgment of Hon'ble Apex Court while exercising powers under section 482 of Cr.P.C.. That, said ruling would not be applicable in a fulfilled trial. Therefore, according to him, there is erroneous approach. Sound and reasoned findings of trial Judge ought not to have been disturbed and so he prays to set aside the judgment and order of first appellate court i.e. Additional Sessions Judge, Udgir by allowing the appeal.

On behalf of Respondents :-

7. In answer to above, learned counsel for respondent nos.1 to 5 pointed out that, the marriage is of 2003, complaint is of 2008. That, there was no previous complaint at any point of time before any authorities. That, there was no demand. It is submitted that, all allegations are false, general and omnibus in nature. It is pointed out that, in fact since beginning informant was not ready to cohabit. She spend most of the time at her parents place. False

complaint has been filed to rope in entire family. Required ingredients for section 498-A of IPC were not established, however, still learned trial court erred in accepting informant's version, recording guilt, appeal was preferred. That, appellate court re-appreciated the entire evidence and applied correct settled law. Findings of trial Judge were apparently flawed, perverse and not sustainable in the eyes of law, and therefore, findings were overturned by assigning plausible reasons. Hence, for all above reasons, he prays to dismiss the appeal for want of merits.

ANALYSIS

8. After considering the submissions of both sides and on going through the evidence before trial court, it transpires that, respondents were charge-sheeted for commission of offence under sections 498-A, 323, 504 and 506 read with section 34 of IPC. Facts emanating from the record and which are undisputed are that marriage is of 2003; secondly, after marriage informant went to reside at husband's place at Mumbai Saki-Naka and she resided with husband as well as in-laws under one room.

9. The sum and substance of informant's evidence is that, after one year of cohabitation with husband and in-laws, she was ill treated. Allegations levelled by her that, they put up a demand of Rs.1,50,000/- for purchasing house. They kept her starved, beat

her, in-laws prevented her from talking to her husband as well as parents. She tolerated and did not inform anyone. In 2006, she delivered a girl child. Again husband and in-laws put up demand of Rs.1,50,000/ and they also refused to take her back. Husband performed second marriage. Finally, she lodged complaint on 30.07.2008.

Apart from her evidence, there is evidence of parents and brother.

10. Appreciated the evidence of informant Rama at Exh.48, parents at Exhs. 55 and 61 and brother at Exh.67. They are all speaking about proper treatment for one year, but subsequently demand of Rs.1,50,000/- for purchasing house and ill treatment being given on that count.

However, on visiting cross faced by these witnesses, more particularly, informant, it is clearly emerging that, she is unable to state when exactly such instances of ill treatment took place. Other witnesses are also unable to clarify and specify as to when informant was kept starved and beaten. When there are allegations of beating, it is expected of them to give dates at least. Informant herself has admitted that at no point of time prior to 30.07.2008, any complaint is lodged anywhere except approaching

Women's Grievance & Redressal Cell. Distinct roles of accused are not clearly spelt out. Entire family has been roped in.

11. Law is fairly settled that, for attracting the charge under section 498A of IPC, prosecution is duty bound to prove following essential ingredients :-

- “(1) A woman was married;*
- (2) She was subjected to cruelty;*
- (3) Such cruelty consisted in -*
 - (i) any lawful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life, limb or health whether mental or physical;*
 - (ii) harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on account of failure of such woman or any of her relations to meet the lawful demand;*
 - (iii) the woman was subjected to such cruelty by her husband or any relation of her husband.”*

12. Law on the point of 498A of IPC is dealt in plethora of judgments.

As to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark case of ***Giridhar Shankar Tawade v. State of Maharashtra*** (2002) 5 SCC 177, where the Court dwelling upon the scope and purport of Section 498A IPC has held as under:

“The basic purport of the statutory provision is to avoid ‘cruelty’ which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word ‘cruelty’ as is expressed by the legislatures : Whereas explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed in equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of ‘cruelty’ in terms of Section 498-A.”

[emphasis added]

Similar views are echoed in ***Gurnaib Singh v. State of Punjab*** (2013) 7 SCC 108, wherein it is held as under :

“Clause (a) of the Explanation to the aforesaid provision defines “cruelty” to mean “any willful conduct which is of such a nature as is likely to drive the woman to commit suicide”. Clause (b) of the Explanation pertains to unlawful demand. Clause (a) can take in its ambit mental cruelty.”

In State of Andhra Pradesh v. M. Madhusudhan Rao (2008)

15 SCC 582, the Hon'ble Apex Court has observed that, "*Harassment simplicitor is not cruelty. Only when such harassment is committed for the purpose of coercing a woman or any other person to meet an unlawful demand or property etc. alone would amount to cruelty punishable under Section 498-A IPC*".

In ***Bhaskar Lal Sharma v. Monica*** (2009) 10 SCC 604, the Hon'ble Apex court reiterated the essential ingredients for the said offence and pleadings which are necessary in that regard.

Very recently in the case of ***K. Subba Rao v. The State of Telangana*** (2018) 14 SCC 452, following observations are made:

"6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. 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."

13. Considering above settled legal position in mind, in view of above discussed material, here, allegations are patently belated, general, omnibus, vague and bald in nature. Except stating that, there was beating and informant was kept starved, when

exactly such instances took place is not coming from the mouth of informant or her family members. Therefore, evidence on the point of cruelty is patently weak. Where accused persons intended to purchase house and for how much amount is also not coming on record. On the contrary, case set up by accused persons in trial court is that, informant was not ready to accommodate herself and stay with husband and in-laws in the room admeasuring 8 x 8 ft.

14. Hence, in the considered opinion of this court, with such material on record, learned Judicial Magistrate First Class ought not to have recorded guilt of all accused persons along with husband, when distinct roles of each of them were not demonstrated. Resultantly, appellate court seems to have properly re-appreciated the evidence and even applied correct law. Mere reliance on the judgment of *Preeti Gupta (Supra)*, wherein ratio relating to exercise of powers under section 482 of Cr.P.C. is laid down, is no good ground to question the appellate court's judgment. In the above ruling, legal requirements of section 498A of IPC are succinctly dealt.

15. Apart from the charge of 498A of IPC, there is charge of 323, 504 and 506 of IPC. However, as stated above, when informant was beaten and what injuries were suffered could have

been established by medical evidence. But, it has not so happened here. There is no evidence in support of section 323 of IPC. General allegations are made about issuing threats without giving details as to when said threats were issued. Therefore, on all counts, there was very weak evidence, and therefore, no fault can be found in the judgment and order of acquittal recorded by appellate court. No case being made out in appeal, following order is passed :-

ORDER

The appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)