



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 270 OF 2004

1. Vishnudas Ganeshlal Sarda
2. Sou. Kondabai Vishnudas Sarda
3. Sou. Shobha Balaprasad Baheti

VERSUS

State Of Maharashtra & Anr

WITH

CRIMINAL APPLICATION NO. 2499 OF 2022
IN APPEAL/270/2004

Girish Rajgopal Sarda

VERSUS

The State Of Maharashtra And Others

- Mr. S. S. Bora h/f Mr. R. R. Chandak , Advocate for the Appellant
- Mr. S. A. Nagarsoge, Advocate for Applicant
- Mrs. Chaitali Choudhari Kutti, APP for the Respondent/State

CORAM : KISHORE C. SANT, J
DATE : AUGUST 20, 2024

PER COURT :

1. Heard parties.
2. This appeal arises out of judgment and order passed by the learned Additional Sessions Judge, Udgir in Sessions Case No. 146/2001 convicting the present Appellants for an offence punishable under Section 498-

A read with Section 34 of the Indian Penal Code and awarded sentence to suffer rigorous imprisonment for two years and to pay fine of Rs. 25,000/- each and in default of payment of fine to suffer further RI for six months. An amount of Rs.50,000/- out of fine amount is directed to be given to the victim Padma - PW-4. Appellants are acquitted of the charges under Sections 306, 307 read with Section 34 of the IPC. During the pendency of the Appeal, Appellant No. 2 i.e., mother-in-law of Complainant/Padma died on 18.01.2024. Fine amount is already deposited in this Court and by order of this Court, the same is directed to be kept in a fixed deposit.

3. Facts, in short, giving rise to present Appeal are as below:

Padma - PW-4 lodged a report with Police Station, Udgir on 30.03.2001. It is stated that she married with one late Rajgopal i.e. son of present Appellant No. 1 and brother of Appellant No. 3 in the year 1994. Late Rajgopal was running a shop of agriculture implements. A couple stayed in a joint

family. After marriage, there was ill-treatment and harassment given to her. There was also a demand of amount. In-laws used to pressurize her to sign on blank stamp paper. On 2-3 occasions they even tried to pour kerosene and set her on fire. They also used to beat and assault her. One of the sisters-in-law from Udgir present Appellant No. 3 also used to demand Rs. 2 lacs. On 03.03.2001 she was called in the backside of the shop in a garage. Their Appellants and deceased Appellant No. 2 put a pressure upon her to sign blank stamp papers. She signed on a bond paper of Rs. 100. On that Appellant Nos. 2 and 3 caught-hold the complainant and made her to lie on the ground. Appellant No. 1 administered poison. Deceased husband came there and asked as to what is going on. On that, Appellants forced him also to consume poison. Thereafter, she felt unconscious. She regained consciousness on 26.03.2001 in hospital. In the said incident, husband Rajgopal died. On her complaint, offence came to be registered for the offence punishable under Sections 306, 307, 498-A read with Section 34 of the Indian Penal Code. All the accused persons came to be convicted for

offence under Section 498-A of IPC and acquitted of other charges. Hence, this Appeal.

4. Shri. Bora, learned Advocate for Appellants, submits that taking the evidence as it is no ingredients of offence under Section 498-A of IPC are made out and there is no supporting evidence led before the Court. Evidence of independent witnesses shows that the couple was residing separately from joint family. The evidence of PW 2 and 3 would only shows that there were some quarrels in the family. However, there is no exact incident stated in the evidence of any of the witness. PW - 4 is the informant herself who is declared hostile and so is the case with PW 5 and 6 i.e., father and mother of the informant. Investigating officer has only supported the case of the prosecution. He thus submits that the trial Court has convicted the Appellants only on the basis of some letters allegedly written and sent by the informant to her parents. He submits that the said letters could not have been read in evidence as the contents of those letters are not proved. Those letters are collected during the course

of evidence. Unless contents of those letters are proved by author of the letter, no such letters could have been exhibited and read in evidence. He thus submits that judgment and order deserves to be quashed and set aside.

5. Smt. Kutti, learned APP, vehemently opposes the Appeal. She states that PW 2 has clearly stated in her evidence that there used to be quarrel between deceased Appellant No. 2 and informant. She was even called by informant and deceased Appellant No. 2 at home because of alleged quarrels. She submits that PW 3 who is independent witness also stated in his evidence that there were quarrels. He deposed that relationship between parties were not cordial. He further states that he came to know on 03.03.2001 that deceased Rajgopal and informant consumed poison and were admitted in hospital.

6. Shri. Nagarsoge, learned Advocate, has filed application to assist APP and opposes Appeal. He has filed application through son of informant and deceased Rajgopal.

7. With the help of the parties, this Court has gone through the record and proceedings and also the evidence.

8. PW 1 is the medical practitioner who stated that the informant was brought to his hospital on 03.03.2001 in unconscious state by Appellant No. 1 with history of consumption of Organo phosphorous poisoning. Along with patient, there were two Doctors, namely, Dr. Baheti and Dr. Lakhotiya from Udgir. As per said history, patient was admitted to the Civil Hospital, Udgir and at 10.00 am informant became unconscious. She was on artificial respiration till 22.03.2001. On 23.03.2001 she regained consciousness. Though she was advised discharge on 29.03.2001, she decided to take discharge only on 02.04.2001. From his evidence, there is nothing except that the informant was brought to hospital when she was admitted.

9. So far as PW 2 and 3 is concerned, they are independent witnesses. PW 2 happens to be active worker of one Mahila Swarakshan Hakka Samiti, Udgir. From her evidence what has come on record is only that there was

quarrel between deceased Appellant No. 2 and the informant. She had been to their house and settled dispute between them. In cross-examination she has admitted that before police she had only stated that she convinced deceased Rajgopal and informant not to quarrel. She did not state before police anything about deceased Appellant No. 2.

10. PW 3 is a person who was tenant in the same building in which Appellants were staying together as tenant. What is stated is only that relations between husband and wife were not cordial. However, he was not aware as to the reason for such strained relationship. Thus, evidence of PW 2 and 3 is of no help to the prosecution so far as allegation under Section 498-A is concerned.

11. As already discussed, PW 4, 5 and 6 are declared hostile. They have clearly stated that material portion in their statements before police was not as per their version and claimed ignorance as to how such statements are appearing in their statement before police.

12. So far as PW 7 i.e., Investigating Officer is concerned, though he has supported the case of prosecution, however, he is not a witness to any incident. He has stated in his evidence that all the sentences appearing in the statement of witnesses is as per their say. However, evidence of this investigating officer, in absence of concrete evidence from any of the witness, is of no use to the prosecution.

13. Considering as to whether any offence is made out under Section 498-A, this Court needs to consider Section 498-A, which reads as under:

Section 498A - Husband or relative of husband of a woman subjecting her to cruelty

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.--For the purpose of this section, "cruelty" means--

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health whether

mental or physical of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing 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.

14. Considering the ingredients of Section 498-A, it was necessary for the prosecution to prove that the woman was subjected to cruelty of such nature to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman or where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security etc. In this case, only in the FIR there is allegation that sister-in-law with Appellant No. 2 had made demand of Rs. 2 lacs. However, there are no specific particulars given of such demand. Even about cruelty or harassment, there are no specific instance with details are quoted. In any case, when the informant herself turned hospital, the contents of FIR does not assume any importance. On the other hand, it

has come in the evidence of the informant herself that for some time she was taking treatment for hysteria. She has also admitted in the cross-examination that she and her husband used to reside separately.

15. Considering the entire evidence, this Court find that the prosecution has miserably failed to prove offence against present Appellants. Appeal, therefore, deserves to be allowed. In the result, Appeal stands allowed. Judgment and order dated 05.04.2004 passed by learned Additional Sessions Judge, Udgir in Sessions Case No. 146/2001 is hereby quashed and set aside. Appellants stand acquitted of offence under Section 498-A of IPC. Fine amount shall be refunded to the Appellant No. 1 along with interest, if any, accrued thereon. Their bail bonds stands cancelled.

16. Pending application, if any, stands disposed of.

(KISHORE C. SANT, J.)