
(2004) 02 BOM CK 0090
In the Bombay High Court
Case No : Criminal Appeal No. 185 of 1993

Hirabai Ramdas Vyavahare and Another APPELLANT
Vs
State RESPONDENT

Date of Decision : 17-02-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 498A

Citation : (2004) 2 DMC 724

Hon'ble Judges : P.B. Gaikwad, J

Bench : Single Bench

Advocate : B.G. Vaidya, for the Appellant; D.P. Adsule, APP, for the Respondent

Judgement

P.B. Gaikwad, J.—Original Accused Nos. 2 and 3, viz. Hirabai Ramdas Vyavahare and Sanjay Ramdas Vyavahare being dissatisfied with the order of conviction and sentence passed by the Additional Sessions Judge, Nashik dated 29th March, 1993 convicting the appellants - Original Accused Nos. 2 and 3 for the offence punishable u/s 498-A read with Section 34 of Indian Penal Code and directing them to suffer R.I. for three years and to pay fine of Rs. 1,000/- in default R.I. for three months, filed the present appeal.

2. The facts in nutshell leading to the present appeal are that the deceased Ujwala was the daughter of P.W. 1 Ratan and P.W. 9 Indubai. Marriage of Ujwala was performed with Rajendra on 23.2.1989. After marriage of Ujwala she came to reside with her husband Rajendra who was residing along with his father Ramdas, mother Hirabai, sisters Lata and Anita and brother Sanjay at Shramik Nagar Colony, Nasik i.e., Deolaligaon, Taluka and District Nashik. It is alleged that on account of service of Rajendra he was staying at Pandharpur. It is further alleged that there was ill-treatment and harassment to Ujwala at the hands of her father-in-law, mother-in-law, sister-in-law and brother-in-law on account of unlawful demand. Ujwala on her visit to her parents house has disclosed in respect of ill-treatment, harassment to her father, uncle, and her uncle has also advised Ujwala to make a report to the Police Station about the ill-treatment and

harassment. It is further alleged that mother-in-law of Ujwala, namely, Hirabai used to insist to bring gold ornaments. Even accused Sanjay used to insist for household articles and as the father of Ujwala could not fulfil the demand, it is alleged that the ill-treatment continued. Even the father-in-law, mother-in-law, brother-in-law, sister in-law used to instigate Rajendra and on that count Rajendra used to beat Ujwala.

3. The alleged incident took place on 6.9.1989. It is further alleged that one day prior to the above incident i.e., on 5.9.1989 Rajendra slapped Ujwala at about 6.30 p.m. Even on 6.9.1989 Ramdas father-in-law of Ujwala returned the house under the influence of liquor. Other accused i.e., Lata, Anita, Sanjay, Hirabai were in the house at that time. It is alleged that accused No. 4 Lata Ramkrishna Shejwal poured kerosene on the person of Ujwala and Hirabai set her on fire and due to which Ujwala sustained burn injuries. Ujwala was immediately taken to the hospital on account of burn injuries sustained by her. The Medical Officer on duty prepared case paper, informed the police, the police accordingly made requisitions to the Special Executive Magistrate for recording dying declaration of Ujwala and on the very day i.e., on 6.9.1989 dying declaration of Ujwala was recorded at about 11 p.m. in which she disclosed that she sustained burn injuries accidentally. On the next date on information given to the father and mother of Ujwala, they visited the hospital. It is alleged that Ujwala disclosed in respect of the incident to her father and mother alleging that her husband Rajendra slapped her and that Lata poured kerosene on her person and Hirabai set her on fire. On 9.9.1989 another requisition was given to the Special Executive Magistrate for recording dying declaration of Ujwala and in the said dying declaration she disclosed in respect of the alleged incident and the manner in which she sustained burn injuries. Even the police officer also recorded the statement of Ujwala and the said dying declarations of Ujwala are accordingly proved at Exhibits 48, 50 and 60. Ujwala ultimately succumbed to the burn injuries on 17.10.1989. PSI on the basis of the dying declaration registered crime against father-in-law, mother-in-law, sister-in-law and brother in law of Ujwala i.e., accused Nos. 1 to 5 for the offence punishable under Sections 498-A and 302 of Indian Penal Code. After recording statement of certain witnesses the police submitted charge-sheet against the above five accused before the Judicial Magistrate, First Class. As the offence u/s 302 being exclusively triable by the Sessions Court, Judicial Magistrate, First Class committed case to the Court of Sessions. Additional Sessions Judge, Nashik, accordingly framed charge against the accused for the offence punishable under Sections 498-A and 302 of Indian Penal Code read with Section 34 of IPC. All the accused denied the charge and claim to be tried. The prosecution to connect the accused in the above said crime examined PSI who recorded the statement, the Special Executive Magistrate who recorded dying declaration firstly on 6.9.1989 and another dying declaration on 9.9.1989. The prosecution has also examined the doctors who ascertained the condition and after ascertaining the condition Special Executive Magistrate recorded dying declaration, and the doctor who examined the condition of Ujwala

when her statement was recorded by PSI. Even the doctor who performed post-mortem has also been examined. Additional District Judge considering the evidence on record acquitted the accused Nos. 1 to 5 for the offence punishable u/s 302 read with Section 34 of IPC considering the inconsistency in the dying declaration Exhibits 48, 50 and 60. So far as regards offence u/s 498-A is concerned, the Additional District Judge concluded that there is no evidence about the ill-treatment so far as accused Nos. 1, 4 and 5 are concerned, however, convicted two accused i.e. accused Nos. 2 and 3 i.e. Hirabai, mother-in-law of Ujwala and Sanjay, brother -in-law of Ujwala for the offence u/s 498-A read with Section 34 of IPC and directed them to suffer R.I. for three years and to pay a fine of Rs. 1,000/- in default R.I. for three months. The said order of conviction and sentence by the Additional Sessions Judge dated 29.3.1993 is challenged by filing the present appeal.

4. In the appeal I heard Mr. Vaidya, Advocate for the appellants original accused Nos. 2 and 3 at length and Mr. Adsule, APP for the State. It is submitted by Mr. Vaidya, Advocate that the evidence on record so far as convicting the present appellant-accused for the offence u/s 498A is not satisfactory, convincing, trustworthy, acceptable as according to him there is material improvement in the evidence of father, uncle and mother of Ujwala. He further submits that on close scrutiny of evidence of the three witnesses it can be safely said that they have improved their version so as to involve the accused only when Ujwala died on account of burn injuries. Thirdly according to him to prove the offence u/s 498-A of IPC, it is necessary that the act on the part of the accused must fall either under Clause (a) or (b) of Section 498-A. However, according to him in the present case when the evidence on record is not satisfactory so as to conclude that there was harassment and ill-treatment on the part of the accused according to him the order of conviction and sentence is not justified. Lastly according to him the Additional District Judge has discarded the evidence of prosecution witnesses and even of the deceased so as to involve all the accused u/s 302 and, therefore, it was not justified on the part of the Additional Sessions Judge to rely upon the said evidence to convict accused Nos. 2 and 3 for the offence punishable u/s 498-A. He, therefore, requests to allow the appeal and to set aside the order of conviction and sentence. On the other hand it is submitted by Mr. Adsule, APP for the State that order of conviction and sentence is proper and justified.

5. Considering the submissions, it is now necessary to see as to whether the order of conviction so far as regards accused Nos. 2 and 3 for the offence u/s 498-A is concerned is proper, justified and for which reference to the evidence on record adduced by the prosecution is necessary.

6. Prosecution has examined P.W. 1 Ratan Damu Chaudhari father of deceased Ujwala. Through his evidence the letter is brought on record i.e., Article No. "A" and other letters Exhibits 35, 36 and 37. P.W. 2 is one Rajendra Ramdas Chaudhari Panch witness about the place of incident. Through his evidence

Panchnama Exhibit 40 is got proved. Another Panchnama is at Exhibit 41. Then P.W. 3 is Raghunath Damu Chaudhari uncle of Ujwala and P.W. 4 is Dr. Ratnakar Shankar Kasodkar who performed post-mortem over the dead body of Ujwala. Evidence of this witness is at Exhibit 44, while post-mortem report is at Exhibit 45. P.W. 6 is Jayprakash Kedu Chauhan, the Special Executive Magistrate. His evidence is at Exhibit 49 and statement recorded by this witness on 6.9.1989 which is not disputed on behalf of defence at Exhibit 48. While another statement recorded by this witness is at Exhibit 50 i.e., on 9.9.1989 involving the accused. P.W. 7 is Dr. Pramod Ramchandra Bayas who was the Medical Officer attached to Casualty Ward of Civil Hospital, Nashik and as per the requisition made by the Special Executive Magistrate he examined condition of Ujwala and after ascertaining the condition of Ujwala by this witness, P.W. 6 recorded her statement and there is an endorsement on the said statement of Doctor. Then P.W. 8 is Dr. Subhash Nath Sidhapure. He was on duty of Civil Hospital on 7.9.1989. The police came to Civil Hospital and on requisition made to ascertain the condition of Ujwala and after ascertaining the condition of Ujwala by this particular witness P.W. 8 the police recorded statement of Ujwala. P.W. 9 is Indumati Ratan Chaudhari, the mother of deceased and P.W. 10 Shantaram Ramchandra Bhalerao PSI attached to Police Station who recorded statement of Ujwala on 7.9.1989 which is proved at Exhibit 60.

7. So far as regards offence u/s 302 read with Section 34 of IPC is concerned, the Courts below have considered the evidence of Special Executive Magistrate and evidence of PSI who recorded statement of Ujwala i.e., dying declarations Exhibits 48, 50 and 60 and concluded that there is material inconsistency in between three statements and accordingly given benefit to the accused so far as offence u/s 302 of IPC is concerned. There is no record that the State has challenged the said finding of acquittal and, therefore, to my mind it is not desirable to discuss the said aspect at length.

8. So far as regards the offence u/s 498-A is concerned the Additional District Judge has acquitted accused Nos. 1, 4 and 5. However, convicted only accused Nos. 2 and 3 for the offence punishable u/s 498-A and, therefore, it is necessary to see whether the order of conviction to the extent is proper, justified, for which I feel it desirable to give a reference to Section 498-A, which reads as under:

"Section 498-A. 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 purposes 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 of the woman; (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."

9. On bare perusal of Section 498-A it is apparently clear that the intention of the provision is to protect the wife where she is subjected to cruelty. Definition of cruelty contained in explanation consisted of two parts i.e., Clause (a) relates to wilful conduct while Clause (b) relates to harassment of women with a view to coercing her to meet any unlawful demand. Thus there must be a wilful conduct on the part of accused. It is also necessary to make it clear that scolding occasionally for a mistake of a woman may not per se amount to cruelty, but the continued taunting, insulting and scolding a woman on false pretexts clearly extracts the term "cruelty" as defined u/s 498-A. Provisions of Section 498-A of IPC comes into play when the husband or wife or relative demands something and the conduct of the husband or relative must be wilful and of such a nature as is likely to drive his wife to commit suicide.

10. It is now necessary to see whether the evidence on record adduced by the prosecution is satisfactory, trustworthy, convincing and acceptable so as to conclude that since the marriage of Ujwala with Rajendra the relatives of her husband i.e. present accused who are mother-in-law and brother-in-law ill-treated Ujwala and thereby committed offence u/s 498-A and in this respect the material evidence of these three witnesses i.e., father Ratan, uncle Raghunath and mother Indubai i.e. P.Ws. 1, 3 and 9. On perusal of the evidence of P.W. 1 it is seen that he has given the details about the marriage as it is seen from the record that marriage of Ujwala was performed with Rajendra on 23.2.1989 and the alleged incident took place on 6.9.1989 i.e. hardly within a period of seven months from her marriage. It is also necessary to make it clear that the husband of Ujwala is not an accused in the present case nor any allegations are made against Rajendra. The reference is only necessary to the admission given by this witness in cross-examination that when he received the message about the burn injuries sustained by Ujwala, he then made inquiry with the Authorities of Civil Hospital at Nashik about the cause of burn injuries sustained by Ujwala and the hospital authorities had informed this witness that she received burn injuries accidentally. He further admitted in cross-examination that on inquiry with Ujwala she disclosed that she was having backache and she then made attempt to lighten the stove, in the meantime she received burn injury due to the flames of stove. So far as other admissions from his evidence are concerned he had clearly admitted that he has not stated anything before the police about the ill-treatment and as on close scrutiny of the evidence of this witness there is a material improvement about the harassment, ill-treatment and in respect of same allegations made against the accused. He also admits that her daughter Ujwala did not write any letter to him about the ill-treatment, even he also admits that he has not stated before the police when his statement was recorded about the demand i.e., unlawful demand about T.V., Fridge, Sunmica Cot, etc. In clear terms he admits to the following effect:

"It is true that first time, Accused No. 1 Ramdas did not demand anything to me but he complained against Ujwala that she cannot prepare the food."

Thus on perusal of the evidence of this witness firstly there is a material improvement, secondly from his evidence cruelty as alleged does not fall either under Clauses (a) or (b). So far as evidence of two witnesses i.e., Ramdas and Indubai is concerned again there is material improvement in their evidence and analysing the evidence on record or on its reappreciation, I find that the Courts below is definitely not justified in convicting the accused-appellants for the offence u/s 498-A and, therefore, I find that the order of conviction by Additional Sessions Judge against accused Nos. 2 and 3 needs to be set aside. In the result, appeal is allowed. Order of conviction as against the present appellant-original accused Nos. 2 and 3 is set aside. The accused-appellants are acquitted for the offence punishable u/s 498-A. The fine amount; if any, paid by the appellant-accused be refunded.