

(1994) 07 BOM CK 0015
In the Bombay High Court
Case No : Criminal Appeal No. 808 of 1987

Shamkant and Another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 07-07-1994

Acts Referred:

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

Citation : (1996) 2 DMC 456

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Advocate : A.R. Rasal, for the Appellant; B.R. Patil, for the Respondent

Final Decision : Dismissed

Judgement

Vishnu Sahai, J.—The appellants Shamkant Vasant Naik and Smt. Krishna- bai Vasant Naik aggrieved by their conviction under Sections 498A read with 34 of the Indian Penal Code and their sentence of 1 year's rigorous imprisonment and fine of Rs. 500/-, in default of payment of fine further imprisonment for a period of 3 months, have come up in appeal before this Court. The aforesaid order of conviction and sentence was passed on 3rd September, 1987 by the Additional Sessions Judge, Pune, in Sessions Case No. 64 of 1987.

2. Alongwith the appellant one Rajendra Narayan Lotikar to whom the other sister of appellant Shamkant Vasant Naik was married, was also tried but he was acquitted by the impugned order.

3. The prosecution in brief is that the deceased Rohini was the sister of informant Dipak Vishwanath Wagale (PW 2). She was married on 17.3.1985 to appellant No. 1. Appellant No. 2 Smt. Krishnabai Vasant Naik is said to be the mother of appellant No. 1 and the mother-in-law of the deceased. According to the prosecution the appellants used to beat Rohini, pull her hair and not provide her with meals. It is said that Rohini wrote two letters dated 18.6.1985 (Exhibit 12) and 29.3.1986 (Exhibit 13) to the informant, in which she complained of the ill-

treatment which was administered to her. It is also alleged that some expenses were incurred by the appellant's in the illness of Rohini and they were demanding their repayment.

4. On 7.10.1986 the informant came to know from one of the brothers of the appellant and one more person about the death of Rohini. On that information he left for Mhalunge where Rohini used to reside with the appellants. There he learnt that Rohini's corpse was in the well.

5. Thereafter the informant proceeded to Police Station, Chakan and lodged FIR on the basis of which a case under Sections 498A, 306 read with 34, IPC was registered. In the aforesaid FIR the appellants are named. The post mortem examination of the dead body of Rohini was conducted on 7.10.1986 between 2 p.m. to 3.30 p.m. by Dr. Arund Digambar Burande (PW 7). On the corpse of the deceased the doctor found two lacerations and one contused lacerated wound. There was no damage to any internal organs. In the opinion of the Doctor the death of the deceased was on account of asphyxia due to drowning.

6. In the usual course the investigation was done and ultimately a charge- sheet against the appellants and Rajendra Narayan Lotikar, under Sections 498, 306, IPC read with 34, IPC was submitted. In the Trial Court charges under Sections 306, IPC and 498A, IPC read with 34, IPC were framed against the appellants as well as the acquitted accused Rajendra Narayan Lotikar. To those charges the appellants pleaded not guilty and claimed to be tried.

7. In the Trial Court in all the prosecution examined as many as 7 witnesses. It also tendered and proved various exhibits. In defence no witness was examined. The trial Judge acquitted Rajendra Narayan Lotikar on all the charges and the appellants under Sections 306, IPC read with 34, IPC. He convicted and sentenced them u/s 498A, IPC

8. I have heard Mr. Sanjeev Kadam holding brief for Mr. A.R. Rasal for the appellant and Mr. B.R. Patil for the State of Maharashtra, at considerable length. I have perused the statements of the witnesses recorded in the Trial Court as well as the various exhibits tendered and proved by the prosecution during the trial. I have gone through the impugned judgment also. After giving anxious consideration to the matter, I am of the opinion that on merits this appeal deserves to be dismissed.

9. I find in the instant case that there is cogent, reliable and unimpeachable evidence with respect to the cruelty administered by appellants to the deceased Rohini.. The documentary evidence consists of two letters Exhibits 12 and 13 written by Rohini to her brother, informant Dipak Wagale (PW 2). These letters have been proved by Dipak Wagale in the Trial Court. I have perused the aforesaid letters. I find that in Exhibit 13 Rohini has categorically mentioned that the accused used to beat her every day, pull her hair and also threatened her.

10. Apart from the documentary evidence there is also oral evidence in the form

of statements of Dipak Vishwanath Wagale (PW 2), Jayshree Jayant Deshpande (PW3) and Balasaheb Baburao Bendbhar (PW 4). All these witnesses have deposed about the cruelty which was administered by the appellant to the deceased. The informant Dipak Vishwanath Wagale (PW 2) stated that the appellants used to treat her as a maid-servant. I have no reason to disbelieve his testimony because had the aforesaid allegations been not true then being the real brother-in-law of the appellant No. 1 whose mother appellant No. 2 is, he would have been the last person to implicate the appellants. PW 3-Jayant Deshpande is the neighbour of the appellants. Her house is at a distance of about 15 ft. from the house of the appellants. She has deposed that the deceased told her that the appellants did not even provide her with meals and used to assault her. She also deposed that the deceased has shown nail scratches on her face and the injuries caused to her at the hands of her mother-in-law. She also stated that the appellant No. 1 used to beat her with a stick. She further stated that one day on hearing the cries of Rohini to the effect "save", "save", she went to Rohini's house and saw the appellants assaulting Rohini in a room which was latched from inside. She claims to have seen wheel marks on Rohini. Balasaheb (PW 4) has a shop in front of the house of the appellants. He deposed that from his shop he had seen the appellants beating Rohini on many occasions.

11. Thus in my opinion there is sufficient oral and documentary evidence to connect the appellants with offence u/s 498A, IPC. The learned Counsel for the appellants contended that inasmuch as Jayshree Jayant (PW 3) and Balasaheb Baburao (PW 4) admitted being inimical to the appellants in their cross-examination in the Trial Court and as the informant Dipak Wagale (PW 2) is the brother of the deceased I should not accept their evidence. I regret that I cannot accede to this contention of the learned Counsel because the law is that the testimony of inimical and interested witnesses is not to be mechanically rejected but only to be assessed with caution. I have applied the necessary caution. I find their statements to be of a wholly reliable and trustworthy nature. They are corroborated by Exhibit 13 which is the letter written by the deceased to the informant Dipak Wagale (PW 2).

12. In my opinion the conviction of the appellants has been rightly arrived at by the learned trial Judge and on merits this appeal deserves to be dismissed.

13. The learned Counsel for the appellants vehemently contended that the jail sentence of the appellants be reduced to the period already undergone by them and some fine in lieu thereof be imposed. So far as appellant Shamkant Vasant Naik is concerned I am not prepared to accede to such a submission. He was the husband of the deceased and instead of protecting her, he treated her with cruelty. Apart from this he was aged 32 years and was expected to behave with a sense of responsibility.

14. As regards appellant No. 2 Smt. Krishnabai Vasant Naik, my first reaction, considering the anti social nature of the crime, was also not to reduce her sentence. However, the learned Counsel for the appellants pointed out that her

age today is about 72 years and in that view of the matter and also keeping in mind that the incident took place about 8 years ago this is a fit case in which her jail sentence be reduced to one already undergone by her. The learned Counsel for the appellant also said that in case some fine is imposed in lieu thereof he would not consider the same to be enhancement. In her statement recorded u/s 313, Cr.P.C. appellant No. 2 in the year 1987, has given out her age as 65 years. There is no observation by the learned trial Judge that the estimate of age given by her is wrong. Consequently, the learned Counsel for the appellant is justified in contending that she is aged about 72 years today. In that view of the matter I direct that jail sentence of appellant No. 2 be reduced to the period already under gone by her and in lieu of the remaining portion of the sentence, a fine of Rs. 3,000/- is imposed on her. Appellant No. 2 is directed to pay the said fine within a period of 4 months from today, failing which she would undergo the sentence imposed by the Trial Court. I may make it clear that the fine of Rs. 3,000/- imposed is in addition to the fine of Rs. 500/- already imposed by the Trial Court. In case appellant No. 2 Smt. Krishnabai Vasant Naik deposits the fine within the aforesaid time, her bail bond shall stand cancelled and surety discharged.

With the aforesaid modifications in the matter of sentence of appellant Smt. Krishnabai Vasant Naik this appeal stands dismissed. Appellant Shamkant Vasant Naik is on bail. He should be taken into custody forthwith to serve out the sentence.