
(2016) 04 BOM CK 0144
In the Bombay High Court
Case No : Criminal Appeal No. 99 of 1999

State of Maharashtra

APPELLANT

Vs

Chagan Kannu Bankar

RESPONDENT

Date of Decision : 25-04-2016

Acts Referred:

Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 498A

Citation : (2016) 2 AIRBomRCri 483 : (2016) ALLMRCri 5042 : (2017) 1 MhLJCri 474

Hon'ble Judges : A.M. Badar, J.

Bench : Single Bench

Advocate : Mrs. M.M. Deshmukh, APP, for the Appellant; Mr. D.S. Sapkale, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Badar, J. (Oral) - By this appeal, the appellant-State is challenging the judgment and order passed by the learned 5th Jt. J.M.F.C., Ulhasnagar on 19th November, 1998 in Regular Criminal Case No.135/1998 thereby acquitting the respondent/accused for the offence punishable under section 498A of the Indian Penal Code, 1860.

2. Facts leading to the institution of the present appeal can be summarised thus :-

(a) The respondent/accused Chhagan Bankar married informant Chandabai Chhagan Bankar on 16th March, 1997. Thereafter, informant Chanda started co-habiting with the respondent/accused at Village Rahtoli, Taluka Ulhasnagar, District Thane. According to the prosecution case, after initial nice treatment for four months, married life of Chanda had seen rough weather. Her husband Chhagan started subjecting her to cruelty by asking her to bring golden necklace from her mother. She was reached to her maternal house thereafter. When she returned to her matrimonial home after stay of eight months with her parents,

the accused again subjected her to cruelty by assaulting her. Thereafter, informant Chanda was again required to take shelter at her parental home. Then, she was again reached to her matrimonial house. Thereafter, her husband Chhagan questioned her as to why she had not brought an amount of Rs.10,000/- from her father. Then accused is stated to have assaulted Chandabai. Fed-up with the constant ill-treatment and harassment at the hands of her husband/accused, Chanda lodged report against her husband on 30th April, 1998 resulting in registration of crime No.I-6/1998 against the respondent/accused at Kulgaon police station, Badlapur, Taluka Ulhasnagar, District Thane. In pursuance to the investigation of the said offence, charge-sheet was filed against the respondent/accused and ultimately Regular Criminal Case No.135/1998 was registered against him.

(b) Charge for the offence punishable under section 498A of the Indian Penal Code was framed against the respondent/accused, who pleaded not guilty. In support of the charge, the prosecution has examined in all five witnesses. Neighbourer Vishnu Ramchandra Pawar came to be examined as PW1 at Exhibit-7. Informant Chanda Bankar was examined PW2 at Exhibit-8. Report lodged by her is at Exhibit- 9. Father of Chanda, Motiram Daji Mhase came to be examined as PW3 at Exhibit-13. Investigating Officer Madhukar Dhiga Patil was examined as PW4 at Exhibit-15. Medical Officer Dr.Bhausahab Shankar Bhondve was examined as PW5 at Exhibit-17 and medical certificate issued by him is at Exhibit-18.

(c) After hearing the parties, by the impugned judgment and order the learned trial Court came to the conclusion that evidence on record does not show that accused has subjected the informant to cruelty and, therefore, he came to be acquitted.

3. Heard the learned Additional Public Prosecutor appearing for the State. She vehemently argued that the evidence of informant Chanda coupled with that of her father PW3 Motiram as well as the evidence of the Medical Officer PW5 Bhausahab Bhondve is sufficient to hold that the informant was subjected to cruelty by her husband and, therefore, the learned trial Court erred in acquitting the accused.

4. As against this, the learned counsel appearing for the respondent/accused argued that if it is assumed that there was some ill-treatment to the informant at the hands of the accused, the same does not amount to cruelty as defined in the explanation to section 498A of the Indian Penal Code and, therefore, the learned trial Court correctly acquitted the accused of the offence alleged against him.

5. Now, let us examine whether the learned trial Court has taken a probable view based on evidence on record. It will have to be seen whether there are compelling and substantial reasons to interfere with the judgment of acquittal.

6. At the outset, it would be appropriate to quote the definition of the term "cruelty". The Explanation to section 498A defined the term "cruelty in the following manner:-

"(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.

7. Bare reading of the term "cruelty" as explained in section 498A makes it clear that the same may be mental as well as physical. At this juncture, it needs to be mentioned that the meaning of the term "cruelty" varies from place to place and individual to individual. The status of the parties is always relevant while determining whether the acts complained of can constitute "cruelty" as explained in section 498A of the Indian Penal Code. For determining this aspect, the Court is always required to consider the whole facts of relationship between the parties. Suffice to state that cruelty postulates such treatment as to cause reasonable apprehension in the mind of the wife that her living with the husband and in-laws will be harmful and injurious to her life. Torture alleged is required to be of such a nature that would drive a married lady to commit suicide or to cause grave injury or danger to her life. Needless to mention that normal pitfalls in the married life cannot constitute legal cruelty as envisaged by section 498A of the Indian Penal Code. Keeping in mind this position of law, let us examine whether informant Chanda was subjected to cruelty by the accused constituting offence punishable under section 498A of the Indian Penal Code. Naturally, therefore, evidence of informant Chanda would assume great importance. It is in her evidence that she was treated nicely by the accused for a period of four months in the beginning and thereafter, the accused demanded Rs.10,000/- from her. She further deposed that because of her poor financial condition, she was unable to satisfy the demand of Rs.10,000/- by the respondent/accused-husband. Her evidence further goes to show that when she informed the accused that she has not brought an amount of Rs.10,000/-, the accused had beaten her and threatened to kill her. PW2 Chanda then concluded her chief-examination by stating that, therefore, she has lodged the report against the accused by going to the police station at the instance of her father.

8. Even without adverting to her cross-examination, evidence of PW2 Chanda makes it crystal clear that accused had not subjected her to any ill-treatment for demanding money or amount of Rs.10,000/-. Her version shows that when she ultimately disclosed him that she is unable to bring the amount of Rs.10,000/-, her husband i.e. the accused had beaten her. The requirement of definition of cruelty found in explanation (b) to section 498A is harassment of a women with a view to coerce her or any person related to her to meet the unlawful demand of any property or valuable security. It is thus clear that there should be harassment or ill-treatment of a married women in order to coercing her to meet the unlawful demand by the husband or in-laws. In the case in hand, evidence of

PW2 Chanda shows that her husband demanded an amount of Rs.10,000/- to her. She does not state that she was either coerced or harassed by her husband while demanding amount. On the contrary, she stated that when she disclosed to her husband that she is not in a position to bring that amount, her husband had beaten her. Except this, there is no material in chief-examination of PW2 Chanda to show that she was coerced, harassed ill-treated or tortured by her husband while making demand of money from her. Alleged beating given by her husband, PW2 Chand, as seen from the from her evidence, is only once which has resulted in lodging report by her. Cruelty as envisaged in section 498A of the Indian Penal Code requires constant harassment and torture with some persistence, causing reasonable apprehension in the mind of the wife that living with her husband will be harmful or injurious to her. This element is missing from the evidence of PW2 Chanda. As such, her evidence is not sufficient to infer the act of legal cruelty by the respondent/accused.

9. PW3 Motiram, is the father of PW2 Chanda. It is his evidence that after good treatment to his daughter for a period of four months, the accused started demanding golden necklace to PW2 Chanda and as he could not satisfy the demand, she was subjected to cruelty by the accused. Evidence of PW3 Motiram is totally inconsistent with evidence of his daughter PW2 Chanda. She has not stated about the demand of golden necklace by the accused in her evidence before the Court. In the offence of the present nature under section 498A of the Indian Penal Code, allegations are easily made and once made, it is very difficult to dislodge. If evidence fails to inspire confidence, then, it is always advisable to look for corroboration. Evidence coming on record from the mouth of the father of PW2 Chanda is not corroborated by the information and, therefore, needs to be ignored.

10. PW3 Motiram further deposed that his daughter PW2 Chanda was reached to his house, where she stayed for seven to eight months. Then, according to the version of PW3 Motiram, PW2 Chanda was reached to her matrimonial house where she stated for two months. Thereafter, according to PW3 Motiram, accused again started demanding money to his daughter PW2 Chanda and this fact of demand of Rs.10,000/- was told to him by Chanda on 27th April, 1998. As per version of PW3 when he went to the house of the accused, he saw bleeding from ear of PW2 Chanda, who informed him that on account of failure to bring Rs.10,000/-, she was assaulted by the respondent/accused.

11. In the instant case, all evidence available against the accused as far as alleged cruelty is concerned, is coming from the near and dear once of the informant. There is not a single piece of any independent evidence and as such, in order to gain corroboration, the testimony of PW3 Motiram is required to be compared with that of PW2 Chanda. Whatever is stated by PW3 Motiram is not vouched by PW2 Chanda in her deposition. She has not stated that her father came to her matrimonial home to see her, she was bleeding from ear. Evidence of PW2 Chanda and PW3 Motiram is not at all consistent and cogent to infer

cruelty. Isolated overt act of the accused is not sufficient to infer cruelty as defined by explanation to section 498A of the Indian Penal Code. Therefore, even though PW5 Medical Officer Bhausaheb Bhondve has deposed that upon examination of PW2 Chanda on 29th April, 1998, he found contusion on the intra scapular region and bleeding from ear of PW2 Chanda, it cannot be said that the prosecution has made out an offence under section 498A of the Indian Penal Code.

12. For the foregoing reasons, it can be said that the view adopted by the learned trial Court while acquitting the accused of the offence punishable under section 498A of the Indian Penal Code, is a plausible view requiring no substitution at the hands of this Court. In the result, the appeal fails and the same is hereby dismissed.