

(2024) 12 BOM CK 0016
In the Bombay High Court
Case No : Criminal Appeal No. 486 Of 2004

State Of Maharashtra

APPELLANT

Vs

Vishal Prakash Shinde And Ors

RESPONDENT

Date of Decision : 06-12-2024

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 498A, 504, 506

Citation : (2024) 12 BOM CK 0016

Hon'ble Judges : Milind N. Jadhav, J

Bench : Single Bench

Advocate : Manisha R. Tidke, P. J. Pawar, L. S. Nalawade

Final Decision : Dismissed

Judgement

Milind N. Jadhav, J.

1. Heard Ms. Tidke, learned APP for Appellant - the State of Maharashtra and Mr. Pawar, learned Advocate for Respondent Nos.1 to 5.

2. The present Appeal is directed against judgement of acquittal dated 29.11.2003 passed by the learned Trial Court in R.C.C. No.16 of 2002. It is filed by State of Maharashtra. Respondent Nos.1 to 5 are original Accused Nos.1 to 5. Respondent No.3 who is Accused No.3 has expired in the interregnum. Offences for which Respondents were tried were under Sections 498A, 323, 504 read with Section 34 of Indian Penal Code, 1860 (for short 'IPC'). Complainant is the wife. Accused No.1 is her husband, Accused No.2 is her mother-in-law; Accused No.3 was her father-in-law who is no more; Accused No.4 is her brother-in-law and Accused No.5 is wife of Accused No.4. Marriage of complainant and Respondent No.1 took place on 25.06.2001. It was an arranged marriage. Complainant left her matrimonial home on 25.12.2001 and filed complaint / First Information Report (for short 'FIR') on 26.12.2001. Between the date of marriage and 25.12.2001, admittedly complainant cohabited with her husband and in-laws in her matrimonial home, save and except during Diwali of that year when she

visited her parental home. In so far as Respondent Nos.4 and 5 are concerned, complainant admitted in her witness action that they lived separately and in her cross-examination gave admission that it was true that Respondent Nos.3 and 4 (Original Accused Nos.4 and 5) never quarreled with her.

3. Prosecution led the evidence of four witnesses, PW-1 was the Complainant herself; PW-2 was a lady called Anjali Pralhad Sonawane who had arranged the marriage of Complainant with Respondent No.1; PW-3 is the father of Complainant and PW-4 is the Investigating Officer.

4. Briefly stated, prosecution case is that within one month after marriage some time in July-2001, Complainant was assaulted and a demand was made from her to bring Rs.80,000/- from her parents which were the expenses incurred by Respondents on the marriage of Complainant and Respondent No.1. Though in the FIR, adequate details are not stated but on lodging the complaint on 26.12.2001, a detailed statement of complainant was recorded. The deposition and examination of PW-1 is incidentally on the facts which are stated in her detailed statement which was recorded. After the incident in July, complainant has stated that in September-2001 on one particular day she was assaulted for not cooking a proper meal. She next stated that in September-2001 she was assaulted at the instigation of Respondent Nos.3 and 4 (original Accused Nos.4 and 5).

5. It is pertinent to note that no specific details as to aforesaid acts of cruelty alleged by her in July and September have been stated in her recorded statement save and except what is stated hereinabove. Next she has stated that after she returned to her matrimonial home post Diwali festival on 25.11.2001, Accused No.3 (now expired) abused her for spending too many days in her parental house. Thereafter in her complaint she has stated that she was assaulted by kick blows. Once again, no details whatsoever are given in her recorded statement as also in her evidence. Thereafter according to Complainant in the month of December namely on 04.12.2001, she was assaulted and on 23.12.2001 she was ill-treated and a demand of Rs.80,000/- was made from her. Perusing the complaint and evidence of the Complainant, it is seen that no further details except for the above stated incidents have been given by her .

6. From the above, it is seen that allegation of demand of Rs.80,000/- is made according to complainant once in July and second time on 23.12.2001. Apart from the aforesaid four specific incidences, there is no other allegation. Thereafter Complainant on her own volition left her matrimonial home on 25.12.2001 alongwith her uncle. The edifice of the prosecution case for invoking charges of Sections 498A and 323 read with Sections 506 and 34 of IPC is based on the aforesaid statements and nothing more. Prosecution attempted to prove these allegations through its witnesses. PW-1 deposed below Exhibit-49, the aforesaid facts and nothing more. However, in her cross-examination she has admitted to the fact that original Accused Nos.4 and 5 were living independently and not in their house. She has admitted that in so far she and her husband

were concerned, they were given independent room to reside. She has also categorically admitted in her cross-examination that original Accused Nos.4 and 5 never quarreled with her.

7. What is significant to note in her cross-examination is the fact that she has admitted that the incidents which occurred and were narrated by her in her complaint were not complained by her or even by her parents. This is significant because according to her, she brought these incidents about ill-treatment meted out to her by Respondents to the notice of her elder sister. However, ironically neither the complainant nor her parents or her elder sister filed any complaint about cruelty or harassment against Respondents. It is seen from her cross-examination that efforts were made to reconcile the differences between parties after she left her matrimonial home but they did not fructify. The thread of demand for Rs.80,000/- forms the basis of the complaint but it is seen from Complainant's own evidence and her statement that it was made once in July and thereafter on 23.12.2001. However, no details whatsoever as to how the said demand was made, who made the demand and in what circumstances are not stated.

8. In so far as evidence of PW-2 i.e. the person who arranged the marriage of Complainant with Respondent is concerned, same does not touch upon any of the allegations relating to cruelty/harassment/ demand leading to chargesheeting of the four Accused under the aforementioned provisions of IPC. Hence PW-2's evidence cannot be considered. PW-3 – father of complainant has deposed that he realised about the harassment of complainant through his elder daughter i.e. elder sister of complainant but he did not take any steps. Hence, whether mere allegation of the demand or harassment can be considered by the Court for indicting and convicting the Respondents was the question answered by the Trial Court against the Applicant. PW-4 who is the Investigating Officer has placed on record the aforesaid details as considered by the Trial Court and nothing more.

9. Learned Trial Court in its judgement after considering the gamut of evidence placed before it returned cogent findings after analyzing the evidence of all four prosecution witnesses. Proof of cruelty is something which is left to be answered in the present case. Mere allegation of harassment or mere demand cannot amount to cruelty. In this regard, explanation (b) given to the principal provision under Section 498A of IPC itself comes to aid of the Accused. This is so because as delineated hereinabove, in none of the incidents between July – 2001 and December – 2001, Complainant has given any details, neither the complainant has ever complained nor her parents nor her elder sister who had knowledge filed any complaint. Her elder sister's statement was not recorded and her evidence was also led by the prosecution.

10. Needless to state that there is no medical evidence supporting the case of prosecution which has been duly considered by the learned Trial Court for the charge under Section 323. What is significant to note is the fact that for the purpose of alleging assault, abuse and demand, complainant has in her own

statement not even stated about the action or manner in which her husband or her in-laws ill-treated her and therefore her case borders clearly on allegations.

11. Mr. Pawar has placed reliance on the decision of this Court in the case of Ravindra Pyarelal Bidlan and Others Vs. State of Maharashtra 1993 Cri.L.J. 1309 and would contend that in view of the explanation (b) to

Section 498-A, mere harassment or mere demand of property cannot be construed as cruelty. In view of above and after perusing the statement of the Complainant and the impugned judgement, I am not inclined to place any implicit faith in the allegations of demand made by the Complainant consequentially leading to abuse, assault and ill-treatment of the Complainant. Nothing whatsoever has been proved by complainant in the present case. The indictment and involvement of Respondent Nos.4 and 5 is absolutely unwarranted in view of the admissions of Complainant herself in her cross-examination.

12. Prosecution has not proved the present case beyond all reasonable doubts rather it has failed and therefore I see no reason as to why this Court should interfere in the reasoned judgment dated 29.11.2003 delivered by learned Trial Court. The judgment is correctly passed and is upheld. If bail bonds have been given, the same shall stand cancelled in accordance with law.

13. In view of the above observations and findings, Criminal Appeal is dismissed.