

(2003) 09 BOM CK 0110

In the Bombay High Court

Case No : Criminal Revision Application No. 21 of 2000

Vandana

APPELLANT

Vs

Shridhar Kisan Pise and Others

RESPONDENT

Date of Decision : 24-09-2003

Acts Referred:

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

Citation : (2005) 1 DMC 275

Hon'ble Judges : P.S. Brahme, J

Bench : Single Bench

Advocate : Anjan De, for the Appellant; N.N. Motghare and Firdos Mirza for Non-applicant No. 2 and S.G. Loney, Assistant Public Prosecutor for Non-applicant No. 3, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Brahme, J.—Heard Mr. De, learned Counsel for the applicant, Mr. Firdos Mirza, learned Counsel for non-applicant Nos. 1 and 2 and Mr. Loney, APP for non-applicant No. 3.

2. The applicant herein has approached this Court by this Criminal Revision Application for challenging the judgment and order passed by the Judicial Magistrate First Class, Brahmapuri in Regular Criminal Case No. 30 of 1996 passed on 31.12.1999, whereunder non-applicant Nos. 1 and 2 came to be acquitted of the offence u/s 498-A read with Section 34 of Indian Penal Code.

3. The applicant was married to non-applicant No. 1-Shridhar Kisan Pise on 1.5.1993. A son was born to the spouses on 29.2.1994 out of the said wedlock. It is the allegation of the prosecution that non-applicant No. 1 used to abuse the applicant and demand an amount of Rs. 50,000/- from her for opening a poultry farm. Non-applicant No. 2-Anandrao Kisan Deole used to instigate non-applicant No. 1. As the applicant failed to bring the amount and satisfy illegal demand of non-applicant No. 1, she was subjected to harassment and cruelty. The applicant

was beaten by non-applicant No. 1. The applicant, having faced with the physical ill-treatment and cruelty, lodged report at Brahmapuri Police Station vide Ex. 28 on the basis of which an offence was registered vide Crime No. 32 of 1996 and after completing investigation, Regular Criminal Case No. 30 of 1996 was initiated against non-applicant Nos. 1 and 2 in the Court of Judicial Magistrate First Class, Brahmapuri. Non-applicant Nos. 1 and 2 were charged for the offence u/s 498-A read with Section 34 of I.P.C. They pleaded not guilty to the charge and claimed to be tried. Their defence was of total denial. At the trial, the prosecution examined number of witnesses including applicant-Vandana and her father Kewalram Pakmode (P.W. 2). The learned Magistrate on appreciation and assessment of evidence found that the prosecution has utterly failed to establish that non-applicant Nos. 1 and 2 subjected the applicant to cruelty as envisaged u/s 498-A of I.P.C. and in keeping with the said finding, he acquitted both the non-applicants. Hence, this Revision Application.

4. Mr. De, learned Counsel for the applicant vehemently submitted that the Court below failed to exercise jurisdiction vested in it by law and failed to consider the provisions of Section 498-A of I.P.C. in proper perspective. The Court has acted on assumptions and presumptions and acquitted non-applicant Nos. 1 and 2 without taking into consideration the material evidence on record. The learned Counsel further submitted that the Court below rejected the evidence of witnesses by giving undue importance to minor contradictions. The learned Counsel submitted that the error committed by the Trial Court in not assessing and appreciating the evidence in proper perspective has resulted into miscarriage of justice. He, therefore, urged that the application be allowed and that the matter be remitted back to Trial Court for retrial, setting aside the order of acquittal.

5. As against that the learned Counsel for non-applicant Nos. 1 and 2, Mr. Firdos, submitted that the trial Court assessed the evidence in correct perspective. He pointed out the glaring inconsistency in the evidence right from the inception of initiation of proceeding. He submitted that the applicant has not even averred that there was harassment to her by non-applicant Nos. 1 and 2 for non-fulfilment of unlawful demand. Even as regards the harassment and cruelty regarding which the applicant and her father have given evidence before the Court, does not stand to be probable and plausible much less it is supported by any cogent reasons. To support his submissions, he placed reliance on the decision of the Apex Court in 2002(4) Mh.L.J. 5, Girdhar Shankar Tawade v. State of Maharashtra. The Apex Court has stated that harassment of a woman would not constitute cruelty in absence of evidence that such harassment was with a view to coerce her to meet any unlawful demand for dowry, which is the gist of offence punishable u/s 498-A of I.P.C. He, therefore, urged that the application needs no consideration and should be dismissed.

6. Mr. Loney, learned Additional Public Prosecutor supported the applicant adopting the submissions of the learned Counsel for the applicant. Admittedly,

State has not preferred appeal against the order of acquittal. Therefore, Mr. Loney, placed reliance on a decision of the Apex Court in *Kishan Swaroop Vs. Govt. of NCT of Delhi*, wherein it is held that it is open to the High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal. But the Apex Court has further said that this jurisdiction should, in our opinion, be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice.

7. As laid down by Apex Court in *Kishan Swaroop Vs. Govt. of NCT of Delhi*, there is no hurdle in entertaining this revision application at the instance of complainant for challenging the order of acquittal passed by the Trial Court though the prosecution was on the basis of the charge-sheet filed by the police, the State has not preferred appeal against the order of acquittal. But at the same time, a sound of caution has been given by the Apex Court that this jurisdiction available to the High Court, limiting to entertain the Revision Application, should be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is manifest error on a point of law and consequently there has been a flagrant miscarriage of justice.

8. The Apex Court in 1999 (1) ALL MR 237, *Vimal Singh v. Khuman Singh and Anr.*, has held that though the High Court is empowered to interfere with the acquittal in certain cases, it cannot convert acquittal into conviction. The Apex Court observed that the High Court converted acquittal to conviction on the ground that the Trial Court discarded certain evidence. But in fact, the Trial Court had considered entire evidence and held that prosecution case was not proved beyond reasonable doubt. Therefore, the Apex Court observed that reappraising of evidence and consequent interference with the Trial Court order by the High Court was not proper. When the Appellate Court wrongly ruled out evidence which was admissible, the High Court would be justified in interfering with the order of acquittal in revision, so the evidence may be reappraised after taking into account the evidence which was wrongly ruled out as inadmissible. But the High Court should confine itself to the admissibility of the evidence and should not go further and appraise the evidence also.

9. In the case before hand, the Trial Court did consider the evidence, of applicant Vandana (P.W. 1) and that of her father Kewalram Pakmode (P.W. 2) and two witnesses viz., Bhagrathabai (P.W. 4) and Kamlabai (P.W. 5). It is submitted by the learned Counsel for the applicant that the witnesses Bhagrathabai and Kamlabai in their evidence, supported the case of the applicant and their evidence practically went unchallenged and remained unshakable, but the Trial Court has rejected their evidence for no reason.

10. As against that the learned Counsel for non-applicant Nos. 1 and 2 submitted that witness Kamlabai's evidence on the point of harassment is very vague. All that she has stated in her evidence is that before four years back, accused No. 1

beat this wife. This witness has admitted in cross-examination that accused No. 1 brought his wife at Mararmendha from Malda when she was pregnant and at the time of delivery, accused No. 1 provided sufficient aid at his house to her. She also admitted that accused No. 1 used to give well treatment to his wife. She also admitted that her husband had demanded Rs. 1,000/- from accused No. 1. It was suggested to her that as accused No. 1 refused to give cash amount and food grains to them, there was dispute between her husband and accused No. 1. Though she denied the suggestion, she admitted that since last 2-3 months, they are not on talking terms with accused No. 1. She stated that she did not know the cause of quarrel between accused No. 1 and his wife. The Trial Court considering such state of evidence of witness Kamlabai, rejected her evidence. I do not think that the Trial Court has committed any error in rejecting the evidence of this witness Kamlabai. In addition to that even accepting her evidence as it stands, I do not think that it is of any assistance to corroborate the claim of applicant-Vandana. This witness - Kamlabai has reason to give evidence against non-applicant Nos. 1 and 2 as stated by her. All that she has stated in her evidence is about physical cruelty i.e. beating by non-applicant No. 1 to the applicant. That by itself is not sufficient to hold that non-applicant No. 1 committed offence u/s 498-A of I.P.C.

11. So far as witness Bhagrathabai is concerned, in her evidence she claimed that there used to be frequent disputes between the applicant and non-applicant No. 1 and later used to beat his wife. This witness-Bhagrathabai has admitted in her evidence that there was dispute between her and non-applicant No. 1 about putting clay on the road and strained relations between them and that the father of the applicant Vandana had been to the village prior to 15 days of her evidence. The Trial Court observed that this goes to show that the witness was deposing against accused persons due to enmity at the instance of father of the applicant Vandana. I do not find that any error has been committed by the Trial Court in discarding the evidence of witness Bhagrathabai in the background of admissions given by her, admitting the fact of enmity between her and non-applicant No. 1. That apart, even accepting her evidence, nothing turns out as to the factum of cruelty to the applicant-Vandana at the hands of non-applicant No. 1 as contemplated under Explanation (b) to Section 498-A. The Explanation (b) reads thus:

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

(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."

12. So far as evidence of applicant Vandana is concerned, the Trial Court has found that there is glaring discrepancy as regards report Ex. 28 lodged by her at the police station. In this context, the learned Counsel for non-applicant Nos. 1 and 2 pointed out that witness Vandana in her evidence claimed that she herself

went to the Police Station and lodged written police report. The witness - Bhaurao Ganpatrao Masarkar (P.W. 7), who was then Police Station Officer, stated that Vandana gave typed report in the police station. As regards demand of amount of Rs. 50,000/- by non-applicant No. 1, it was the contention of the defence that the claim in that regard is not probable and plausible. Admittedly, non-applicant No. 1 was in service as a teacher. All that the applicant and her father claimed is that non-applicant No. 1 was demanding the sum of Rs. 50,000/- as he wanted to do business by opening a poultry farm. The Trial Court rejected the claim having regard to the fact that non-applicant No. 1 was already in service as a teacher and it did not appear probable that he would ask for amount for the purpose of starting a business. On record Ex. 28 is the report alleged to have been given by the complainant Vandana. However, it is brought in cross-examination of Vandana that she submitted written report when she had been to police station with one Dadaji Pise. She has denied that she has submitted the typed report in the police station. As stated earlier, the police Head Constable Bhaurao deposed that the father of Vandana submitted typed report on the basis of which crime was registered. It is in this background that the Trial Court gave much emphasis on the disparity and absence of handwritten report claimed to have been given by Vandana herself in the police station makes the matter mysterious. Therefore, the Trial Court has found that in the typed report at Ex. 28, deliberately factum of demand of Rs. 50,000/- was incorporated to form basis for prosecution for the offence u/s 498-A of I.P.C. It is not that merely because of disparity in respect of report Ex. 28 that the Trial Court has rejected the evidence of complainant Vandana and her father.

13. The witness Vandana stated in her evidence in detail about the manner in which she was subjected to cruelty and harassment by her husband non-applicant No. 1 including the fact that non-applicant No. 1 did not provide medical aid to her during the period she lived with him. But as could be seen from the evidence of witness Kamlabai wherein she has admitted in her cross-examination that non-applicant No. 1 used to provide well treatment to the applicant when she was pregnant and that he brought her to his house at the time when she was pregnant. Her cross-examination shows that non-applicant No. 1 has not at all caused any ill-treatment to her. That apart, the learned Counsel for non-applicant No. 1 has rightly pointed out that whatever claims she has made in her evidence is admittedly afterthought as she has admitted in her cross-examination that she has not stated about these things in detail in her statement recorded by the police, Her statement was recorded by witness P.S.I. Dhanraj Narnaware (P.W. 6) who admitted that Vandana did not state before him that non-applicant No. 1 gave ill- treatment for about 7-8 months after marriage. She did not state specifically in her statement that after her delivery, accused No. 1 was demanding Rs. 50,000/- from her parents and used to beat her frequently. She did not state specifically before me that the accused assaulted and beat her and due to that she became unconscious and that she had given a message to her father and thereafter her father had been to her. She did not

state before me that accused No. 2 used to say to accused No. 1 that accused No. 1 should leave her and thereafter accused No. 2 would manage for accused No. 1 with employed girl and accused No. 1 used to beat her on the say of accused No. 2. The witness has stated that above stated facts which are on record are not stated by Vandana when her statement was recorded. Even witness Vandana in her cross-examination candidly admitted that she was given good treatment for 7-8 months after marriage though in the report it is mentioned that she was not given well treatment since her marriage. It is certain that the written report lodged by Vandana has been deliberately suppressed by the prosecution.

14. The Trial Court observed that it is difficult to accept the allegation that accused No. 1 assaulted Vandana in a square severely and mercilessly and as such in that assault she has become unconscious and subsequently she was taken to house and thereafter she lodged a report. The Trial Court found that if at all such incident has taken place, Vandana would have sustained visible injury on her person. It is matter of fact that Vandana was not referred for medical examination by the police nor she told the police to refer her for medical examination. Therefore, the Trial Court was right in observing that the allegations about the incident of assault by non-applicant No. 1 and that too openly in square does not stand to the reasons and it is not believable also.

15. The Trial Court has assessed the evidence of witness Kewalram (P.W. 2) in correct perspective. All that he claimed in his evidence was that non-applicant No. 1 did not allow his daughter to go with him when he had gone to fetch her and that even in his attempt some 10 days thereafter, non-applicant No. 1 did not allow his daughter to go with him. In his evidence, he had claimed that accused No. 1 used to beat her frequently and drove her from the house and that accused No. 1 wanted to resign service and start poultry farm and, as such, he demanded Rs. 50,000/-. In his evidence, he has further stated about the assault by non-applicant No. 1 to the applicant Vandana at the square at Mararmendha. The Trial Court assessed his evidence in the light of the version of complainant Vandana and other evidence on record. It was pointed out through the evidence of P.S.I. - Dhanraj Narnaware (P.W. 6) that this witness Kewalram did not state before him that after one month of delivery of Vandana, non-applicant No. 1 beat her at a square and this fact was brought to his notice by Dadaji Pise. He did not state before me when his statement was recorded that when he had been to Mararmendha, at that time the respectable persons advised him to take Vandana and his kid to his house. Having regard to the fact that witness Kewalram has made much improvements in his evidence before the Court with glaring disparity as to the report Ex. 28, the Trial Court was justified in not placing any reliance on his evidence.

16. So on the evidence on record, the factum of demand of an amount of Rs. 50,000/- is not established. That apart, there is no averment much less evidence that whatever physical harassment was caused by non-applicant No. 1 to the

applicant was on account of non-fulfilment of the demand of Rs. 50,000/-.

17. As held by the Apex Court in 2002 (4) Mh. L.J. 5 (supra), the legislative intent is clear enough to indicate that in particular reference to Explanation (b) there shall have to be a series of acts in order to be harassment within the meaning of Explanation (b). The basic purport of the statutory provision contained u/s 498-A of I.P.C. is to avoid "cruelty" which stands defined by attributing specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the Legislature : whereas Explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the Legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498-A. Therefore, if in a given case suicide is ruled out, in that event applicability of Section 498-A can be had only in terms of Explanation (b) thereto which in no uncertain terms records harassment of the woman to constitute "cruelty" only in the event of such a harassment being with view to coerce 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.

18. In the case before hand, as stated earlier, there was even no specific averment that because of non-fulfilment of demand of Rs. 50,000/-, the applicant was subjected to cruelty. That apart, even on the evidence on record, it is not made out that applicant Vandana was subjected to physical cruelty on account of non-fulfilment of demand. In my opinion, even accepting that non-applicant No. 1 made demand of Rs. 50,000/- for the purpose of opening poultry farm, by no stretch of imagination, it could be said that it was unlawful demand. The finding is recorded by the trial Court that there was no justification for accepting the fact that there was demand of amount of Rs. 50,000/- by non-applicant No. 1. In addition to that, the Trial Court has recorded a finding based on evidence that it is not established beyond reasonable doubt that the applicant was subjected to ill-treatment for non-fulfilment of demand of Rs. 50,000/-. If that is so, I do not find that the Trial Court has committed any error much less grave error in rejecting the evidence. No fault can be found with the assessment and appreciation of the evidence by the Trial Court. If that is so, then as laid down by the Apex Court in 1999 (1) ALL MR 237, this Court has no reason to interfere with the finding of acquittal recorded by the Trial Court.

19. It is certainly not a case where the Trial Court has committed glaring illegality nor the Trial Court has shut down the evidence overlooking the material

evidence. Therefore, I do not think that by passing the order of acquittal of non-applicant Nos. 1 and 2 on appreciation of evidence in correct perspective, there has been any miscarriage of justice. The Criminal Revision Application, therefore, has no merits or substance and the same deserves to be dismissed. Hence, the order.

Criminal Revision Application is dismissed.