

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 9 OF 2003.

State. ... Appellant.

Versus

Dr. Moreswar Anant Joshi,
r/o Bhailipeth, Bicholim. ... Respondent.

Mr. S.N. Sardessai, Public Prosecutor for the
Appellant/State.

Mr. A.P. Lawande, Advocate for the Respondent.

Coram : P.V. HARDAS, J.

Date : 28th August 2003.

ORAL JUDGMENT.

The State, being aggrieved by the Judgment of the learned Judicial Magistrate, First Class, Bicholim, dated 17th August 2002, in Criminal Case No. 72/S/94/C, sentencing the accused for imprisonment till rising of the Court and fine of Rs. 5,000/- in default to undergo simple imprisonment for 15 days, for an offence punishable under Section 498-A of the Indian Penal Code, has filed the present appeal for enhancement of the sentence. The learned trial Court had, however, acquitted the respondent/accused for an offence punishable under Sections 504 and 506 (ii) of the Indian Penal Code. I have heard Mr. Sardessai, learned Public Prosecutor for the appellant/State and Mr. Lawande, learned counsel appearing on behalf of the respondent/accused. In terms of Section 377(3) of the Code of Criminal Procedure, Mr. Lawande, learned

counsel appearing for the respondent/accused, has pleaded for the acquittal of the respondent/accused.

2. The facts, in brief, as are necessary for the decision of this appeal, are set out hereunder:-

It appears that, on the basis of the complaint at Exhibit P.W.1/B, one A.S.I. R.G. Sawal, who, at the relevant time, was attached to the Bicholim Police Station, registered an offence and, after completion of the investigation, submitted a charge-sheet in the Court. The prosecution had examined P.W.6 Shanti Baykar, Head Constable, who has identified the signatures of A.S.I. Sawal, on Exhibit P.W.1/B and the charge-sheet. It appears from the evidence of P.W.6 Baykar that A.S.I. Sawal had expired about 2 years prior to the date of recording her evidence. Effectively in this case the prosecution has not examined the Investigating Officer.

3. The pivot of the prosecution case is the evidence of P.W.1 Suda Joshi, wife of the respondent/accused. P.W.1 Suda states in her evidence that she was married to the accused in 1978. She refers to some incident of 1994. According to her, initially their relations were harmonious. Subsequently there were differences and the accused had started harassing

her 'recently'. According to her, she was always under tension and pressure as the accused was dominating her throughout. According to her, on 14th March 1994, the accused attended his dispensary in the morning and returned at about 1.30 p.m.. As usual, she offered him lime juice and the accused went for a bath. Thereafter both of them sat down for lunch and the accused was narrating some facts regarding the theft that had taken place in some other house. P.W.1 Suda told him that she was aware of the same and was correcting the accused by informing him that the name of the person in whose house the theft had taken place was different from the name the accused was referring to. According to her, the accused got upset and started abusing her. According to P.W.1 Suda, in a fit of despair, she went to the dispensary attached to the house and took some tablets. According to her, one person by name Purushottam Gawde, who was staying with them, had seen her taking the tablets. After consuming the tablets, she went to sleep and, since she was feeling unwell, she requested Purushottam to switch on the fan. However, she continued to feel uncomfortable and, therefore, she requested Purushottam to bring 'the carpet'. At that time accused learnt that P.W.1 Suda had consumed something and he came and started kicking her. He questioned her as to how many tablets she had consumed and she in return questioned him as to what was their

relation as a 'wife' or 'kamwali' or maidservant'. P.W.1 Suda states that she repeated this to the accused on 3 to 4 occasions and the accused threatened to inform the matter to the mother of P.W.1 Suda. Thereafter, the accused forcibly made her to get up by kicking her and served her with saline water and, thereafter, she vomited. A policeman had come. The accused had served her with hot tea. According to her, the policeman had questioned her as to what had happened. However, she did not inform the incident to the police and told the policeman that she was suffering from headache and, therefore, had consumed some tablets. Thereafter her family members had come and were insisting that P.W.1 Suda should accompany them to Ribandar. However, Suda declined to accompany them stating that she would die in the house. She, however, relented and agreed to have medical examination. She was admitted in the Goa Medical College and, thereafter, was referred to the mental hospital at Altinho and was discharged on 23rd March 1994. She lodged her complaint on 6th April 1994, which is at Exhibit P.W.1/B. Her supplementary statement came to be recorded on 24th April 1994. On 22nd April 1994, she had submitted a statement of the ill-treatment which had been dished out to her throughout her life by the accused.

4. In the complaint, at Exhibit P.W.1/B, she

refers to the incident, dated 14th March 1994, and her consuming some tablets. This is the only instance which is referred to in the complaint, at Exhibit P.W.1/B. However, in the substantive evidence she refers to certain other instances specially of an instance of the year 1980. She states that the accused used to quarrel with her on minor incidents and certain other instances where the mother of the accused had informed him about P.W.1 Suda not performing certain religious ceremonies. She also states that on a number of occasions the accused had threatened her that he would divorce her. According to her, the accused was not liking her going to her mother's place at Ribandar. She also stated that she used to write letters to her family members. It appears that P.W.1 Suda could not conceive and, therefore, she was being given the treatment of Dr. Talaulikar and had also consulted Dr. Purande. She also states that the accused had not allowed her to go to her mother's house prior to her mother's death, despite the fact that her mother was serious. According to her, though she used to prepare delicious food, the accused used to grumble. After 'hot discussion with the accused', she could attend the funeral of her brother's wife in 1991. The accused, though invited for public functions, hardly used to take her. She also stated that the accused had forced her to write certain letters admitting therein that she could not conceive on account

of her own defect and such letters she was made to read out aloud in the presence of her family members. According to her, the accused had illicit relations with one woman and the accused was using his sperms for artificial insemination. According to her, the accused was having illicit relations with one lady by the name Lalita Joshi and had begotten a child. She produced a birth certificate, at Exhibit P.W.1/A. Her letter, dated 21st April 1994, addressed to the Investigating Officer was exhibited by the learned trial Court as Exhibit P.W.1/D.

5. In the cross-examination she has admitted that, on 14th March 1994, the police had visited her residence. She was, however, unable to state whether the police had visited her residence on account of the complaint of her brother. She has admitted as correct that she had informed the police that she had taken tablets because she was suffering from a headache. She has also admitted that she did not state that there was any harassment and, therefore, she had taken the tablets. She has also admitted that she did not inform the police, on 14th March 1994, about any harassment. According to her, she had decided to lodge a complaint to the police as the accused had failed to come to the hospital to see her when she was admitted. According to her, the accused had come to the hospital and had

threatened her that she should not come to his house. She has, however, admitted that after discharge, when she went to her parents' house, the accused had written two letters requesting her to come to his house. She has further admitted in the cross-examination that, on 6th March 1994, on the insistence of the accused, she had called her brothers because the accused wanted to inform them about her mental condition. She has stated that she does not remember as to whether her brother had told the accused that he was taking P.W.1 Suda for psychiatric treatment at Poona. According to her, the harassment commenced when the two doctors, namely, Dr. Sawaikar and Dr. Talaulikar had told her that she was able to bear a child. She was asked the following question:- 'Do you meant to say that accused did not want that you should have a child?'. P.W.1 Suda answered:- 'I cannot answer this question'. She has denied the suggestion that after the report from the doctors that she could not conceive a child, she began going into depression. She has, however, admitted that after she was admitted in the hospital at Altinho, the doctor had told her that she was depressed. In respect of the incident of the accused kicking her while she was reading the Bagwat Geeta, she states that she does not remember the year. She has admitted that 'since I had taken the overdose of the tablet to put end of my life the question as to how many tablets I have taken I say

that I do not know the number of the tablet taken by me'. She denied to have stated in her complaint that she had taken 4 tablets and, therefore, was confronted with the portion marked 'A to A'. She has admitted that the accused had given her salt water as first aid so that she should vomit. Certain contradictions were brought out in respect of the accused telling her some facts about a theft whereas in her statement the accused was telling her a 'story' about a lady. She has admitted that the accused had told her that the accused was willing to adopt, if a girl child was born to her brother Ramkrishna. She has admitted that the wife of her brother Ramkrishna gave birth to a male child and, therefore, there was no question of adopting the child. She has admitted that she had filed a suit for divorce in 1994 and that she had returned to the matrimonial house with the sole intention not to lose her claim to the property, that is, movable and immovable assets owned by the accused. She has further admitted in the cross-examination that she could not state the year or month when she informed her family members that the accused was ill-treating her. She has, however, asserted that she telephoned them on 6th March 1994. Omission was brought out in respect of the accused not allowing her to see her mother, though she was serious. She has further admitted that she did not state in the complaint that the accused was assaulting her.

Similarly, omission was brought out in respect of the accused grumbling about the food cooked by her. Omission was brought out in respect of the accused allowing her to attend the funeral of the wife of her brother after 'hot discussion'. More important is the fact that she has admitted that she had not stated that the accused had forced her to write letters to her relatives that she could not conceive on account of the defect. Similarly she has also admitted that she did not state in the complaint that in the presence of her family members she was made to read those letters aloud. In respect of the allegation that the accused was collecting his own sperms and was artificially inseminating one lady, P.W.1 Suda has admitted not to have seen the lady, but states that it was the accused who told her. She has admitted not to have stated this fact in her complaint to the police. In respect of the accused having illicit relations with a woman, P.W.1 Suda states that she has made this allegation on the basis of a birth certificate, which she obtained in the year 1998, that is, after the filing of the charge-sheet. Ultimately she has admitted 'I did not know if the accused was having any illicit relation with any women when I was staying with him. It is true that I did not state to the police in my complaint that the accused was having illicit relation with any women, in order to keep the name of my family.' Omissions have

been brought out in respect of the accused confining her in her room, not allowing her to read books or watch T.V., slapping her on her cheeks and private parts, twice or thrice breaking the Mangalsutra, not allowing her to go to the bathroom and the accused many times pushing her outside the house.

6. In respect of the accused having illicit relations with one Lalita, P.W.1 Suda has admitted that Lalita is distantly related to the respondent/accused. She has admitted not to have visited the house of Lalita.

7. P.W.1 Suda in her attempt to establish the charge under Section 498-A of the Indian Penal Code has vastly improved her case from the one that was set out in the F.I.R. at Exhibit P.W.1/B. The allegations in respect of cruelty, most of which are by way of omissions, are extremely vague and indeterminative. Stray and isolated instances of the accused not allowing her to go to a particular place, cannot be termed as wilful conduct on the part of the accused. The F.I.R. refers only to the instance of 14th March 1994. According to her, over some disagreement, the accused abused her and she felt depressed and went and consumed some tablets. She was immediately referred to the Psychiatry Department, where she was undergoing

treatment for depression. From the evidence on record, it appears to me that, certain bitterness in the relations between the respondent/accused and P.W.1 Suda appears to have crept in, on account of the fact that, despite being married for a considerable length of time, they were not blessed with a child. The instances of various allegations of cruelty are extremely vague. That apart, the letter addressed by P.W.1 Suda to the Investigating Officer, after the commencement of the investigation, is inadmissible in evidence and ought not to have been relied upon. P.W.1 Suda has also referred to certain instances, which do not form the subject matter of charge.

8. Perusal of evidence of P.W.2 Ramkrishna D. Bhide, brother of P.W.1 Suda, reveals that, on 14th March 1994, he received a telephone call from one Prakash Bodes, who used to reside in the house of the accused, informing P.W.2 Ramkrishna that P.W.1 had consumed certain pills and she was unconscious. P.W.2 Ramkrishna, accordingly, went to the house accompanied by his brother P.W.3 Prabhakar Bhide and saw that P.W.1 Suda was trembling and shivering. On being asked as to what had happened, P.W.1 Suda is alleged to have replied that 'she was very badly treated and she was asked to get out of the house and that was the reason for her to commit suicide.' Thereafter he had suggested that P.W.1

Suda required treatment and was shifted to Goa Medical College, Bambolim. Though he refers that he learnt from P.W.1 Suda in the year 1984 itself that the accused was ill-treating her, in the cross-examination he has stated that he cannot tell the year when he learnt for the first time about the ill-treatment. On the accused being asked by P.W.2 Ramkrishna about the ill-treatment, the accused is stated to have replied that P.W.1 could not bear a child, she could not cook and she did not behave properly. He states that he had gone on ten occasions to the house of the accused for this purpose and told P.W.1. to take the reply of the accused in proper spirit. He has admitted that P.W.1 Suda was not willing to come with him and it was only when he told her that she was being taken for treatment that she agreed to come. He has denied the suggestion that P.W.1 had mental depression as she could not conceive a child and she could be treated only by a Psychiatric.

9. P.W.3 Prabhakar Bhide states that, on 14th March 1994, his brother P.W.2 Ramkrishna informed him that P.W.1 Suda had consumed some pills/tablets. He spoke to the accused on telephone and the accused informed him that P.W.1 Suda had consumed tablets. He immediately contacted Bicholim Police Station with a request to take an ambulance. He, thereafter, along with his wife went to the house of the accused, where

his other brother Madhav was also present. P.W.2 Ramkrishna alongwith his wife had also proceeded to the house of the accused. When they reached the house, P.W.1 Suda was seated at the dinner table and was shivering and crying. They asked P.W.1 Suda as to what had happened and she told them that she had consumed tablets. He states that the accused, who was present, was asked whether he was ready to take Suda to some hospital for medical aid and the accused told them that he would not to anything. He further states that P.W.2 Ramkrishna took P.W.1 Suda in his car. He also states that he had written a letter to the Investigating Officer, dated 18th April 1994. He refers to an instance of the year 1990, where P.W.1 Suda is alleged to have informed him that the accused had driven her out of the house. He also refers to an incident of 1991, when P.W.1 Suda telephoned him stating that she was in trouble and needed help. He immediately proceeded to the house of the accused, where P.W.1 Suda is alleged to have told him that she was in a difficult situation and she needs help. He requested the accused that they should settle the 'controversy' between them by taking the help of an elderly person. The accused requested him to suggest the name of some elderly person. The accused approved the name of one Ganpat Sahakari. Accordingly, an appointment was set up with Ganpat Sahakari. He further refers to an instance of 1992,

when P.W.1 Suda came crying and informed him that she wanted the uncle of the accused to know about the harassment and mental torture. He, therefore, accompanied P.W.1 Suda to the house of the uncle of the accused, but the uncle of the accused was not present. P.W.1 Suda narrated the incident of harassment and torture to the wife of the uncle of the accused. He further states that a month thereafter, both, the accused and P.W.1 Suda agreed that in case there are any differences, the same would be settled before him. He then states that, on 22nd January 1994, P.W.2 Ramkrishna received a phone call from P.W.1 Suda requesting for help. On instructions of P.W.2 Ramkrishna, P.W.3 Prabhakar proceeded to the house of the accused, where P.W.1 Suda told him that the harassment of the accused had become severe and the accused was assaulting her and the accused was insisting for an apology in the presence of the family members. On 6th March 1994, P.W.1 Suda telephoned and requested them to attend the house of the accused for the purpose of tendering apology. P.W.1 Suda read out the apology note and, after reading the apology note, the accused assaulted P.W.1 Suda.

10. In the cross-examination he has admitted that he had stated in the statement before the police, on 14th March 1994, when he came to the house of the accused and inquired with P.W.1 Suda as to what had

happened, she had replied that as usual she had consumed tablets for headache. He has also admitted that he had not stated in his statement that he had asked the accused whether he was ready to take P.W.1 Suda to some hospital and the accused had replied that he would not do anything and, if they wanted, they could do so. In respect of the incident of 1994 of P.W.1 Suda telephoning him and stating that she was in need of help, he has admitted not to have stated the said fact in the statement to the police. He has also admitted not to have said in his statement that, on 22nd January 1994, P.W.2 Ramkrishna received a phone call from P.W.1 Suda requesting for help and, on the request of Ramkrishna, he went to the house of the accused, where P.W.1 Suda told him that the harassment of the accused had become severe and the accused was assaulting her. He has also admitted that he had not stated in his statement before the police that P.W.1 Suda read out the apology note. He has also not stated about the contents of the apology note. He has stated that, after reading the apology note, the accused had assaulted P.W.1 Suda and had abused her. He has admitted that it was one Moreshwar Joshi, who had informed him that P.W.1 Suda had consumed tablets on account of headache. He was confronted with the portion of his statement where he had stated he was not aware as to which hospital Suda was admitted. He has produced on record the letter, at

Exhibit P.W.3/A addressed to P.W.1 Suda informing her that, as per the report of Dr. Purande, she was normal and to continue the same treatment and, thereafter, report for checkup.

11. P.W.4 Madhav Bhide is the brother of P.W.1 Suda. He states that, on 14th March 1994, when he had reached the house of P.W.1 Suda, he found her trembling and crying bitterly and when asked as to what had happened, P.W.1 Suda had replied that the accused continues to torture her so badly that she felt that she had no other way out but to commit suicide. He states that P.W.1 Suda had written a letter to him, which is dated 9th March 1994, at Exhibit P.W.4/A Colly.

12. P.W.5 Damodar Kuncolienkar was attached to the Institute of Psychiatry and Human Behaviour. P.W.1 Suda was examined by Dr. Audhi and Dr. Maruthi Naik. On 15th March 1994, when he had examined P.W.1 Suda, he found that it was a case of depression. He states that when he interviewed the husband of P.W.1 Suda, he found that there was psycho social stresses and there was marital disharmony and frequent conflict and quarrels on minor issues. In the cross-examination he has admitted that 'I opined that infertility is the cause of the depression of the complainant'. He admitted that husband of P.W.1 Suda had visited the institution on

15th March 1994. He has also admitted that P.W.1 Suda was referred to that institute with case history of attempted suicide. He has admitted that no clinical signs of attempt to suicide were found on the patient. He has further admitted that, as per their record, it was mentioned that the patient had consumed criprizine and those tablets are prescribed usually for allergy and the same are histamine. He has admitted as true that the matter was not so serious and, though the case history showed as attempt to suicide, P.W.1 Suda was allowed to go home. He has stated that, on the day of discharge, the said patient was fit to give her statement. He has admitted that there was nothing in the case papers to arrive at the finding that the depression was on account of harassment. The case papers are at Exhibit P.W.5/A colly.

13. A perusal of the evidence of the witnesses clearly suggests that the statement that, on 14th March 1994, P.W.1 Suda had informed them that she had consumed the tablets as the accused had treated her badly and had driven her out of the house, is falsified by the admission given by P.W.3 Prabhakar that P.W.1 Suda had told him that she had consumed the tablets as usual for headache. There is no explanation as to why the report at Exhibit P.W.1/B came to be lodged on 7th April 1994, when, admittedly, P.W.1 Suda was discharged on 23rd

March 1994. As per the evidence of P.W.5 Dr. Damodar, she was fit to give her statement to the police. Apart from this, there is no thread of consistency between the evidence of P.W.1 Suda, P.W.2 Ramkrishna, P.W.3 Prabhakar and P.W.4 Madhav. The allegations of ill-treatment/cruelty are extremely vague and there is no inter se corroboration between them. Two persons are alleged to have been residing in the house of the accused, when the incident, dated 14th March 1994 occurred. The prosecution has chosen not to examine them.

14. In the background of the evidence tendered by the prosecution, the evidence of the witnesses does not inspire any confidence and falls woefully short of establishing the offence under Section 498-A of the Indian Penal Code against the respondent/accused. It is, therefore, rightly urged by the learned counsel for the respondent/accused, relying on Section 377(3) of the Code of Criminal Procedure, that there is no evidence whatsoever for sustaining the charge under Section 498-A of the Indian Penal Code. The allegation that the respondent/accused had illicit relations with a lady from whom he had a child, apart from the fact that the evidence is beyond the charge, the evidence is absolutely vague. P.W.1 Suda has produced on record a certificate of birth at Exhibit P.W.1/A. It speaks

about a lady named Lalita Moreshwar Joshi giving birth to a child on 5th May 1998. The name of the father is Dr. Moreshwar Anant Joshi. Apart from producing such a certificate, no other evidence is led to show that the father of the child, referred to in the certificate, is the respondent/accused. The learned trial Court in paragraph 17 has placed implicit reliance on the said certificate to come to the conclusion that the accused had illicit relations and had fathered a child. The learned trial Court has not appreciated that the evidence tendered by the prosecution tasks human credulity for its acceptance, apart from the fact that the evidence in respect of cruelty was vague and indeterminative in nature. Such allegations are not corroborated inter se by the witnesses. The Court unnecessarily proceeded on the ground of limitation when such was not the argument advanced. The argument was in respect of delay in lodging the complaint.

15. For all the aforesaid reasons, therefore, I am of the opinion that the prosecution has utterly failed to prove the offence against the respondent/accused beyond reasonable doubt. While examining the necessity of enhancing the sentence, as per Sub-Section (3) of Section 377 of the Code of Criminal Procedure, the learned counsel for the accused has argued for his acquittal.

16. In the result, therefore, Criminal Appeal is dismissed and the Judgment, dated 17th August 2002, rendered by the Judicial Magistrate, First Class, Bicholim, in Criminal Case No. 72/S/94/C, is quashed and set aside and the respondent/accused is acquitted of the offence for which he was charged and convicted.

(P.V. HARDAS)
JUDGE.

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