13. As the Court is of the view that the complaint itself does not disclose any offence as alleged, it is not necessary to enter into the merits of the other submissions advanced by the learned Counsel for the petitioners as regards the interpretation of the provisions of clause (7) of the Fifth Schedule to the Act."

8.0 A perusal of the impugned complaint would clarify that the same is absolutely silent on the aspect that the transfer of the concerned workmen amounts to unfair labour practice. The complaint is totally lacking in all material particulars. There is nothing produced to show as to how the offence as alleged in the complaint is constituted. Thus, as per law enunciated by this Court in the aforesaid judgment dated 01.09.2008 on a similar issue, this Court is of the considered opinion that present case false under the categories of cases as laid down by the Apex Court in the case of ***State of Haryana Vs. Bhajanlal [1992(1) SCC 335].***

9.0 Hence, in light of afore-noted facts and observations, present application is allowed. The impugned complaint being the Criminal Case No.1007/2015 dated 17.06.2015 filed by the respondent no.2 before the Judicial Magistrate First Class, Gandevi and subsequent proceedings thereof are hereby quashed and set aside. Rule is made absolute. Direct service is permitted.

Result:- Application allowed.

ABC 2019 (I) 263 GUJ

ACQUITTAL & BAIL CASES

HIGH COURT OF GUJARAT

(A.G.Uraizee, J.)

Criminal Appeal No. 1321 of 2003

Decided on 4 December, 2018

ARJAN JETHABHAI HARIJAN ***- Petitioner(s).***

Versus

STATE OF GUJARAT ***- Respondent(s).***

Law Covered:- ***(A) Indian Penal Code, 1860 — Section 498-A — Conviction of husband — contradiction between the evidence of witnesses — contradiction regarding demanded amount — Acquittal of all the accused of the offences u/s 304-B & 306 — Cruelty —No***

evidence of incessant, unbearable mental & physical torture —Main thrust of the allegation — Instigation to the husband by in-laws & sister-in-law — not believed by trial Court — Held, no evidence remains which would connect the appellant with the offence punishable u/s 498A —Acquittal. (Para 19)

(B) Criminal trial — Indian Penal Code, 1860 — Section 498-A — Issue to be considered — whether there was immediate provocation for the deceased to end her life & that the ill-treatment meted out to her was so incessant that she had no option but to end her life. (Para 19)

(C) Indian Penal Code, 1860 — Section 498-A — Establishing the guilt of the accused — Duty of the prosecution — in first place, the prosecution has to establish that there was an ill-treatment meted out to the hapless wife — & there has to be further evidence to clearly indicate that such harassment & cruelty was so frequent and unbearable that the wife would be led to end her life. (Para 19)

Facts:- *Brief facts of the prosecution case are that the brother of the deceased lodged a complaint with Police for offences punishable u/ss 498A, 304B and 306 of IPC against the husband, his father, mother and sister alleging that they demanded a sum of ₹. 40,000/-. Since demand was not met, the deceased was subjected to mental and physical cruelty. The deceased could not bear the torture, as a result, she ended her life by jumping in to the well.*

The learned Trial Judge convicted the husband for offence punishable u/s 498A of IPC, however, acquitted him of charges u/ss 304B and 306 of IPC. The other accused persons were acquitted of all the charges. The husband, being aggrieved by the conviction, preferred this appeal.

Law of relief:- ***If the main allegation to connect the accused with crime is discarded no evidence remains which would connect him with the offence.***

Held:- The witnesses have consistently stated in their respective testimonies that the deceased Diksha was treated with cruelty on account of non-fulfillment of demand of Rs. 40,000/- but the analysis of the evidence of these witnesses makes it clear that except PW 1, brother of the deceased, rest of the witnesses have stated in their testimonies that the incident had happened six months before. While according to PW 1, the incident had happened around one month before. Moreover, if the complaint is seen, it is alleged therein

that there was a demand of Rs. 25,000/-. Witnesses in their respective evidence before the Court have stated that there was a demand of Rs. 40,000/-. Essentially, the issue which requires consideration is whether there was immediate provocation for the deceased to end her life and that the ill-treatment meted out to her was so incessant that she had no option but to end her life. Sofar as offence punishable under sections 304B and 306 are concerned, the Trial Court has acquitted all the accused persons including the appellant but the Trial Court has chosen not to convict the appellant under section 498A of IPC on the basis of evidence of the material witnesses. Scrutiny of material witnesses does not reveal that there was incessant, unbearable mental and physical torture meted out to the deceased by the appellant. The main thrust of the allegation was that the in-laws and sister-in-law (nanand) of the deceased were instigating the appellant. The learned Trial Judge has not believed the prosecution case on this material aspect and therefore, if the main allegation of instigation on part of the parents in-laws, appellant and sister-in-law of the deceased is discarded, in my view, no evidence remains which would connect the appellant with the offence punishable under section 498A of the Code. It is a settled proposition of law that in first place, the prosecution has to establish that there was an ill-treatment meted out to the hapless wife and there has to be further evidence to clearly indicate that such harassment and cruelty was so frequent and unbearable that the wife would be led to end her life. Upon microscopic analysis of the evidence of the prosecution, I do not find any such evidence to record a conclusion that the appellant had meted out any cruelty to the deceased warranting his conviction under section 498A of IPC. I am therefore of the view that the conviction of the appellant for the offence punishable under section 498A of the Code cannot be sustained. The impugned judgement and order of conviction warrants interference in this appeal. (Para-19)

Counsel:- ***For Petitioner(s):*** *Ms Sejal K Mandavia, Adv.*

For Respondent(s): *Mr K P Raval, Adv.*

JUDGMENT

A.G.URAIZEE, J.: - 1. The present appeal under section 374 of the Code of Criminal Procedure,1973 ['the Code' for short] emanates from the judgement and order of conviction dated 10.10.2003 passed by the learned Additional Sessions Judge, Fourth Fast Track

Court, Veraval in Sessions Case No 56 of 2001 whereby and where-under, the appellant came to be convicted for the offence punishable under section 498A of the Indian Penal Code. ['IPC' for short] and directed to undergo imprisonment for two years and also directed to pay fine of Rs. 2000/-. In default of payment of fine, the applicant is directed to undergo rigorous imprisonment for three months.

2. Brief facts of the prosecution case, as could be culled out from the impugned judgement, are that Govindbhai Mangalbhai Vaja, PW 1, who happens to be the brother of the deceased Dikshaben. Govindbhai lodged a complaint with Kodinar Police Station for offences punishable under sections 498A, 304B and 306 of IPC against the present appellant-Arjan Jethabhai Harijan, his father Jetha Masri Harijan, his mother Amarben Jethabhai Harijan and his sister-Samjuben Jethabhai alleging inter alia that they demanded a sum of Rs. 40,000/- from PW 1 through deceased who happened to be the wife of the appellant. PW 1 could not meet the demand therefore, the deceased Dikshaben was subjected to mental and physical cruelty by appellant, his parents and sister. The deceased Dikshaben could not bear the torture, mental as well as physical, meted out to her. As a result, she ended her life by jumping in to the well.

3. Complaint of PW 1 was investigated and charge sheet came to be filed against the appellant, his parents and sister in the Court of learned JMFC, Kodinar. As the offence is committed by the appellant and other co-accused persons was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to Sessions Court under section 209 of the Code, where it was numbered as Sessions Case No. 56 of 2001.

4. Charge vide Exh 1 came to be framed against the appellant and other co-accused persons who pleaded not guilty and came to be tried. The prosecution, in order to bring home the case against the appellant adduced the following oral evidence:

A. Complainant

1. PW 1 , Govindbhai Mangalbhai Vaja was examined at Exh 15

B. Prosecution Witnesses

1. PW 2, Maniben Mangabhai was examined at Exh 17

2. PW 3, Shamjibhai Mangaljibhai was examined at Exh 18

3. PW 5, Keshubhai Mangalbhai was examined at Exh 23

4. PW 6, Meenaben Mangalbhai was examined at Exh 24

5. PW 9, Muliben Govindbhai was examined at Exh 28

6. PW 10, Kadubhai @ Naranbhai Karsanbhai was examined at Exh 29

. Medical Officer

1. PW 11, Dr. J.J.Rachchh was examined at Exh 31

D. Panchwitnesses

1. PW 7 Karsanbhai Pujabhai was examined at Exh 25

2. PW 8 Nagalben Karsanbhai was examined at Exh 27

3. PW 12 Laxmanbhai Bheemabhai Gohel was examined at Exh 33

E. Police Witnesses

1. PW 4 Head Constable Umarbhai Ismilebhai PSO was examined at Exh 19

2. Police Sub Inspector L.J.Higrajiya, Investigating Officer was examined at Exh 35

5. The prosecution also produced and relied upon following documentary evidence:

FIR produced at Exh 16

Station Diary produced at Exh 20

Postmortem Report produced at Exh 32

Inquest panchnama produced at Exh 26

Panchnama of scene of offence produced at Exh 34

6. After conclusion of the evidence of the prosecution, statement under section 313 of the Code of the appellant and co-accused persons came to be recorded wherein their case is of complete denial. In support of their defence, they examined following defence witnesses:

1. DW 1, Haribhai Jethabhai was examined at Exh 41

2. DW 2, Laxmanbhai Sidibhai Gohil was examined at Exh 42

3. DW 3, Principal G.P.Thakar was examined at Exh 44

. DW 4, Rajabhai Ranabhai was examined at Exh 46

7. Following documentary evidence was produced on behalf of the appellant and co-accused persons in the evidence of defence witnesses.

1. Attendance Sheet produced at Exh 45

2. Constitution of Dowry practice produced at Exh 47

8. The learned Trial Judge convicted the appellant for offence punishable under section 498A of IPC and directed him to undergo rigorous imprisonment of two years and also directed to pay fine of Rs. 2000/-. In default of payment of fine, directed to undergo rigorous imprisonment of three years. The learned Trial Judge acquitted the appellant of charges under sections 304B and 306 of IPC. The other accused persons were acquitted of all the charges. The appellant being aggrieved by the conviction under section 498A of IPC, has preferred this appeal.

9. I have heard Ms. Sejal Mandavia learned advocate for the appellant and Mr. K P Raval learned APP for the respondent- State. I have also perused the record and proceedings of the case.

10. Ms. Sejal Mandaviya vehemently submitted that the learned Trial Judge has committed a serious error in convicting the appellant under section 498A of IPC. In absence of any cogent and reliable evidence, she stoutly submitted that evidence of PW 1 and other material witnesses suffered from material contradictions. She also submitted that witnesses examined on behalf of the prosecution are related witnesses being brother, mother, sister of the deceased. She therefore urged that the appeal may be allowed and conviction may be set aside.

11. Mr. K.P.Raval learned APP has strongly opposed this appeal. He submitted that the evidence of PW 1 and other witnesses, though related, is consistent and does not suffer from material contradictions or embellishment. He submitted that their testimonies are natural and there is no reason to discard and disbelieve their testimonies. He further submitted that the law only requires careful scrutiny of the testimonies of related witnesses and if such testimonies are found reliable and trustworthy, conviction can be based on such evidence. He submitted that the learned Trial Judge has found the evidence of all the witnesses reliable and trustworthy by assigning cogent reasons and therefore no interference is warranted in the impugned judgement and order of conviction. He

submitted that the marriage span between the appellant and deceased Diksha was around one year and therefore, presumption under section 113A of the Evidence Act would come into play and therefore, the learned Trial Judge was justified in convicting the appellant under section 498A of IPC.

12. In order to appreciate the argument canvassed at the bar, it would be appropriate to have bird's eye view of the evidence of relevant witnesses to find out whether the appellant had meted out any mental or physical cruelty to his wife-deceased Dikshaben.

13. Govindbhai Mangalbhai Vaja PW 1 who is the brother of deceased Dikshaben is the original complainant. It emerges from his testimony that the marriage between the appellant and deceased was performed around one year before the incident. After their marriage, deceased Dikshaben started her matrimonial life by living with the appellant and her in-laws at village Khan. He stated in his testimony that the appellant used to beat the deceased and demand money from the deceased. He further stated that his sister was sent to parental home after beating her. The appellant and his father came one week after to take the deceased back. At that time, PW 1 had asked them to go with two persons of their community. Thereafter, on next day, the deceased was sent to her matrimonial home with her mother Maniben, PW 2. He further stated that around after fifteen days, he went to the house of the appellant where he found that everything was alright. The deceased came to his house one month thereafter and on being asked, she told that her mother-in-law, father-in-law and sister- in-law (nanand) were instigating the appellant to ask deceased to bring money from brother i.e. PW 1 otherwise they do not want to keep her.

14. It is very clear from the testimony of PW 1 that when the deceased came to her parental home for the first time, she made a grievance that appellant alone was demanding Rs. 40,000/- and subjecting her to mental and physical ill- treatment.

15. Thereafter, when PW 1 went to see the deceased at her matrimonial home, he found everything alright and the only grievance made by the deceased was that upon instigation by her in-laws, the appellant was asking her to bring money from PW 1. He was threatening that he did not want to keep her. It is thus very much clear from the evidence of this witness- complainant that after the first incident, when the appellant and his father were counseled not to ill-

treat the deceased and not to demand money, at least the ill-treatment part of the misfortune of the deceased Dikshaben had stopped and there was no physical ill-treatment meted out to her by the appellant. On his visit to the matrimonial home of the deceased. PW 1 was only told that the appellant was telling the deceased that he was not keeping her if the demand for money is not met. In any case, there was no physical and mental ill-treatment.

16. Maniben Mangabhai, PW 2, mother of the deceased is examined at Exh 17. She has also deposed more or less on the line of testimony of PW 1. It emerges from her testimony that her daughter was subjected to ill-treatment for not bringing Rs. 40,000/- and that the appellant and other accused persons had thrown her daughter into a well. The testimony of this witness does not reveal the nature of ill-treatment or cruelty which was meted out to the deceased. She has stated in too general terms that her daughter was subjected to ill-treatment on account of not bringing Rs. 40,000/-.

17. Shyamjibhai Mangalji, PW 3, the brother of the deceased was examined at Exh 18. He only stated in his testimony that the marriage life between the appellant and the deceased was good for sometime after the marriage but thereafter, she was physically and mentally ill-treated and was asked to bring Rs. 40,000/- from her parents. As the demand for money was not met, he stated that his sister jumped into a well because of ill-treatment on account of non-fulfillment of demand of money.

18. Keshubhai Mangalbhai Vaja, PW 5, is the brother of deceased Diksha. He also stated in his testimony that the deceased was subjected to mental and physical cruelty by the appellant on account of demand of Rs. 40,000/-. He also stated that lastly, his sister had come to parental home six months before the incident. Similar is the evidence of Meenaben Bhikhabhai, PW 6, who is the sister of the deceased. She was the panch of inquest panchnama but then she, in her testimony, stated that she had come to know that there was a demand of Rs. 40,000/-. One Nagalben Karsanbhai, PW 8, was also sister of the deceased. She was also one of the panchas of inquest panchnama. She stated in her testimony that the deceased had told to her sister-in-law (bhabhi) that she had problem at her matrimonial house. Her sister-in-law Muliben told this fact.

19. The witnesses have consistently stated in their respective testimonies that the deceased Diksha was treated with cruelty on

account of non-fulfillment of demand of Rs. 40,000/- but the analysis of the evidence of these witnesses makes it clear that except PW 1, brother of the deceased, rest of the witnesses have stated in their testimonies that the incident had happened six months before. While according to PW 1, the incident had happened around one month before. Moreover, if the complaint is seen, it is alleged therein that there was a demand of Rs. 25,000/-. Witnesses in their respective evidence before the Court have stated that there was a demand of Rs. 40,000/-. Essentially, the issue which requires consideration is whether there was immediate provocation for the deceased to end her life and that the ill-treatment meted out to her was so incessant that she had no option but to end her life. Sofar as offence punishable under sections 304B and 306 are concerned, the Trial Court has acquitted all the accused persons including the appellant but the Trial Court has chosen not to convict the appellant under section 498A of IPC on the basis of evidence of the material witnesses. Scrutiny of material witnesses does not reveal that there was incessant, unbearable mental and physical torture meted out to the deceased by the appellant. The main thrust of the allegation was that the in-laws and sister-in-law (nanand) of the deceased were instigating the appellant. The learned Trial Judge has not believed the prosecution case on this material aspect and therefore, if the main allegation of instigation on part of the parents in-laws, appellant and sister-in-law of the deceased is discarded, in my view, no evidence remains which would connect the appellant with the offence punishable under section 498A of the Code. It is a settled proposition of law that in first place, the prosecution has to establish that there was an ill-treatment meted out to the hapless wife and there has to be further evidence to clearly indicate that such harassment and cruelty was so frequent and unbearable that the wife would be led to end her life. Upon microscopic analysis of the evidence of the prosecution, I do not find any such evidence to record a conclusion that the appellant had meted out any cruelty to the deceased warranting his conviction under section 498A of IPC. I am therefore of the view that the conviction of the appellant for the offence punishable under section 498A of the Code cannot be sustained. The impugned judgement and order of conviction warrants interference in this appeal.

20. For the foregoing reasons, the appeal succeeds and is hereby allowed. Judgement and order of conviction dated 10.10.2003 passed by the Additional Sessions Judge, Fourth Fast Track Court,

Veraval, in Sessions Case No. 56 of 2001 is hereby quashed and set aside. The appellant is acquitted of the charges leveled against him under section 498A of the Indian Penal Code. Fine, if any, deposited by the appellant be refunded to him.

Bail bonds furnished by the accused stand discharged. R & P to be transmitted back to the concerned Trial Court forthwith. Criminal Appeal is disposed of.

Result:- Appeal allowed.

February 2019