
(2017) 06 BOM CK 0216
In the Bombay High Court
Case No : 157 of 1999

Akhilesh Kumar S/o Krishna Kumar Sao

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 27-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 174](#) - Police to enquire and report on suicide, etc
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 498A](#), <

Citation : (2017) 06 BOM CK 0216

Hon'ble Judges : V. M. Deshpande

Bench : SINGLE BENCH

Advocate : R.S.Akbani, T.H.Udeshi

Final Decision : Allowed

Judgement

1. The present appeal is directed against the judgment and order of conviction passed by Learned Sessions Judge, Nagpur dated 29/05/1999, by which learned Sessions Judge, Nagpur convicted the appellant for the offence punishable under Section 306 of the Indian Penal Code and directed to suffer R.I. for 3 years and to pay fine of Rs. 1000/and in default of payment of fine to undergo further R.I. for three months. The appellant is also convicted for the offence punishable under Section 498A of the Indian Penal Code and sentenced to suffer R.I. for 3 years and to pay fine of Rs. 1000/and in default of payment of fine to suffer further R.I. for 3 months.

2. Heard Shri R.S.Akbani, learned counsel for appellant and Smt.T.H.Udeshi, learned Addl.P.P. for State. Learned counsel Shri Akbani for appellant strenuously urged before me that the judgment and order passed by the learned Trial Court is erroneous in law . He invited my attention to the evidence of prosecution witnesses in detail. So also, smt.T.H.Udeshi, learned Addl.P.P. invited my attention on various documents which were fully proved during the course of trial.

They both vehemently submitted in respect of their respective prayers in the present appeal.

3. Deceased is Archana. Her marriage took place with the appellant in the year 1992. At the time of marriage, appellant was taking education in engineering stream at Pusad where the deceased used to reside with her parents. According to prosecution, the appellant was in habit of chasing deceased and so also indulged in teasing. However for such alleged acts on the part of the appellant no offence at any point of time .

4. The evidence as brought on record by the prosecution in order to bring home guilt of the appellant shows that ultimately the deceased herself ran away with appellant at his native place at Akaltara, DistrictBilaspur. After getting the information Vijay Ginnalwar(PW1) her father reached to said village where he got knowledge that his daughter deceased Archana has already performed marriage with the present appellant. Therefore, to give sanctity to their relations both were brought at Pusad by Vijay (PW1) and thereafter marriage was duly performed.

5. The incident in question has occurred on 3/8/1996. In the said incident Archana received severe burn injuries and also her toddler by name Gaurav also suffered burn injuries. They were taken into hospital,however firstly Archana succumbed to her burn injuries on 5/8/2016 and on 15/8/1996 Gaurav also succumbed to his burn injuries.

6. Vijay(PW1) on 6/8/1996 approached to P.S.M.I.D.C. Nagpur with a typed written complaint(Exh.21) wherein he specifically alleged that he has a strong suspicion against appellant that he must have poured kerosene on deceased Archana and set her ablaze. Prior to lodging of the written complaint, since the death of Archana was unnatural one an accidental death was registered with P.S.M.I.D.C.Nagpur and it was registered under Section 174 of Code of Criminal Procedure and it was registered as AD No.25/1996.

7. Raosaheb Arjun Lokhande(PW7) Police SubInspector was entrusted with the enquiry of the said accidental death. During inquiry of the said he visited the spot of the incident where he found a letter (chit) of deceased Archana reciting that she could not bear anything more. The spot panchnama was prepared by investigating officer Raosaheb Arjun Lokhande (PW7) on 6/8/1996 and it is at Exh.34. The chit which was seized during the course of drawing panchnama is available at Exh.22. The inquest was also done over the dead body of Archana by Raosaheb Arjun Lokhande(PW7) and inquest panchnama is at Exh.20. In the meanwhile, since he received the typed written complaint(Exh.21) he registered an offence against appellant vide Crime No.165/1996 for the offence punishable under Section 306 of the Indian Penal Code. The printed F.I.R. is at Exh.35. Thereafter he handed over the further investigation to P.I.Gedam.

8. After completion of usual investigation, chargesheet was presented in the Court of law.

9. A charge was framed against the appellant by learned Sessions Judge, Nagpur below Exh.6 for the offence punishable under Sections 306 of the Indian Penal Code and also under Section 498A of the Indian Penal Code.

10. In order to bring home the guilt of the appellant in all 10 witnesses were examined.

11. P.W.1 Vijay S/o Ganpatrao Ginnalwar is the father of the deceased while P.W.2 Arti W/o Vijayrao Innalwar is the mother of deceased. P.W.3 Sirish Vijayrao Ginnalwar is brother of the deceased whereas P.W.4 is one Satish S/o Krishnarao Sadan to whom deceased use to call maternal uncle(mama). P.W.5 is Dr.Vinod Raghunathdas Agrawal who has performed post mortem on the dead body of deceased Gaurav and has proved the post mortem notes (Exh.31). P.W.6 is Wasudeo Ghusiji Sidam who has conducted investigation of Crime No.165/1996 and filed chargesheet. P.W.7 Raosaheb Arjun Lokhande has inquired accidental death proceeding and seized chit (Exh.22) by drawing panchnama(Exh.24). Dr.Pradeep Gangadhar Dixit (PW8) has performed post mortem on the dead body of deceased Archana and proved post mortem notes (Exh.38), P.W.9 is Dr.Sudanwar Sudhakar Rao Bhoot and he has given a letter that during the course of treatment Gaurav died on 6/8/1996. P.W.10 is Manikrao Tarachand Rokde, a panch on sot panchnama(Exh.34).

12. Though written complaint (Exh.21) filed on behalf of Vijay(PW1), the father of deceased states that he has a strong suspicion that appellant committed murder of his daughter Archana. Neither the chargesheet nor charge was framed against the present appellant for the offence punishable under Section 302 of the Indian Penal Code. The chargesheet was presented against appellant for the offence punishable under Section 306 of the Indian Penal Code. He also faced the charge for the offence punishable under Section 498A of Indian Penal Code in addition to this charge.

13. Looking to the inquest panchanma and post mortem(Exh.38) conducted by Dr.Dixit there cannot be any doubt that deceased met with unnatural death.

14. The unnatural death be I) homicidal one II) suicidal one and III) accidental one. Since the appellant did not face the charge of homicidal death the said possibility is completely ruled out. According to prosecution, deceased Archana committed suicide due to harassment caused to her whereas as per the defence Archana suffered burn injuries accidentally to which ultimately she succumbed alongwith her son Gaurav.

15. The prosecution has not examined any person in whose presence the deceased committed suicide nor it is expected also if the suicide is committed in four walls of the house. The record shows that when Archana was admitted in the hospital her statement was recorded by police. From the evidence of Raosaheb Lokhande(PW7) it is clear that her statement was recorded by A.S.I.Waghare. Said statement was not filed on record alongwith the chargesheet. However, during the cross-examination of Satish(PW4) the

prosecution was required to place the said documents on record. This prosecution witness Satish Sadan is having close acquaintance with the family of deceased. Even according to Vijay (PW1) he received information from Satish Sadan(PW4) to whom he referred in examination in chief as deemed maternal uncle about the burning incident. That shows this prosecution witness was closely acquainted with the family of Vijay(PW1). This witness was declared hostile by learned Addl.P.P. with the permission of the Court and he was crossexamined by learned Addl.P.P. During his crossexamination, he admitted that Archana was brought to him by appellant himself and then he took Archana to Dr.Badjate Hospital who advised him to admit her in Medical College. In his crossexamination , it is further brought on record at the hands of the defence that when Archana was admitted in the hospital in his presence police recorded her statement and on the said statement Satish Sadan(PW4) put his signature as one of the panchas. This particular version of Satish Sadan(PW4) that in his presence statement of Archana was recorded is duly corroborated by Raosaheb Arjun Lokhande(PW7) who candidly admitted that A.S.I.Waghare has recorded statement of deceased Archana.

16. The job of the prosecution and investigating officer is to place the material collected during the course of investigation before the Court. It is not expected either from investigating officer or from the prosecution to take side of either complainant or the accused. The fair investigation is the primary thing for administration of criminal justice. If the prosecution or the investigating officer is not placing the material collected or obtained during the course of investigation, then there is always possibility of polluting the stream of criminal administration. It is the duty of the Court to appreciate the material collected and placed on record during the course of investigation. The investigating officer cannot decide as to which document he should file on record for securing the conviction of accused against whom the offence is registered. Let the Court should do its duty by appreciating material brought on record. Ultimately, during the course of crossexamination of Satish Sadan(PW4) when he stated that in his presence statement of deceased is recorded the prosecution was required to place the said document on record. Thus, the statement recorded by A.S.I.Waghare of deceased Archana reached on the record through the prosecution side only. It is not placed on record by the defence or by accused. Thus, it has its own sanctity. The said document was duly exhibited by learned Judge in view of the evidence of Satish Sadan(PW4) and it is available at Exh.27.

17. Perusal of Exh.27 clearly shows that the incident in question has happened due to accident only.

18. Further, after receipt of information about the burning incident Vijay(PW1) immediately reached to Nagpur and rushed to Medical College where Archana was admitted as an indoor patient. His evidence discloses that after reaching along side her he asked about the incident. His evidence is completely silent that on inquiry which he made with Archana she disclosed that she committed

suicide. His evidence only shows that she asked the accused who was present there he should remove himself from there. Thus, from the evidence of Vijay(PW1) it is crystal clear that to him no oral dying declaration was made by deceased Archana.

19. The other facet of the prosecution case is that Archana committed suicide due to illtreatment which used to receive at the hands of the present appellant. In fact, appellant was also charged for an offence punishable under Section 498A of the Indian Penal Code. In order to prove the said charge of harassment the prosecution has examined the parents of the deceased and also her brother.

20. Evidence of Arti shows that she belongs to caste known as Panchal(goldsmith) whereas appellant belongs to Teli . Thus, it is clear that the marriage between appellant and deceased was intercaste marriage. Further even as per the evidence of Vijay(PW1) his daughter, deceased ran away with the appellant from Pusad to a place in district Bilaspur where the appellant was having native place and there they performed marriage. That shows the marriage between this couple was performed against the wish of parents of Archana. Though as per the evidence of Vijay(PW1) he brought back the couple in order to give sanctity to their relations function was organised at Pusad. That by itself is not sufficient to reach to the final conclusion that the parents has given consent to appellant for performing intercase marriage.

21. According to evidence of Vijay(PW1),Arti(PW2) and Sirish (PW3), the brother of deceased the appellant used to harass deceased. For the harassment at no point of time the appellant suffered any prosecution at the hands of the parents of deceased. On the contrary, it is clear that after getting job at M.I.D.C.Nagpur the appellant started residing with deceased at Nagpur and during the course of their marital life Archana also delivered a male child. The evidence in respect of harassment appears to be improved version in the evidence of parents and brother. Further the prosecution has not examined any neighbour pointing out that they noticed at least any brickraining in the marital life of the couple.

22. Learned Addl.P.P. has heavily relied on Exh.22 which is a chit which was seized from the house of appellant alone while drawing spot panchnama. Exh.22 recites that it is written to Vijay (PW1) by writing "baba" . The gist of Exh.22 is that she is unable to bear anything and he should come and fetch her otherwise she will take drastic step. It is the submission of learned Addl.P.P. that due to this Exh.22 it is sufficient to prove the harassment at the hands of the appellant was to such an extent that she was required to write down the letter and ultimately she has short her life.

23. Chit (Exh.22) was seized by police police officer Raosaheb (PW7) when he was inquiring in the AD proceeding by drawing the spot planchnama(Exh.34). Manikrao(PW10) is one of the panchas to the said spot panchnama(Exh.34). This witness is chowkidar. His evidence shows that two police personnel and father in law of the appellant came to the spot, entered into the house of the appellant,

not only that in his examination in chief itself he has stated that when the spot panchnama was drawn the appellant was not present. Thus, in absence of the appellant the spot was search. It is to be noted that that day appellant was not arrested. Appellant was arrested subsequently on 8/8/1996. Even as per the prosecution case, deceased was well educated girl therefore her handwriting must have been available either in the marital house or in parental house. Chit (Exh.22) which questions the behaviour of the appellant could have been compared with other handwriting of deceased Archana. For the reasons best known to the prosecution chit (Exh.22) was not sent to the handwriting expert to reach to the conclusion that chit (Exh.22) was in fact written by deceased Archana. The said document is undated one and also it does not reflect her full name. In view of the fact that the handwriting of chit (Exh.22) is not proved to be handwriting of the deceased. I refrained myself from placing any reliance on the said document to reach to the conclusion that she was subjected to cruelty at the hands of the appellant.

24. Exh.27 shows that Archana suffered burn injuries due to accident. Not only that Vijay (PW1), Arti(PW2) and Sirish (PW3) are totally silent in their respective testimonies from the witness box that to them any oral dying declaration was made by Archana that she committed suicide. Thus, in my view, this is the case wherein the prosecution has utterly failed to prove its case beyond reasonable doubt warranting me to pass the following order. ORDER

I) Appeal is allowed.

II) Judgment and order of conviction passed by learned Sessions Judge, Nagpur dated 29/05/1999 in S.T.No.166/1997 is hereby quashed and set aside.

III) Appellant is acquitted from the charge of offence punishable under Sections 306 and 498A of the Indian Penal Code .

IV) His bail bonds stand cancelled.