

(1988) 01 BOM CK 0050
In the Bombay High Court
Case No : Criminal Appeal No. 149 of 1985

Anjanabai Jadhav

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-01-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174

Evidence Act, 1872 — Section 113A

Penal Code, 1860 (IPC) — Section 306, 309, 34, 498A

Citation : (1988) MhLj 641

Hon'ble Judges : V.P. Salve, J

Bench : Single Bench

Advocate : N.P. Chapalgaonkar with Smt. A.S. Rasal, for the Appellant; G.R. Ghute, Additional Public Prosecutor, for the Respondent

Judgement

V.P. Salve, J.—The accused-Appellant, Smt. Anjanabai Jadhav, challenges her conviction u/s 306 of the Indian Penal Code, for which she has been sentenced to two years" R.I., by the Additional Sessions Judge, Parbhani.

2. The prosecution unfolded its case through its witnesses as under :

Smt. Parwati Bharat Jadhav, aged about 20 years, was the daughter-in-law of the accused and the only daughter of her parents - Devidasrao Ingoli, a S.T. driver, and Smt. Kusum Ingoli (P.W.2), residents of Parbhani. Smt. Parwati was married with Bharat, the elder son of the accused serving in S.R.P. Force about nine months next before the occurrence. After her marriage, Smt. Parwati started living in her matrimonial house bearing Quarter No. J/7 in Police Lines, Parbhani, along with her parents-in-law and brothers-in-law. Her husband Bharat used to reside at the place of his posting outside Parbhani. The life of Smt. Parwati was not quite happy in her matrimonial house in that she was not provided proper food, subjected to ill-treatment and humiliation by the accused and her younger brothers-in-law and not permitted to visit her parental house located in Misar Nagar, Parbhani. On her two short visits to her parental house,

Smt. Parwati confided to her parents about her plight in the matrimonial house. However, her parents tried to console her by telling that things may improve by passage of time.

On 10-3-1984, some time in afternoon, the neighbouring residents of the locality heard yells and shouts for help from the house of the accused. Since both front and rear doors were found closed, somebody firstly got entry into the house through an outlet made by removing the roof-tin of the kitchen-room and he opened the back door and then the neighbouring residents. Shakeeluddin, Vithalrao Sukalkar (P.W.4) and Namdeo Mithapalle (P.W.5) entered the house through it. They found Smt. Parwati in the cistern with extensive burn injuries on her person. They took her out of the cistern and rushed her to the Civil Hospital, Parbhani, in a police van. Dr. Smt. Usha Joshi (P.W.7) who was then Duty Medical Officer admitted her in the burn ward and also sent letter (Exh. 27) addressed to the P.S.I., Parbhani, to arrange for recording her dying declaration. Consequently, the P.S.I. Gangale (P.W.6) gave instructions to the P.S.O. to send requisition letter in the matter to the Honorary or Executive Magistrate, whosoever available, and himself went to the Civil Hospital, Parbhani. Since treatment was being given to the injured in the Hospital, he went to the spot and drew up panchanama of the scene of offence (Exh. 5). He thereafter recorded statements of total 10 witnesses. Since it transpired that Smt. Parwatibai attempted to commit suicide, he lodged his complaint for the State in the matter and registered the crime No. 72/78 u/s 309 of the Indian Penal Code. In the meantime, the Executive Magistrate, Parbhani, Shri S. S.Aundhekar (P.W.I), on requisition of Nanalpeth Police Station, went to Civil Hospital, Parbhani, and after getting certified from Dr. Smt. Usha Joshi that the patient was conscious, recorded dying declaration of Smt. Parwatibai Jadhav, vide Exh. 9 at 2.20 p.m. on 10-3-1984.

Smt. Kusum (P.W.3) darted to the Civil Hospital on receiving message that her daughter sustained burn injuries and was taken to the hospital. On enquiry, with her daughter, it transpired that earlier in the day, the accused not only declined her permission to visit her parental house only for an hour, but impressed on her that she would never be permitted to visit her parents in future also and subjected her to beating with a chappal before going out of the house and she being unable to stand humiliation and torture, set fire to her clothes by sprinkling kerosene thereon in a bid to put an end to her life.

Smt. Parwati succumbed to her burn injuries in the Civil Hospital at 8.20 a.m. on 14-3-1984. Necessary information in that behalf was conveyed to the P.S.I. by the then Duty Medical Officer, Dr. Smt. Usha Joshi, vide Exh. 28, on the basis of which the P.S.O., Nanalpeth Police Station, registered A.D. No. 5 of 1984, u/s 174, Criminal Procedure Code, and entrusted enquiry thereof to P.S.I. B.G. Gangale (P.W. 6). The inquest panchanama (Exh. 6) came to be drawn up. In the enquiry No. 5/84, it transpired that Smt. Parwati committed suicide, unable to stand ill-treatment and cruelty by her mother-in-law, the accused and teen-aged

brother-in-law Sanjay Jadhav. Consequently, the P.S.I. Gangale lodged his complaint dated 14-3-1984 (Exh. 21) in the matter and having registered Crime No. 73/84, u/s 306 read with section 34 of the Indian Penal Code, took investigation thereof to himself. On 14-3-1984 he recorded statements of a total of 13 witnesses. The post mortem examination report in respect of Smt. Parwati Jadhav was received by him on 31 -3-1984. On completion of investigation, he sent charge sheet (Exh. 22) against the accused u/s 306 read with section 34 of the Indian Penal Code on 10-5-1984.

3. Prosecution examined 7 witnesses : Smt. Kusum Ingoli (P.W.3), mother of the deceased, S. S. Aundhekar, Executive Magistrate (P.W.I), who recorded the dying declaration of deceased Smt. Parwati Jadhav, Vithal Dagdu (P.W.4) and Namdeo Tukaram (P.W.5), neighbours of the deceased, who rushed Smt. Jadhav to Civil Hospital, Parbhani, after she had received serious burn injuries. Prosecution has also examined Dr. Smt. Usha Joshi (P.W.7), Dr. Uttarn Shankarrao (P.W.2), who conducted autopsy and Balwant Gangale (P.W.6), the P.S.I., who investigated the crime.

4. It is not disputed that Smt. Parwati Jadhav was married to Bharat Jadhav, the elder son of the accused, only about nine months prior to the date of the incident. At the time of the incident, Smt. Parwati was residing at her in-laws' place.

5. Vithal (P.W.4) and Namdeo (P.W.5) heard shouts for help at about 1 p.m. on 10-3-1984, emanating from the house of the accused. They rushed to the house and found Smt. Parwati in the cistern with extensive burn injuries on her person and from there she was rushed to the Civil Hospital in a police van and was admitted there. It appears that there was no other family member present in the house and the neighbours were required to force their entry by removing the roof-tin, as both, the front and the rear, doors were chained from inside. Victim Parwati had sustained 95 to 98 percents burns on her person. She disclosed to Vithal (P. W.4) on way to hospital that she had self-immolated herself. She told the same story to her mother, P.W.3 Kusum, when she was questioned by her at the hospital stating that she had poured kerosene on her clothes and set fire thereto in a bid to put an end to her life. This is also the version of the victim in the dying declaration recorded at Exh. 9

6. That Parwati died of 98 percent burns on her body is not challenged by the accused. The only point raised is whether the suicide of Parwati was in consequence of what was said or done by the accused-Appellant Smt. Anjanabai, victim's mother-in-law. The trial Court placed reliance on the testimony of Dr. Smt. Joshi, who deposed to the effect that though the victim Parwati had suffered 98 percent burns at the time her dying declaration was recorded by the Executive Magistrate, she was conscious and was in a fit mental condition to make the statement. The entire case, therefore, depends on the truthfulness or otherwise of the dying declaration, and if it is found that the dying declaration is truthful, then there is no reason why conviction should not be based on it.

7. The original dying declaration is recorded by the Executive Magistrate in Marathi, which is to the following effect :

The simple language, brevity and the precision in which the dying declaration is recorded gives it a ring of truthfulness. Moreover, two additional factors give it more probative value. First factor is that the victim has not implicated other family members, either her husband, or her father-in-law, but has given them good certificates in the dying declaration. Though she has stated in the earlier part of the dying declaration that her mother-in-law and brother-in-law assaulted her and abused her, in the latter part, she has not implicated her brother-in-law as the person, by whose conduct or insulting words, she was compelled to commit suicide. She is so specific in her declaration that it was only because her mother-in-law scolded that she poured kerosene on her body and ignited the same.

8. Shri Chapalgaonkar, learned Counsel for the Appellant-accused, attacked the truthfulness or veracity of the dying declaration submitting that the document itself is an altered document at many places and such a document should not be believed as a dying declaration. No doubt, at two places, there is either scoring out or overwriting in the dying declaration, Exh. 9. However, that itself gives it a more probative value, because if a forger wants to forge a false document, then, naturally, mistakes are avoided and, if made, another paper is used, so that no mistakes appear, while recording such false declarations. However, the Executive Magistrate did not use any other paper, but made the corrections in the same paper, which are not very material and do not change text or the allegation contained in the dying declaration. The victim has fixed up the responsibility on her mother-in-law specifically in the dying declaration and looking to all these circumstances, there is no reason whatsoever to disbelieve this dying declaration. By now, the law is settled that if dying declaration is truthful, conviction can be based on it.

9. In addition to these circumstances of recording of a truthful dying declaration, there is the other circumstance, namely, that both the doors of the house were chained from inside, when the neighbours heard the shouts of help, emanating from the house of the accused. The accused was admittedly inside the house and was alone, when the incident happened. If what is argued before me, namely, that, the accused, as the mother-in-law, was not responsible for abetting the suicide of the said Parwatibai and that she had herself voluntarily committed suicide is to be believed, then, the neighbours would have found both the doors open and even the mother-in-law would also, necessarily, be shouting for help. The fact that the doors were chained from inside and the neighbours had to force their entry by removing the roof-tin itself indicates that the crime was tried to be suppressed by the accused because of her guilty mind.

10. Shri Chapalgaonkar, and later on, Smt. Rasal, for the accused, submitted that the case would not be covered by the Explanation "A" to section 498A of the Indian Penal Code, in which cruelty is defined, and according to them, the

presumption u/s 113-A of the Evidence Act could not have been raised against the accused, since what the mother-in-law said may not amount to cruelty as defined in the Explanation to section 498A of the Indian Penal Code. The Explanation is wide enough to include any wilful conduct on the part of the husband or husband's relative, which is of such a nature as is likely to drive the woman to commit suicide. In this case, reading the dying declaration, it is made very clear that the scolding's ,which the victim received at the hands of her mother-in-law, made her commit suicide. Therefore, it will have to be construed as a wilful conduct of such a nature as has driven the woman, Parvati, to commit suicide.

11. It was the submission of Shri Chapalgaonkar and also Smt. Rasal, who appeared later on, that in order to constitute cruelty as defined in section 498A, it was necessary to show harassment or coercion or unlawful demand for any valuable property or security by the accused person. This is the "B" part of the Explanation, in which harassment, coercion, unlawful demand for any valuable property or security, etc., is included. The first or "A" part of the Explanation is very clear and under it what is made punishable is a wilful conduct of such a nature as is likely to drive the woman to commit suicide, which we find proved in the instant case. The other ingredient to be proved is that the marriage should have been performed within 7 years of the date of the incident to allow the presumption being raised u/s 113-A of the Evidence Act. Section 113-A of the Evidence Act is to the following effect :-

113A. Presumption as to abetment of suicide by a married woman. -

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation. - For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code.

Reading the Explanation, it is clear that meaning of "cruelty" as defined in section 498A of the Indian Penal Code has to be imported in section 113A of the Evidence Act while deciding whether the victim had been subjected to any cruelty or not. Since I have already held that the act of the accused was a wilful act of such a nature as has driven the deceased Parwati to commit suicide, I hold that the offence has been brought home rightly by the prosecution to the accused and the accused-Appellant has been rightly convicted for the offence punishable u/s 306 of the Indian Penal Code.

12. So far as the sentence is concerned, though I feel that the sentence is not adequate, since there is no appeal filed by the State for enhancement of the

sentence, the conviction and sentence are maintained as they are. The appeal is dismissed. One month's time is granted to the Appellant to surrender to bail.