

(2016) 02 BOM CK 0092
In the Bombay High Court
Case No : Criminal Appeal No. 494 of 2001.

Babasaheb s/o. Balabhau More

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

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

Citation : (2016) 2 AIRBomRCri 732 : (2016) ALLMRCri 2120 : (2016) 4 BomCR(Cri) 141

Hon'ble Judges : M.T. Joshi, J.

Bench : Single Bench

Advocate : V.C.Patil, I/b. S.M. Godsay, Advocates, for the Appellant; N.T. Bhagat, A.P.P, for the Respondent

Final Decision : Allowed

Judgement

M.T. Joshi, J.(Oral) - Heard both sides.

2. The present appellant/original accused no. 1 was convicted by the learned IInd Addl. Sessions Judge, Aurangabad for the offences punishable under Section 498-A and 306 of Indian Penal Code vide judgment and order dated 8th November, 2001 passed in Sessions Case No. 432 of 1999. He was sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 500/- for the offence punishable under Section 498-A of Indian Penal Code. He was further sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs. 1,000/- for the offence punishable under Section 306 of Indian Penal Code.

The parents of the present appellant i.e. original accused nos. 2 and 3 were, however, acquitted by the learned IInd Addl. Sessions Judge.

3. The prosecution case, in short, is as under :-

That, deceased Sangita, daughter of PW 1 - Sudhakar and PW 2 - Mathurabai, r/o. Zalta, Tq. and Dist. Aurangabad, had married to the present appellant who

was then residing at Kasnapur, prior to five years of her death. Deceased Sangita died on 22nd May, 1999 due to drowning in a well.

It is the case of prosecution that after the marriage, deceased Sangita started residing in the joint family of all the accused at Kasnapur. She resided there for about two years at Kasnapur. At that time, all the accused used to illtreat her on the ground that she was not conversant with the household work and was not of their choice. They used to say that they wanted to marry the present appellant with another lady. During cohabitation, the deceased gave birth to a female child namely Sonali. Therefore, as female child was born, the acquitted accused i.e. in-laws used to taunt the deceased calling deceased Sangita inauspicious and that they wanted a male child.

In the year 1996, the appellant as well as deceased Sangita i.e. the couple came to reside at Zalta i.e. the place of parents of deceased, as the appellant had got a job thereat. They resided there together in a separate house for a period of three years. After some happy period of cohabitation, the present appellant started beating the deceased on the ground of suspecting her fidelity. Lateron, though a male child namely, Rahul was born about one year prior to the death of deceased, illtreatment was continued. The parents of deceased Sangita, however, hoped that by passage of time, everything would be normal.

In the situation, in or about January, 1999, the appellant had suffered stomach pain. He was therefore operated in a Hospital at Aurangabad. After the operation, the appellant and deceased Sangita again went to reside at Kasnapur for one month. During that period also, the acquitted accused used to taunt deceased Sangita by saying that she was not of their choice and used to ask her to go away. After one month, the couple again returned to Zalta and started residing separately. The appellant, however, continued to suspect the character of deceased Sangita.

In the situation, before about 4 to 5 days of the untimely death of deceased Sangita, the appellant had slapped deceased Sangita as she did not go for the labour work. At that time, the complainant, his brother PW 3 - Damodhar Shinde and others gave understanding to the appellant. In the situation, on 22nd May, 1999, deceased Sangita went missing. Upon search, her dead body was found in the water of the well near the village. Therefore, on the next date i.e. on 23rd May, 1999, PW 3 - Damodhar, uncle of deceased, filed accidental death report at Exhibit 27 with Police Station, Chikalthana. On the basis of the said complaint, accidental death inquiry was conducted. As usual, inquest panchnama and spot panchnama were recorded. The dead body of deceased Sangita was sent for autopsy. PW 4 - Dr.Mohd. Abdul conducted the post mortem examination and found that the death of deceased has occurred due to drowning. Accordingly, he passed the post mortem examination report. On the same day, lateron father of the deceased - PW 1 - Sudhakar filed the FIR - Exhibit 23.

PW 5 - Venkat Andhale conducted investigation in the matter. He recorded

statements of the relevant witnesses. Viscera was sent to the Chemical Analyst and the charge sheet came to be filed.

4. Before the learned IInd Addl. Sessions Judge, the parents of deceased Sangita were examined as PW 1 and PW 2. Her uncle Damodhar was examined as PW 3 to corroborate their case. The fact that the deceased had died due to drowning is an admitted fact.

5. The learned IInd Addl. Sessions Judge believed the prosecution case so far as present appellant is concerned. However, as regards the original accused nos. 2 and 3, they were acquitted, principally for the reason that as per the prosecution case itself, much prior to the death of deceased Sangita, present appellant and deceased Sangita started residing away from the original accused nos. 2 and 3 i.e. at Zalta, the place of parents of the deceased. The appellant was, therefore, convicted as detailed supra. Hence, the present appeal.

6. Mr. Patil, learned counsel for the appellant took me through the evidence on record, more particularly, the deposition of the uncle of the deceased. He submitted that the landlord of the couple i.e. one Shinde and the neighborer were not examined by the prosecution as independent witnesses, to show that there was illtreatment to the deceased at Zalta at the hands of the appellant. He further submits that scanning of the evidence of the witnesses would reveal vast improvements in their statements. There are contradictions as regards major events between their statements. He therefore submits that the learned Addl. Sessions Judge ought to have extended benefit of reasonable doubt to the present appellant also.

7. On the other hand, the learned A.P.P. submits that in the matrimonial dispute, the outsider would hardly be a witness, therefore, nonexamination of independent witness would not be a fatal to the prosecution case. He took me through the record and submitted that the dead body of the deceased was found in a well, which had parapet wall of two feet and in the circumstances, the learned Addl. Sessions Judge has rightly concluded that the deceased has committed suicide and that cruelty at the hands of the appellant was the cause of the suicide. He therefore submits that the appeal my dismissed.

8. On the basis of this material, following points arise for my determination :-

(I) Whether the prosecution has proved that deceased Sangita, wife of present appellant, has met with suicidal death on 22th May, 1999 at village Zalta ?

(II) Whether the prosecution has proved that present appellant - husband of the deceased has subjected her to cruelty during her cohabitation with him ?

(III) Whether the prosecution has proved that present appellant has abetted commission of suicide ?

(IV) What order ?

My findings, as to the point (I) are in the affirmative and as to points (ii) and

(III), the same are in the negative. The appeal is, therefore, allowed and the appellant is acquitted for the reasons to follow.

REASONS

9. It is an admitted fact that the deceased has died due to drowning in the well. The learned Addl. Sessions Judge has rightly appreciated the evidence on record regarding the situation of the spot of the well, that the well had parapet wall of two feet of height. There was no reason for the deceased to go at a well, which was away from the village. Therefore, the conclusion of learned Addl. Sessions Judge in this regard, cannot be faulted with.

10. The material evidence, that the appellant had treated deceased Sangita with cruelty to such an extent that an ordinary woman would commit suicide, is full of suspicions. We have already found that the dead body of the deceased was found by the relatives on 22nd May, 1999 in the night time. Consequently, the death report was filed by PW 3 - Damodhar, uncle of deceased on 23rd May, 1999. In the said accidental death report, there was no whisper that 4-5 days prior to the death, any incident had occurred, which would point finger towards the appellant. Not only this, PW 1 - Sudhakar, father of deceased has, during the cross-examination, deposed that after the funeral was over, there was a meeting in the family and after due deliberations, the complaint came to be filed.

11. Even if all these facts are ignored, vast contradictions between the statements of these witnesses, are worth noting. According to PW 1 - Sudhakar, only acquitted accused nos. 2 and 3 used to give illtreatment to the deceased when she was residing with them at Kasnapur on the ground that she was inauspicious (Karanti) and that the present appellant wanted to marry with another lady.

PW 2 - Mathurabai, however, deposed that all the accused used to illtreat the deceased on the ground that she was not knowing the household work and used to sleep only. Further, the material version of this witness is that the deceased used to narrate about the illtreatment not to her, but to PW 1 - Sudhakar and he, in turn, used to tell about the same to this witness. Thus, the said statement cannot be called as dying declaration by the deceased to this witness.

12. While PW 1 - Sudhakar and PW 2 - Mathurabai deposed that while residing at Zalta, present appellant used to suspect character of the deceased, PW 3 - Damodhar, uncle of deceased, is silent on this aspect. He deposed that after about 2-3 months of stay at Zalta, present appellant used to raise quarrel with the deceased on the ground that she was not going for labour work. On that count, according to him, the appellant used to beat her.

While PW 1 - Sudhakar and PW 2 - Mathurabai deposed that about 3 to 4 days prior to the death of the deceased, she was driven away by the appellants from the house after beating, PW 3 - Damodhar was silent on this aspect. He however added that all the accused used to say that deceased was of black complexion

and therefore, she was not of their choice. This however is not a ground deposed by her parents.

The statements of PW 2 - Mathurabai and PW 3- Damodhar during the cross-examination, were found to be improvements over their earlier statements recorded by the police.

13. Upon reading of the impugned judgment, it appears that the learned Addl. Sessions Judge was overwhelmed by the fact that the deceased has committed suicide and finding that she was required to commit suicide while residing separately with the present appellant, the conviction came to be recorded against the present appellant and rest of the accused were acquitted. The nexus between the suicide and illtreatment, if any, however is required to be established.

As observed earlier, while PW 1 - Sudhakar and PW 2 - Mathurabai brought the said nexus on record by stating that about 3-4 days prior to the death of Sangita, she was driven away by the appellants by beating, but PW 3 - Damodhar is silent on this aspect.

14. Considering all this material on record, in my view, a reasonable doubt has arisen in the present case, as to whether, any cruel treatment was given by the appellant to deceased Sangita, which ultimately is a cause of suicide by deceased Sangita.

15. Hence, the following order :-

[A] The appeal is hereby allowed.

[B] The impugned judgment and order dated 8th November, 2001 passed in Sessions Case No. 432 of 1999 by the learned IInd Addl. Sessions Judge, Aurangabad for the offences punishable under Section 498-A and 306 of Indian Penal Code, is hereby set aside.

Instead the appellant is acquitted of all the offences.

[C] His bail bonds shall stand cancelled.