
(2016) 07 BOM CK 0082

In the Bombay High Court

Case No : Criminal Appeal No. 740 of 1996

Balasaheb Ganpati Jadhav

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 25-07-2016

Acts Referred:

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

Citation : (2016) 3 AIRBomRCri 307 : (2016) ALLMRCri 3964 : (2016) 4 BomCR(Cri) 321 : (2016) 5 MhLJCrI 173

Hon'ble Judges : A.S. Gadkari, J.

Bench : Single Bench

Advocate : Mr. S.R. Phanse, appointed Advocate as Amicus Curiae, for the Appellants; Mr. A.S. Patil, APP, for the Respondent-State

Final Decision : Allowed

Judgement

A.S. Gadkari, J. (Oral)—The appellants are convicted under Section 498A read with 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 100/- each and under Section 306 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 100/- each and in default of payment of fine to further undergo imprisonment for 15 days on each count by the 2nd Additional Sessions Judge, Sangli in Sessions Case No.206 of 1993 by its Judgment and Order dated 18th November 1996.

2. The record discloses that as none appeared for the appellants at the time of final hearing on many occasions, this Court therefore requested Advocate Shri S.R. Phanse to appear in the present matter as an amicus curiae. Shri Phanse the learned counsel has gracefully accepted the said request. The said fact is recorded in Order dated 22nd June 2016.

3. The facts which are relevant to decide the present appeal and enumerated from the record can briefly be stated as under:

(i) The appellant No.2-Ramesh B. Jadhav is the husband, the appellant No.1-Balasaheb Jadhav is the father-in-law, appellant No.3-Smt. Ratnabai Jadhav is the mother-in-law and appellant No.4-Smt. Surekha Jadhav is the sister-in-law of the deceased Smt. Kalpana.

(ii) It is the prosecution case that, the deceased Smt. Kalpana was married with the appellant No.2-Ramesh approximately five to seven years before her death. The date of incident is 7.5.1993. That the appellant No.2- Ramesh was divorce when he married deceased Smt. Kalpana. The said marriage was solemnized with the mediation of Shri Vasant Bogar, the resident of Yelour. The appellants are the residents of village Karandwadi, Taluka Islampur, District-Sangli. That after the marriage, for the initial period of about three years, deceased Smt. Kalpana was treated properly at the house of the appellants. That after a period of about three years of marriage of Kalpana, the marriage of Ashok (PW-2) i.e. brother of deceased Smt. Kalpana was settled and therefore Ashok went to Karandwadi to invite his sister i.e. deceased Smt. Kalpana and appellant No.2 Ramesh for his marriage. After return from the house of the appellant No.2, Ashok informed his mother Smt. Sarubai (PW-1) that the appellant Nos.3 and 4 were demanding two tolas of gold and only after the said demand is fulfilled, they will attend the marriage of Ashok. It is the further prosecution case that, the appellants used to demand Rs. 10,000/- from deceased Smt. Kalpana on the ground that they were not properly treated at the marriage of Ashok (PW-2). That the appellants also used to tell deceased Smt. Kalpana that if she is unable to bring the amount of Rs. 10,000/- from her parents, then she must leave matrimonial house and can reside with her parents.

(iii) That on 7.5.1993 in the evening a jeep came from the village Karandwadi to the house of the parents of deceased Smt. Kalpana i.e. Smt. Sarubai (PW-1) and Ashok (PW-2). The driver of the said jeep informed that Smt. Kalpana was suffering from abdominal pain and asked the complainant Smt. Sarubai and her family members to come along with him to village Karandwadi. After reaching the house of the appellants, Smt. Sarubai (PW-1) was informed that the deceased Smt. Kalpana went outside by informing that she was going to answer nature's call, however, she did not come back. Upon search, it was found that the corpus of Smt. Kalpana was floating in the well which is situated at short distance from the house. The said dead body was fished out from the well.

(iv) That on 8.5.1993, the appellant No.1-Shri Balasaheb went to Ashta and lodged accidental death report regarding the death of his daughter-in-law Smt. Kalpana. At the Ashta Police Station on 8.5.1993 Shri Sharif Rasul Shaikh, Police Station Officer was on duty at that relevant time. The appellant No.1 informed that deceased Smt. Kalpana went to answer nature's call and committed suicide by jumping in the well. The said report was numbered as A.D. Case No.15 of 1993. The investigation of the said A.D. Case regarding accidental death of Smt. Kalpana was handed over to Mr. Usmangani Sayyad (PW-4) Assistant Police Inspector then attached to Ashta Police Station. Mr. Usmangani Sayyad (PW-4)

conducted inquest panchanama, which is at Exh. 9. He recorded panchnama of spot of occurrence on 8.5.1993 Exh.-34. He seized certain articles lying at the scene of offence. He also seized the clothes which were on the person of deceased Smt. Kalpana by effecting panchanama Exh.11.

(v) During the course of investigation of the said A.D. Case No.15 of 1993, Smt. Sarubai (PW-1) lodged complaint with him stating that as the appellants were harassing and torturing deceased Smt. Kalpana and were also demanding dowry from her, she committed suicide. In view of the said statement, PW-4 registered offence bearing Crime No.41 of 1993 and investigated the same. After receipt of medical report and other relevant documents from the concerned Authorities, PW-4 submitted charge sheet on 5.8.1993 against the appellants in the Court of Judicial Magistrate First Class, Islampur, District-Sangli. The learned Trial Court committed the said case to the Court of Sessions as contemplated under Section 209 of Cr. P.C. The learned Trial Court framed charge below Exhibit-1 under Section 498A read with 34 and Section 306 read with 34 of the Indian Penal Code. The said charge was read over and explained to the appellants in vernacular language, to which they denied and claimed to be tried. The defence of the appellants was of total denial. The prosecution in support of its case examined in all four witnesses. The Trial Court after recording the evidence and after hearing the parties to the said case, was pleased to convict and sentence the appellants by its Judgment and Order dated 18th November 1996 as stated herein above.

4. Heard Mr. Phanse, the learned Advocate appointed as amicus curiae to represent the appellants and Shri A.S. Patil, the learned APP for the State. I have also perused the record pertaining to the present case.

Mr. Phanse the learned counsel for the appellants submitted that the evidence of Smt. Sarubai (PW-1) and Ashok (PW-2) is full of omissions. That the theory of harassment and ill-treatment meted out to deceased Smt. Kalpana was brought for the first time before the Court at the time of recording evidence and the said fact lacks its presence in the statements made before the police. He submitted that the evidence of PW Nos.1 and 2 is full of material omissions and contradictions. He submitted that it has come on record in the evidence of PW Nos.1 and 2 that the financial condition of the appellants was much sound than that of the PW Nos.1 and 2 and therefore there is no question of demand of Rs. 10,000/- by the appellants, particularly after a period of more than three years of marriage of Smt. Kalpana with appellant No.2 Ramesh. He submitted that the evidence on record shows that the deceased Smt. Kalpana was suffering from various ailments and had also undergone mental treatment at the hospital at Sangli. He submitted that the evidence on record is totally silent as far as the alleged abetment to suicide is concerned. In support of his contention, he relied on following four decisions of the Supreme Court and this Court:

(i) Ramesh Kumar v. State of Chhatisgarh 2001 0 AIR (SC) 3837: 2001 9 SCC 618;

(ii) Sanju alias Sanjay Singh Sengar v. State of M.P. [(2002) 5 SCC 371;

(iii) Amalendu Pal alias Jhantu v. State of West Bengal (2010 1 SCC 707.

(iv) Raviraj Ramchandra Deshpande v. The State of Maharashtra & Anr. 2016 ALL MR (Cri) 1420;

He lastly submitted that neither the offence under Section 306 nor under Section 498A of the Indian Penal Code is made out in view of the evidence available on record. He therefore prayed that the present appeal may be allowed and the appellants may be acquitted from the charges levelled against them.

Per contra, Mr. A.S. Patil, the learned APP for the State supported the impugned Judgment and Order dated 18th November 1996 and submitted that the evidence on record is sufficient to sustain the conviction of the appellants and no interference in the Judgment and Order dated 18th November 1996 is necessary and prayed that the present appeal may be dismissed by maintaining the conviction and sentence of the appellants.

5. As stated earlier, the prosecution has examined in all four witnesses in support of its case.

PW-1 Smt. Sarubai is the mother and PW-2 Ashok is the brother of deceased Smt. Kalpana. A careful perusal of the evidence of these two witnesses would reveal that their evidence is full of omissions. The theory of demand and ill-treatment has been brought on record for the first time during recording of their evidence. PW Nos.1 and 2 in their cross-examination have admitted that the appellant No.2-Ramesh had borne the expenses of marriage and that he did not demand anything at the time of marriage. It is further admitted by them that the financial condition of the appellants was much better than the family members of deceased Smt. Kalpana. These two witnesses have also admitted that prior to incident, deceased Smt. Kalpana did not send any letter thereby mentioning ill-treatment and/or harassment meted out to her by the appellants. They have also admitted that deceased Smt. Kalpana used to visit their house for medical treatment and they used to take deceased Smt. Kalpana to hospital at Islampur. That deceased Smt. Kalpana used to remain sick and therefore the said witnesses gave her treatment at various hospitals at Islampur. PW No.1 in her cross-examination has further admitted that Smt. Kalpana was treated for mental illness at Sangli. As far as demand of Rs. 10,000/-, two tolas of gold and the harassment and ill-treatment meted out to deceased Smt. Kalpana is concerned, the defence succeeded in bringing on record that the said statements are omissions. PW-2 Ashok has admitted that in his marriage, deceased Smt. Kalpana did not tell regarding ill-treatment meted out to her by the appellants. He further admitted that the deceased Smt. Kalpana was at his house for one month and at that time he did not ask her to go to the appellants for questioning about ill-treatment. PW-2 Ashok admitted that the land of the appellants is irrigated land.

PW No.3 Mr. Sharif Rasul Shaikh was then attached to Ashta Police Station as Head Constable and has recorded the accidental report regarding the death of Smt. Kalpana on the basis of information given by the appellant No.1-Balasaheb. He has proved the accidental death report bearing A.D.No.15 of 1993 which is at Exhibit 30. PW-4 Mr. Usangani I. Sayyad, Assistant Police Inspector was then attached to Ashta Police Station, District Sangli has initially conducted the investigation with respect to the A.D. Case No.15 of 1993 and lodgment of crime bearing No.41 of 1993. He conducted further investigation and after completion of investigation submitted charge sheet against the appellants in the Court of Judicial Magistrate First Class at Islampur as stated earlier. It appears from the record that during the course of cross-examination of PW Nos.3 and 4 general questions were put to them and no material which is beneficial to the appellants is elicited at the instance of the said two witnesses.

6. After minutely scrutinising the evidence of PW Nos. 1 and 2, it is thus clear that the financial condition of the appellants was much better than that of the parents of the deceased Smt. Kalpana. That there was no complaint from deceased Smt. Kalpana about ill-treatment and/or harassment by the appellants. The evidence further reveals that the alleged theory of demand and harassment as stated by PW Nos.1 and 2 is full of material omissions and therefore I am of the considered opinion that the prosecution has utterly failed to prove the guilt of appellants beyond reasonable doubt as far as Section 498A of the Indian Penal Code is concerned. I therefore record the finding of acquittal with respect to the Section 498A of the Indian Penal Code.

7. As stated earlier, there is no evidence on record to show that the appellants at any point of time demanded the said alleged amount of Rs. 10,000/- and/or two tolas of gold from the parents of deceased Smt. Kalpana. That the financial condition of the appellants was far better than the parents of deceased Smt. Kalpana. In the cross-examination PW-1 Smt. Sarubai stated that after the marriage, deceased Smt. Kalpana always used to remain sick. That PW Nos.1 and 2 gave her treatment at various hospitals at Islampur. That deceased Smt. Kalpana was treated for her mental illness at Sangli.

8. The Supreme Court in the case of Ramesh Kumar v. State of Chhatisgarh (supra) in para-12 of the Judgment has held as under:

"This provision was introduced by Criminal Law (Second) Amendment Act, 1983 with effect from 26.12.1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four-corners of the matrimonial home and hence was not available to any one outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113A shows that to attract applicability of Section 113A, it must be shown that (i) the woman has

committed suicide, (ii) suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the above said circumstances, the Court may presume that such suicide had been abetted by her husband or by such relative of her husband. The Parliament had chosen to sound a note of caution. Firstly, the presumption is not mandatory, it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the above said three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the Court shall have to have regard to all the other circumstances of the case". A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. The expression-"The other circumstances of the case" used in Section 113A suggests the need to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase "May presume" used in Section 113A is defined in Section 4 of the Evidence Act, which says-"whenever it is provided by this Act that Court may presume a fact, it may either regard such act as provided, unless and until it is disproved or may call for proof of it."

The ratio laid down by the Supreme Court in the case of Ramesh Kumar (supra) is followed in the case of Sanju alias Sanjay Singh Sengar v. State of M.P. (supra). The Supreme Court in the case of Amalendu Pal alias Jhantu v. State of West Bengal (supra) in paragraphs 10, 12, 13 and 14 has held as under:

(10) The legal position as regards Sections 306 IPC which is long settled was recently reiterated by this Court in the case of Randhir Singh v. State of Punjab (2004) 13 SCC 129 as follows in paras 12 and 13:

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

13. In State of W.B. v. Orilal Jaiswal this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced

individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

(12) Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

(13) In order to bring a case within the purview of Section 306 of IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

(14) The expression "abetment" has been defined under Section 107 IPC which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause firstly or to do anything as stated in clauses secondly or thirdly of Section 107 IPC. Section 109 IPC provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence. Learned counsel for the respondent State, however, clearly stated before us that it would be a case where clause Thirdly of Section 107 IPC only would be attracted. According to him, a case of abetment of suicide is made out as provided for under Section 107 IPC."

9. In view of the afore stated settled legal position, I have examined the entire evidence available on record and find that the prosecution witnesses in their testimony have not stated that the deceased Smt. Kalpana was tortured either physically or mentally by the appellants. As stated earlier, it has already come on record that the deceased Smt. Kalpana was suffering from various ailments and was also treated for her mental illness at hospital at Sangli. It is the settled position of law that the abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. That without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme Court, it is clear that in order to convict a person under Section 306 of Indian Penal Code there has to be a clear mens rea

to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he/she committed suicide. A useful reference at this stage can be made to the Judgment of the Supreme Court in the case of Gangula Mohan Reddy v. State of Andhra Pradesh reported in AIR 2010 SC 327 wherein it is held that mens rea to commit the offence, must be present for proving the offence of abetment of suicide. It is held that abetment involves a mental process of instigation a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

10. As stated earlier, there is no evidence at all to conclude and/or to even infer that the appellants herein have aided and/or abetted Smt. Kalpana to commit suicide. It is to be noted here that there is no evidence on record even to suggest that the alleged harassment and/or ill-treatment meted out to deceased Smt. Kalpana by the appellants was of such an nature that, she could not sustain the same and there was no option but to take such an extreme step of committing suicide thereby causing end to her own life. According to me the prosecution has totally failed to prove the offence under Section 306 of the Indian Penal Code against the appellants.

11. The cumulative effect of the analysis of evidence on record leads to the irresistible conclusion that, the prosecution has failed to prove beyond reasonable doubt the guilt of the appellants for the offence under Section 498A read with 34 of the Indian Penal Code.

12. As a result, the appellants succeed in the appeal. Hence, the following Order:

(i) The appeal is allowed;

(ii) The impugned Judgment and Order dated 18th November 1996 passed by the 2nd Additional Sessions Judge, Sangli in Sessions Case No.206 of 1993 is hereby quashed and set aside and the Appellants are acquitted from charges under Section 498A read with 34 and under Section 306 read with 34 of the Indian Penal Code.

(iii) Fine, if any paid by the appellants be returned to them after completing necessary formalities.

13. Before parting with the Judgment, I wish to place on record my appreciation for the able assistance rendered by the learned Advocate Shri S.R. Phanse who within a very short time was thoroughly prepared and very ably conducted the matter.