

(2000) 04 BOM CK 0064
In the Bombay High Court
Case No : Criminal Appeal No. 292 of 1992

Bhagwan Sakharam Said and Another APPELLANT
Vs
State of Maharashtra RESPONDENT

Date of Decision : 11-04-2000

Acts Referred:

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

Citation : (2002) 1 DMC 601

Hon'ble Judges : J.A. Patil, J

Bench : Single Bench

Advocate : S.J. Rairkar, for the Appellant; Rohini Dandekar, Asstt. P.P., for the Respondent

Final Decision : Allowed

Judgement

J.A. Patil, J.—The appellants are original accused Nos. 1 and 2 in Sessions Case No. 299 of 1991. Both of them were tried by the VIIth Additional Sessions Judge, Pune, on the charge of having committed the offences under Sections 306 and 498A read with Section 34 of the Indian Penal Code. The learned Judge, by his order dated 27.4.1992 acquitted both the accused of the offence u/s 306 read with Section 34 of the Indian Penal Code, but convicted both of them for the offence u/s 498-A read with Section 34 of the Indian Penal Code and sentenced each of them to suffer rigorous imprisonment for six months and to pay a fine of Rs. 500/- in default to further suffer simple imprisonment for two months. Feeling aggrieved thereby, the accused have filed this appeal. 1

2. The prosecution case, in brief, is that deceased Tarabai ? Anita was married to accused No. 1 on 26.6.1989. Accused No. 2 is the sister of accused No. 1, and both of them were residing at village Gavadewadi. After the marriage, the deceased Tarabai also started living with them. It appears that at the time of the marriage, accused No. 1 was serving in Mumbai. However, sometime after his marriage, he lost his job and was required to return to his village. According to the prosecution, both the accused used to blame Tarabai for the same, by

abusing her to be an inauspicious woman, who had brought misfortune to accused No. 1. It is further alleged that both the accused used to harass and ill-treat Tarabai by beating her and by not giving her food. In addition, they also used to make a demand of money from Tarabai to enable them to construct a new house. According to the prosecution, the cruelty meted out by the accused became unbearable and finally Tarabai committed suicide by jumping into a well. Tarabai was missing since 31.8.1990 and her dead body was found floating in a well at Gavadewadi on 2.9.1990. On the same day, her father Khandu Ramji Bagel (PW 5) lodged his complaint against the accused alleging that his daughter Tarabai had committed suicide because of the ill-treatment meted out to her.

3. On the basis of the complaint lodged by Khandu Ramji Bhagel (PW 5), the police registered the case against both the accused for the offences under Sections 306 and 498A of the Indian Penal Code and took up the investigation. In due course, the investigation was completed and both the accused came to be charge-sheeted for the above-mentioned offences.

4. The learned Trial Judge charged both the accused for the offences under Sections 306 and 498-A read with Section 34 of the Indian Penal Code. Alternatively, the learned Judge charged individually each of them for the offences under Sections 306 and 494A of the Indian Penal Code. Their defence is one of total denial. In support of its case, the prosecution examined, in all, seven witnesses, including the father, mother, brother, sister and neighbour of the deceased Tarabai. The accused did not lead any evidence nor did they examine themselves on oath. The learned Judge, upon consideration of the evidence on record, found that the prosecution had failed to prove the charge u/s 306 of the Indian Penal Code. He, therefore, acquitted both the accused on that count. The learned Judge, however, found that the charge for the offence u/s 498-A read with Section 34 of the Indian Penal Code was established by the prosecution. He, therefore proceeded to convict and sentence both the accused as indicated above.

5. I have heard Mr. Rairkar, the learned Advocate for the appellants-accused and Mrs. Dandekar the learned A.P.P. for the respondent-State. Mr. Rairkar took me through the entire oral evidence on record and pointed out the omissions and discrepancies in the evidence of the witnesses. He submitted before me that the Trial Court was in error in convicting the accused on the basis of the evidence which does not inspire confidence. On the other hand, Mrs. Dandekar supported the order of conviction and sentence and submitted that the evidence on record is sufficient to bring home the guilt of the accused.

6. According to the prosecution, both the accused used to treat Tarabai with cruelty. The acts of cruelty attributed to the accused are : (i) abusing Tarabai by calling her inauspicious woman, that is, in Marathi language; (ii) physical beating; (iii) not giving food to Tarabai; and (iv) demanding money for constructing a house. In order to prove these acts of cruelty, the prosecution has relied upon the evidence of near relatives of Tarabai as well as one of her neighbours from Gavadewadi. It may be pointed out that the parental home of

Tarabai was at Manchar and the matrimonial home was at Gavadewadi. It is not clear from the evidence on record as to what is the distance between these two places, but it appears that the witnesses used to go to Gavadewadi to see Tarabao. There is no dispute of the fact that marriage of Tarabai with accused No. 1 took place on 26.6.1989 and that she died on or about 31.8.1990, that is, within 14 months from her marriage. The Trial Court has acquitted the accused of the offence u/s 306 of the Indian Penal Code. It is, however, necessary to point out that the Trial Court has not even cared to record a finding as to whether the death of Tarabai was a suicidal one or otherwise.

7. Coming to the oral evidence, the first witness is Sunita Sanjay Gawade (PW 1), who happens to be the sister of Tarabai and who resides at Gavadewadi. Her house is at a distance of two-three minutes walk from the house of the accused. Sunita has stated that after the marriage, Tarabai used to visit her house intermittently. But, since before two months prior to her death, she had stopped visiting the house of the witness. Sunita tried to correct her earlier statement by stating that Tarabai used to visit her house surreptitiously as her in-laws were not allowing her to visit the house of Sunita. According to Sunita, accused No. 1 lost his service about two months before the incident in question. This fact is also stated by Bhamabai (PW 3), the mother of Tarabai to the effect that accused No. 1 returned from Mumbai after losing her job about four months before the incident. The fact that accused No. 1 had lost his job sometime after his marriage with Tarabai, is not at all in dispute. It is in this background, Sunita PW 1 has stated that accused No. 1 used to abuse Tarabai by calling her an inauspicious woman, because of whom he (accused No. 1) lost his job. She has stated that accused No. 1 also used to blame Tarabai that she had brought poverty with her in his house. According to Sunita accused No. 1 had even asked Tarabai not to show her black face to him. Sunita claims that she came to know about these things because Tarabai used to tell her whenever she used to visit her house. So far as this part of the version of Sunita is concerned, there is no contradiction or discrepancy in it. Sunita being the sister of Tarabai and as she was residing in the same village, it was but natural for Tarabai to visit her house and disclose to her what was going on in her matrimonial home.

8. Bhamabai (P.W. 3) is the mother of Tarabai. She has also stated about the same facts. According to her, after the marriage, Tarabai used to come to her parental home and at that time she used to make disclosures. There is no discrepancy between her version and her police statement. The next witness, to speak about the ill-treatment to Tarabai is her neighbour Sulabai (P. W. 4). Her cross-examination shows that she is closely related to Bhamabai (PW 3). Although, Sulabai has not specifically stated about the blame which accused No. 1 used to put on Tarabai, she has only stated that Tarabai used to tell her that accused No. 2 used to tell Tarabai that since the marriage, everything in the household was disturbed. Sulabai being the neighbour of the accused, it is quite probable that Tarabai used to visit her house. Besides, they were related to each other, Sulabai however, does not say that accused No. 1 used to call Tarabai as an

inauspicious woman nor does she say that Tarabai disclosed to her that accused No. 1 was blaming her in that way. The next witness to speak about the same thing is Khandu Bagal (P.W. 5), who is the father of Tarabai. According to him, after the marriage, Tarabai was treated nicely for the first three-four months, but thereafter she was ill-treated. According to him, Tarabai had come to his house on three/four occasions and at that time she had told him that the accused were calling her as an inauspicious woman and that she had brought poverty in their house. He also stated that Tarabai disclosed to him that the accused had asked her not to show her black face to them. There is nothing particular in the cross-examination to impeach the credibility of this witness. Moreover his version on this point finds corroboration from the First Information Report Exhibit 17, which was lodged on the same day, that is, on 2.9.1990, on which day the dead body of Tarabai was found. Besides, being the father of Tarabai, it is possible that she might have disclosed the things in her parental home. I have carefully gone through the evidence of all the concerned witnesses on this point. In my opinion, the version of the witnesses, insofar as they relate to accused No. 1, are without any infirmity. Although Bhamabai PW 3 and Khandu P.W. 5 state that Tarabai disclosed to them that both the accused used to call her an inauspicious woman, Sunita PW I does not say that Tarabai disclosed to her the name of accused No. 2 as calling her an inauspicious woman. Taking this fact into consideration, it will have to be seen that the evidence in this respect can be accepted only against accused No. 1.

9. The next item of cruelty attributed to the accused is their beating of Tarabai. In this respect, there is no direct evidence of any witness stating that he had seen both or any of the accused physically assaulting Tarabai. Similarly, there is no evidence on record to show that Tarabai was found to have sustained any bodily injuries. It is true that Sunita (P.W. 1) has stated that on one occasion accused Nos. 1 and 2, had beaten Tarabai. However, she has not stated whether she was stating that fact on the basis of her personal knowledge or on information. Moreover, before the police, she does not appear to have disclosed this fact. Therefore, it is difficult to place reliance upon her version on this point. Goraknath (P.W. 2), that is, the brother of Tarabai has also stated that Tarabai used to complain to him about the ill-treatment and beating at the hands of the accused. He further stated that on 20.8.1990, Tarabai returned to his house and at that time she was weeping. He further stated that on being asked by his mother, Bhamabai she (Tarabai) disclosed that she was beaten by accused Nos. 1 and 2. His version in this respect is corroborated by his mother Bhamabai P.W. 3, who stated that on the flay of Pola, Tarabai had come to her house and that she started weeping. It may be further stated that on enquiry, Tarabai disclosed that accused No. 1 had beaten her on the previous night. There is no omission or contradiction in the evidence of Bhamabai in this respect. Khandu (P.W. 5) has also referred to the visit of Tarabi to his house on 20.8.1990. He does not state that Tarabai told her that she was beaten by accused. However, he has stated that Tarabai disclosed to him that she was disgusted with the ill-treatment and

cruelty at the hands of the accused and, therefore, she had left their house without their consent. Sulabai (P.W. 4) has also stated that Tarabai had disclosed to her that she was beaten by accused No. 12. However, before the police, Sulabai did not make any statement. In my opinion, there is no difficulty in accepting the version of the above-mentioned witnesses to the effect that Tarabai had disclosed to them about the beating at the hands of accused No. 1.

10. The third item of cruelty attributed to the accused is that they were not giving food to Tarabai. In this respect, the version of Sunita (P.W. 1), the sister of Tarabai, who was residing at Gavadewadi, is silent. So also, Sulabai (PW 4), who was residing in the neighbourhood does not say anything about it. The only witness, who speaks about it is Goraknath (P.W. 2) and Bhamabai (P.W. 3). The statement of Goraknath in this respect is, however, too vague. He has stated that the accused were not providing meals to Tarabai. It is, however, not known whether this fact is based on his own information or on the basis of disclosure made to him by Bhamabai PW 3. Bhamabai has stated that Tarabai disclosed to her that the accused were not providing meals to her. This, however, appears to be an improvement made by Bhamabai, because in her statement before the police she did not disclose this fact. It will be thus seen that the evidence as regards the allegation that the accused were not providing any food to deceased Tarabai, is not at all satisfactory.

11. The last item of cruelty attributed to the accused is their illegal demand of money. The only witness, who speaks about this fact is Goraknath, PW 2. According to him, Tarabai had disclosed to him that both the accused were demanding money from her to construct a house. It, however, material to note that Khandu (PW 5), who is the father of Tarabai, is totally silent on this point. In fact, it is he who was concerned with the alleged demand by the accused. If at all, any such demand had been made by the accused to Tarabai, then, in all probability, she would have disclosed the same to her father Khandu. The very fact that Khandu speaks nothing about the alleged illegal demand by the accused itself is sufficient to doubt the veracity of the statement of Goraknath in that respect. Mrs. Dandekar drew my attention to the panchanama Exhibit 10 of the house of the accused, which shows that the house of the accused consisted of two Khans. Mrs. Dandekar pointed out that there were three members in the family of the accused and, therefore, a house comprising of two Khans might have been found to be inadequate by the accused.

However, that does not mean that the accused must have made a demand of money for constructing a new house. In this respect, it is relevant to note that Goraknath admitted in his cross-examination that accused No. 1 constructed his own house about four-five years back before the incident.

12. Taking into consideration the entire evidence vis-a-vis the acts of cruelty attributed to both the accused, it is found that what the prosecution has succeeded in proving beyond the facts that accused No. 1 used to abuse Tarabai as an inauspicious woman, who had brought property in the house and because,

of whom, he (accused No. 1) lost his job. There is absolutely no convincing evidence on record to establish the other items of cruelty as alleged. The question which, therefore, arises is whether on the basis of the above-mentioned sole act of abusing, the accused could be said to have subjected Tarabai to cruelty within the meaning of Section 498-A of the Indian Penal Code. The Explanation to Section 498-A defines "cruelty" as under:

Explanation.-For the purposes of this Section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the women; or (b) harassment of the women where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

It will, therefore, be seen that it is not every harassment which would amount to cruelty within the meaning of Clause (a) or Clause (b) of the Explanation to Section 498-A. In this respect, Mr. Rairkar relied upon the decision in Ravindra Pyarelal Bidlan and others Vs. State of Maharashtra, wherein Ashok Agarwal, J held that "Cruelty has to be of such gravity as is likely to draw a woman to commit suicide or cause grave danger or injury to life or health. Mere harassment of the woman does not amount to cruelty and it must be established that the beating or harassment was with a view to force the wife to commit suicide or fulfil illegal demands of her husband or in-laws. Thus, having regard to the nature of "cruelty" contemplated by Section 498-A it cannot be said that the prosecution has succeeded in establishing the same within the four corners of this section. It is true that Tarabai died within a short period of fourteen months after the marriage. However, the prosecution did not lead any evidence to show that her death was suicidal one. The post mortem report Exhibit 18 states the opinion as to the probable cause of death of the deceased Tarabai was "reserved viscera preserved for Chemical Analyser's examination". However, the report of the Chemical Analyser was never produced before the Court. In short, the prosecution cannot contend that Tarabai had committed suicide and that it was so because she was subjected to cruelty. In short, the prosecution has failed to discharge its legitimate burden and the evidence adduced by it is inadequate to establish even the charge of cruelty. The learned Trial Judge has failed to assess the evidence properly and carefully and he appears to have been swayed away by the fact that all the witnesses had uniformly stated that Tarabai was ill-treated by the accused. For the reasons mentioned above, it is not possible to sustain the conviction of the accused for the offence u/s 498-A read with Section 34 of the Indian Penal Code.

13. In the result, the appeal is allowed. The order of conviction and sentence passed by the Trial Court dated 27.4.1992 in Sessions Case No. 299 of 1991 against the appellants accused is quashed and set aside and both the appellants-accused (Bhagwan Sakham Said and Manda Rajaram Murkute) are hereby

acquitted of the offence punishable u/s 498-A read with Section 34 of the Indian Penal Code. Fine paid by the accused be refunded to them forthwith. Record and proceedings of the case be sent back to the Trial Court.

Certified copy be issued forthwith. Parties and the concerned authorities to act on an ordinary copy of this judgment and order duly authenticated by the Sheristedar of this Court.

Certified copy expedited.