
(2012) 08 BOM CK 0001
In the Bombay High Court
Case No : Criminal Appeal No. 582 of 1993

Chandresh Ramsurat Kurmi	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, 306, 498A, 498A

Citation : (2013) 4 ABR 517

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : Rohini Dandekar, for the Appellant; U.V. Kejariwal, APP, for the Respondent

Final Decision : Allowed

Judgement

R.C. Chavan, J.—This appeal is directed against the conviction of the appellant by the learned Additional Sessions Judge Mumbai for offence punishable u/s 498-A of the Indian Penal Code (for short IPC) while the learned Judge acquitted the appellant for the offences punishable under Sections 304B & 306 of IPC. The learned Judge imposed sentence of rigorous imprisonment of one year and fine of Rs. 500/-, or in default, imprisonment for a further period of two months on the appellant. The facts which are material for deciding this appeal are as under:

Victim Hiravati was married to the appellant sometime in May, 1984 and lived with him at Mumbai till 24-8-1986 when she committed suicide by setting herself on fire. Police were informed and after performing inquest, police sent the dead body for post-mortem examination. On the report of Mr. Chetnarayan an offence was registered: In the course of investigation, police recorded the statements of witnesses and on completion of investigation, sent charge-sheet to the Court of Metropolitan Magistrate, Andheri, who committed the case to the Court of Sessions at Mumbai.

2. The learned Additional Sessions Judge, to whom the case was made over,

charged the appellant with offences punishable under Sections 498A, 306 & 304B of IPC. Since the appellant pleaded not guilty he was put to trial, at which the prosecution examined four witnesses in its attempt to bring home guilt of the appellant. After considering the prosecution evidence in the light of the defence of false implication, the learned Judge acquitted the appellant of offence punishable under Sections 306 & 304B of IPC, but, convicted and sentenced him as aforementioned for offence punishable u/s 498A of IPC. Aggrieved thereby, the appellant is before this Court

3. I have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor for the State and with their help, I have gone-through the evidence on record. PW-1 Amar is victim's uncle who has not supported the prosecution case. He stated that victim's brother did not tell him about any report of unhappiness of the victim. PW-2 Dr. Subhash is the autopsy surgeon who performed the postmortem on the body of the victim and found that the victim had died on account of 100% burns. PW-3 Chetnarayan is the victim's brother who gives a fascinating account of his sister's married life. He proved his report at Exh. 11. He stated that his father had agreed to give sum of Rs. 16,000/- to the appellant at the time of marriage and had in fact paid Rs. 9,000/- in July, 1986. Balance of Rs. 7,000/- has been agreed to be paid at Raksha Bandhan of 1986. These things are not to be found in the FIR. He stated that he had gone to his sister's house and found her to be unhappy, but, stated that he could not speak to her because the accused came there. He stated that the accused had in fact told him in a very rough tone that character of the victim was suspicious and if she did not improve it, the appellant would beat her and drive her away from the house. PW-3 Chetnarayan claimed to have asked his sister about this, but, again stated that the conversation was cut short because the accused and his parents came there. Thus, there is no evidence from Chetnarayan about any ill-treatment of the victim reported to him by the victim herself. PW-4 PSI Anil Choudhary is the Investigating Officer.

4. It is really difficult to imagine as to how with this type of evidence the learned Judge could have come to the conclusion that the cruelty was proved only because the victim committed suicide. The learned APP submitted that the fact that the victim committed suicide within two years of her marriage was itself pointer to the fact that her life was made miserable by the appellant and, therefore, she committed suicide,. This conclusion is too far fetched and there could be several reasons for the victim to commit suicide which may not have surfaced. In the absence of any evidence to show that the victim reported that she was subjected to any ill-treatment, the finding of the learned Judge that the offence punishable u/s 498A of IPC was proved is thoroughly unsustainable. The appeal is allowed. The conviction of the appellant for the offence punishable u/s 498A of IPC and sentence of rigorous imprisonment for one year and fine of Rs. 500/- imposed, are set aside. He is acquitted of the said offence. His bail bonds stand cancelled and the sureties discharged.