
(1993) 02 BOM CK 0087
In the Bombay High Court
Case No : Criminal A. No. 525 of 1986

Datta Mahadev Wadile

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-02-1993

Acts Referred:

Penal Code, 1860 (IPC) — Section 498A

Citation : (1993) 2 DMC 96

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Advocate : Deehan R. Mose, for the Appellant; K.H. Chopda, for the Respondent

Final Decision : Allowed

Judgement

Ashok Agarwal, J.—The appellant is original accused No. 1. He claims to impugn the order of conviction and sentence imposed upon him by learned Addl. Sessions Judge, Pune, on 4th June, 1986 in Sessions Case No.93 of 1986. By the said order he has been acquitted of the offence u/s 306 of the Indian Penal Code but has been convicted for the offence u/s 498A of the Indian Penal Code. For the offence under 498-A of the IPC he has been sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs. 500/- in default to suffer further rigorous imprisonment for two months.

2. By the very same order, accused No. 2 has been acquitted for both the charges u/s 306 as also u/s 498A of the Indian Penal Code.

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

Mangal was married to the accused about two years prior to the date of the incident. The incident in question occurred on 28th July, 1985 at about 9.00 p.m. when Mangal sustained burn injuries while she was in her house in Takar Colony, Baramati, which is owned by P.W. 4, Baban Jadhav. Accused No. 1 and Mangal were residing there as tenants. Accused No. 1 on noticing the fire entered and tried to extinguish fire. Thereupon his clothes caught fire and he himself

sustained burn injuries. He came out shouting for help. The fire was ultimately extinguished by the neighbours. Both, accused No. 1 and Mangal, were admitted in a local hospital. Mangal sustained 99 per cent burns and she succumbed to her burns at 6.00 a.m. on the following morning i.e., 29th June, 1985. Initially the death of Mangal was recorded as accidental death. While in the hospital, P.W. 8, Suresh Dattatraya Kale, a Police constable recorded a dying declaration, Exhibit 21, of Mangal. As per the version of Suresh Kale, he sent message to the Taluka Executive Magistrate and the latter also recorded a dying declaration of Mangal. That dying declaration, however, is not forthcoming. The prosecution has not chosen to produce the same on record.

4. A telegram was sent to the relations of Mangal. In response P.W.5 Zipru Bhoid, uncle of Mangal, and P.W. 6, Somnath Bhoi, brother of Mangal, arrived on 30th July, 1985. The investigation of the case was taken over by P.W. 9, Tippanna Kardas. He recorded the statements of neighbours as also the aforesaid relations of Mangal. The neighbours include P.W. 2, Balwant Jadhav, P.W. 3, Magan Gaikwad, P.W. 4. Baban Jadhav, who is landlord of accused No. 1. P.W. 7, Aruna Baban Jadhav, is wife of Baban Jadhav. Police statement of Aruna was recorded on 30th July, 1985. The statements of Balwant, Zipru and Somnath were recorded on 31st July, 1985 and that of Magan on 1st August, 1985. The statement of Somnath, Exh. 17, was treated as First Information Report. On the strength of the said First Information Report, the instant offence came to be registered. The initial entry of accidental death was converted into a suicidal death on account of the ill treatment and harassment meted out by the accused to Mangal.

5. The learned Judge of the Trial Court, on an appraisal of the evidence adduced before him, has found that accused No. 2 is not guilty of either of the two charges i.e. u/s 306 and u/s 498A of the Indian Penal Code. He has however, held that the prosecution evidence is sufficient to bring home the offence u/s 498A of the Indian Penal Code against accused No. 1. He has therefore proceeded to pass the impugned order of conviction and sentence against accused No. 1. The said order of conviction and sentence is impugned in the present appeal.

6. The learned Judge has arrived at a finding that the prosecution has failed to prove that Mangal has committed suicide. He has found that the death of Mangal has an accidental death. The said finding is not impugned by the State. For holding the offence u/s 498A of the Indian Penal Code as proved, he has relied upon the evidence of neighbours, P.W.2, Balwant Jadhav, P.W. 3 Magan Gaikwad, P.W. 4, Baban Jadhav, and P.W. 7. Aruna, who is wife of P.W. 4, Baban Jadhav. Baban Jadhav turned hostile and was permitted to be cross-examined by the prosecution. The learned Judge has further placed reliance on the evidence of the relation of Mangal, viz. p.W. 5, Zipru Bhoid, uncle of Mangal and P.W. 6, Somnath, the brother of Mangal. The prosecution has in support of its allegation of ill treatment placed reliance on the dying declaration, Exhibit-21, which was

said to have been recorded by the Police Constable, P.W.8, Suresh Dattatraya Kale. The learned Judge has discarded the dying declaration on two grounds: (1) Because it is recorded by a Police constable and is, therefore, through admissible, is a weak place of evidence and (2) because the prosecution has not produced the dying declaration recorded by the Taluka Executive Magistrate. As far as the evidence of the aforesaid neighbours is concerned, the learned Judge has noticed that they have deposed that accused No. 1 was beating Mangal. According to Aruna, P.W. 7, accused No. 1 used to quarrel with Mangal. As per the version of the aforesaid relations of Mangal is concerned, both stated that after marriage Mangal had visited her parents' house only once. That was in the company of the accused when her sister Sarlabai had expired. According to the witnesses, Mangal had told them at that time that the accused was ill treating her. According to Somnath the ill treatment consisted of quarreling, and beating over petty matters. On the aforesaid evidence, the learned Judge has concluded that accused No. 1 ill treated Mangal by quarreling with her and by setting her to physical torture and beating. He has further found that the aforesaid ill treatment fell within the four corners of explanation (a) of Section 498A. According to him, the cruelty 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). Based on the said finding, the learned Judge has proceeded to record an order of conviction and sentence against accused No. 1.

7. I have heard with the assistance of Shri More, who appears on behalf of the accused and Shri Chopda, the learned Public Prosecutor, has gone through the evidence on record. After giving my anxious consideration to the evidence, I find myself unable to concur with the view expressed by the learned Judge of the Trial Court, The death of Mangal was initially treated as accidental but was converted into a suicidal death on a complaint lodged by P.W. 6, Somnath, who is brother of Mangal. The incident in question has taken place at about 9.00 p.m. on 28th July, 1985. Mangal succumbed to her injuries at about 6.00 a.m. on 29th July, 1985. The neighbours who have been examined in the case were available right from the morning of 29th July, 1985. However, their statements were not immediately recorded. Their statements were recorded on 30-7-1985, 31-7-1985 and 1st August, or 1985. Though the statement of one of the neighbours, P.W. 7, Aruna was recorded on 30th July, 1985 no offence was registered. This is despite the fact that the prosecution was in possession of two dying declarations of Mangal, one recorded by P.W. 8 Suresh and the other by Taluka Executive Magistrate. It would be reasonable in the circumstances to hold that the prosecution was not in possession of any material to bring out any offence against the accused. The statements of the relations of Mangal i.e. P.W. 5, Zipru, and P.W. 6, Somnath, were recorded on 31st July, 1985. The offence in question was recorded thereafter. The statement of Somnath was treated as First Information Report which obviously is an error. The information regarding the commission of a cognizable offence had already been communicated and investigation had already commenced. On 30th July, 1985 itself the statement of

P.W. 7, Aruna had already been recorded. The statement of Somnath, therefore, cannot be treated as First Information Report. It would not lend any assurance or corroboration to the evidence of Somnath. It can merely be treated as the previous statement of the witness.

8. As far as the evidence of the aforesaid neighbours and the relations is concerned, I find that the same is of a general character. General statement arc made regarding quarrels and commissions statements are made that accused used to beat Mangal due to petty quarrels. No particulars are mentioned. No particular incident is deposed to. The question is whether the aforesaid evidence is sufficient to bring home an offence u/s 498A of the Indian Penal Code.

9. Section 498A of the Indian Penal Code provides that when a husband or a relative of the husband of a woman subjects such woman to cruelty he shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The term cruelty has been defined in the explanation to Section 498A. Hence, it is not any and every cruelty that is made punishable but only the cruelty as defined under the explanation. Explanation (a) provides that cruelty means 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 woman. Hence, under Clause (a) the cruelty has to be of such a gravity as is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health. If cruelty is by itself established and the fact of suicide is also established, it would not be sufficient to bring home the guilt of committing cruelty as defined in explanation; (a) A reasonable nexus has to be established between the cruelty and the suicide in order to make good the offence of cruelty. Alternately the cruelty established has to be of such a gravity as is likely to drive a woman to commit suicide etc. If suicide is established it has further to be established that it was occasional on account of cruelty which was of sufficient gravity so as to lead a reasonable person placed in similar circumstances to commit suicide.

10. Sub-clause (b) of the explanation to Section 498A provides that cruelty means harassment of the woman 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. Sub-clause (b) does not make each and every harassment cruelty. The harassment has to be with a definite object, namely to coerce the woman or any person related to her to meet any unlawful demand. Hence, mere harassment by itself is not cruelty. Mere demand for property etc. by itself is also not cruelty. It is only where harassment is shown to have been committed for the purpose of coercing a woman to meet the demands that is cruelty and this made punishable under the Section. In other words, it is not every harassment or every type of cruelty that would attract Section 498A. It must be established that the beating or harassment was with a view to force the wife to commit suicide or to fulfil illegal demands of the husband or the in-laws.

11. In my view, the evidence of the prosecution witnesses falls short of the requirement of cruelty as required under explanation (a) of Section 498A of the Indian Penal Code. Mere quarrels or mere cruelty would not be sufficient to level a charge of cruelty within the meaning of explanation to Section 498A. The degree of the conduct of the husband must such that it would reasonable expected of a wife to commit suicide or to cause grave injury or danger to her life, limb or health. Hence, disagreeing with the learned Judge of the Trial Court, I hold that the prosecution has failed to prove the offence u/s 498A of the Indian Penal Code against accused No. 1.

12. For the foregoing reasons the appeal succeeds. The impugned order of conviction and sentence passed against the accused on by the learned Addl. Sessions Judge, Pune, on 4th June, 1986 in Sessions Case No. 93 of 1986 is quashed and set aside and the original accused No. 1 is acquitted.

The fine, if paid, shall be refunded. The bail bond shall stand cancelled.