
(2015) 02 BOM CK 0260
In the Bombay High Court
Case No : Criminal Appeal No. 1067 of 2007

Gajanan Balaso Khadke

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 17-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 302, 304(B), 304B, 306, 34

Citation : (2015) ALLMR(Cri) 2165

Hon'ble Judges : P.V. Hardas, J; Shalini Phansalkar Joshi, J

Bench : Division Bench

Advocate : Murtaza Najmi, for the Appellant; S.D. Shinde, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. Shalini Phansalkar Joshi, J.—The appellant, who stands convicted for the offences punishable under Sections 302 and 498A of the Indian penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs. 500/-, in default to suffer rigorous imprisonment for one month on the first count and rigorous imprisonment for one year and to pay fine of Rs. 500/- in default to suffer rigorous imprisonment for 15 days, on the second count; by judgment dated 4.9.2007, in Sessions Case No. 1 of 2007, by the Additional Sessions Judge, Ichalkaranji, District Kolhapur, by this appeal challenges his conviction and sentence. The facts necessary for the decision of this appeal, are as follows:-

The appellant is the husband of deceased Aruna. Their marriage had taken place on 29.6.2002. Since four months after the marriage, she was subjected to harassment and illtreatment at the hands of appellant and his family members in order to satisfy their unlawful demand for cash amount to purchase field. Her parents were unable to satisfy the said demand and hence her harassment including physical cruelty continued.

2. On 31.7.2006 at about 9.30 p.m. P.W. 1 Suresh Chougule was informed by the

appellant on phone that Aruna had become unconscious due to faint and she was taken to the hospital of Dr. S.R. Patil at Hupari. When P.W. 1 including his parents reached there, he was informed that she was taken to Government Hospital at Hupari, where the Doctor had examined her and declared that she was dead. Head Constable Thombare registered A.D. No. 28 of 2006 at Hupari police station, carried out the inquest panchnama (Exhibit 40C) and sent her dead body for postmortem. On 1.8.2006, he handed over the papers of A.D.R. to P.W. 3 PSI Prakash Gaikwad. In the said papers, there was advance cause of death certificate of Aruna stating that her death was as a result of asphyxia due to ligature of neck, alongwith asphyxia head injury. P.W. 1 Suresh Chougule then on the same day lodged complaint against the appellant, his parents and sister-in-law vide Exhibit 17. On his complaint C.R. No. 50 of 2006, came to be registered for the offence punishable under Section 302, 498A read with 34 of the Indian Penal Code. The appellant was arrested on the same night at about 10.45 p.m. whereas; the other co-accused were arrested on the next day.

3. P.W. 3 PSI Gaikwad recorded the statements of neighbours and other witnesses. He seized the clothes of the appellant under panchnama (Exhibit 35) and referred the said clothes alongwith the nail clippings and blood sample of the appellant to Chemical Analyzer vide requisitions (Exhibit 42 to 44). After completion of investigation on 23.11.2006, he filed chargesheet in the Court against appellant and other co-accused.

4. On the case being committed to the Session Court, the trial Court framed charge vide Exhibit 6/C. On charge being read over and explained to the appellant and other co-accused, they pleaded not guilty and claimed trial.

5. In support of its case, the prosecution examined only four witnesses viz. P.W. 1 Suresh Chougule the informant and the brother of the deceased Aruna, P.W. 2 Tukaram Tandale the neighbour, P.W. 3 Investigating Officer PSI Gaikwad and P.W. 4 Dr. Vinod Agarwal, who conducted the postmortem (Exhibit 47).

6. Relying on this evidence, the trial Court convicted and sentenced the appellant as stated above whereas acquitted original accused Nos. 2 to 4 for want of sufficient evidence on record against them.

7. This judgment of the trial Court is being challenged in this appeal by learned counsel for the appellant Shri. Murtaza Najmi whereas supported by learned Additional Public Prosecutor Smt. S.D. Shinde.

8. In our opinion, in order to effectively deal with the rival submissions advanced at bar, it would be useful to refer to the evidence on record.

In this case, the prosecution has placed reliance on following three circumstances:-

i) homicidal death of Aruna,

ii) Since four months after marriage she was subjected to cruelty and

harassment which continued till her death.

iii) False explanation offered by the appellant that she has become unconscious due to faint.

9. To prove the first circumstance regarding homicidal death of Aruna, the prosecution has examined P.W. 4 Dr. Vinod Agarwal. He has conducted postmortem at CPR Hospital. Kolhapur on 1.8.2006 between 1.45 a.m. to 3.15 a.m. On examination, he found following external injuries:-

i) Ligature mark around neck incomplete running oblique upwards and backwards from right to left two make of coil and right side joining together on left. Deficient over left mastoid 26 x 1 c.m.

ii) Abrasion 1 x 1 c.ms. 5 c.ms. below left angle of mandible reddish brown

iii) contusion left parietal occipital region 6 x 5 c.ms. red.

iv) Abrasion left middle finger back middle phalanx 0.5 x 0.25 c.ms. reddish brown.

v) Abrasion right wrist posterior medially 1.5 x 0.5 c.ms. reddish brown.

vi) Contusion left thigh over femoral tringle/oblique shaped 2 x 1 c.ms. reddish.

According to him all these injuries were ant mortem and fresh.

On the internal examination, be found following injuries.

i) Haematomma left parieto occipital region 6 x 5 c.ms. red.

ii) sub arachnoid haemorrhage over left parietal region 5 x 4 c.ms. red.

iii) Brain was congested and oedematous.

10. According to him, the cause of death was asphyxia due to pressure and due to ligature on neck along with head injury. The postmortem report issued to that effect is at Exhibit 47. He has further deposed that injury No. 1 as well as injury No. 3 corresponding with internal injuries to brain were sufficient in the ordinary course of nature to cause death. The probable time of death was within 12 to 24 hours before the postmortem examination. He has further opined that the distribution of the injuries found on Aruna's body was suggestive of injuries being inflicted deliberately and hence the it was a case of homicidal death. He has also opined that internal injuries caused to the head were sufficient to cause unconsciousness and asphyxia due to ligature was ultimately instrumental in immediate cause of death. According to him the injuries found on her body are not possible due to self infliction.

11. This witness is cross examined at length by learned counsel for the appellant, but nothing worthwhile is elicited in the cross examination to challenge his opinion. The suggestion put to him that the injury Nos. 2, 4, 5 and 6 are possible during the struggle is denied by him. Further he has denied that the death of

Aruna was suicidal.

12. Thus, as regards to Aruna's death, the prosecution has succeeded in proving the same to be as a result of head injury and asphyxia which was on account of the pressure due to ligature on neck. Though the learned counsel for the appellant has strenuously tried to submit that it can be a case of suicide, we are not impressed by the said submission. The trial Court has after considering the spot panchnama (Exhibit 32C) disclosing the state of articles in the room and after elaborate discussion came to conclusion that it cannot a case of hanging as there was no other article in the room except the cot and it was not possible for the decease to hang herself considering the height of the roof.

13. Moreover, as regards the head injury, which has also resulted in the cause of her death, there is no extra untitled folder 3 nation at all offered by the appellant. Especially when the appellant has admitted his presence in the house along with the deceased at the time, then the burden was shifted on him to explain the head injury and the ligature mark on her neck. No evidence is brought to show that she was found hanging in the room, her dead body was removed by someone or even by appellant himself and thereafter kept on the cot. In his statement under Section 313 Criminal Procedure Code also appellant has not put up such case of hanging.

14. Conversely the explanation offered by the appellant is found to be false one. He has come up with the case that due to the faint, she fell down and sustained head injury. If it was a case, then there is no explanation about ligature marks on her neck or the pressure put on the neck which has also resulted asphyxia leading to her death. Therefore, it has to be held that the prosecution has succeeded in proving important circumstance that explanation offered by the appellant being false. It constitutes one of the links in the circumstantial evidence adduced by the prosecution.

15. This brings us to the third circumstance, that of Aruna being subjected to illtreatment and harassment since four months after the marriage and this harassment and the illtreatment was in order to meet the unlawful demand of the cash amount by the appellant. There is evidence of her brother P.W. 1 Suresh Chougule to the effect that after the marriage on 29.6.2002, for about four months only, Aruna was treated properly. Thereafter, on one count or the other, she was subjected to harassment. Initially the appellant was insisting on her to bring money for household expenses. Aruna used to inform P.W. 1 Suresh and other family members about this demand. However, her family members could not fulfill the demand. Hence after about 1 1/2 year from the date of marriage, the appellant had assaulted on her head by inflicting blow. At that time she was admitted in Shri Patil Nursing Home at Ichalkaranji. From there Aruna was taken to the house of her parents, she stayed there for about 1 1/4 month. Then due to mediation of the relatives and on the assurance by the appellant that she will be treated properly, she was sent to the house of the appellant. But there was no improvement in the conduct of the appellant. For some days, she was residing

separately with the appellant, but then the appellant continued to beat her to satisfy his demand of rupees one lac for purchase of land.

16. According to P.W. 1 Suresh, from time to time the appellant used to give assurance of treating her properly, but there was no improvement in his conduct. He and his parents used to visit the house of the appellant and tried to convince him to behave properly with her. They also requested Aruna to cohabit with the appellant with the hope that appellant would show improvement in future, but there was no end to harassment. According to him, just few days before the incident i.e. on 27.7.2006. Aruna informed him on phone that the appellant was beating her to satisfy the demand of money. She requested him to come and meet her, hence P.W. 1 Suresh went to her house. He again convinced both Aruna and the appellant. He told appellant and other co-accused that arrangement of money could not be done. On 29.7.2006, he made similar effort of convincing the appellant to treat her properly. However, on 31.7.2006, he received information that she was taken in the hospital.

17. Though there is no other witness examined by the prosecution on this aspect of cruelty and harassment which Aruna was subjected to, in our considered opinion, his evidence has remained unshaken, unblemish and is more than sufficient to prove the cruelty. His evidence has a ring of truth, colour of consistency and sense of straight forwardness, as a result of which it inspires confidence in the judicial mind.

18. The only ground on which his evidence is challenged is that his evidence suffers from some omissions. However, on careful notice of his evidence and the complaint lodged by him Exhibit 17, we find that there are no such major omissions. Whatever is stated by him in evidence before the Court is finding place in the complaint Exhibit 17. Therefore his evidence is found to be consistent and reliable to place implicit reliance thereupon.

19. The second ground on which his evidence is challenged is that there is delay in lodging the complaint. It is submitted that on 31.7.2006 itself he came to know about her death, but he has lodged complaint on the next day i.e. at about 8.00 to 8.30 p.m. In our considered opinion, however, there is no delay in lodging the complaint because unless and until he comes to know the cause of her death, it would have been hasty on his part to lodge complaint against the appellant, especially when the appellant has misguided him by stating that due to faint, Aruna has sustained head injury. His evidence shows that only after postmortem was conducted, he came to know that the cause of her death was head injury and asphyxia due to ligature on neck. Hence after having confirmed that her death was homicidal, he has lodged complaint. He has also stated that though he was suspicious about her death, he maintained himself cool and only after funeral, he went to lodge the complaint. In our considered opinion, therefore, it cannot be said that there was delay as such in lodging the complaint and if at all there was any delay, it is explained sufficiently. The evidence of P.W. 1 Suresh thus proves the cruelty and harassment to which Aruna was subjected

at the hands of the appellant.

20. The submission of learned counsel for the appellant is that if Aruna's death is proved to be unnatural, at the most offence under Section 306 of IPC can be made out against the appellant, but not the offence under Section 302 of the IPC. To substantiate his submission, he has placed reliance Lakhjit Singh and Anr. vs. State of Punjab, 1994 Supp (1) SCC 173. However, in our view, the facts of this reported authority are totally different. In the reported authority there was no direct evidence regarding administration of poison to the deceased, as such the only course left open to the court was to hold that the prosecution has proved suicide. Hence it was held that charge under Section 306 IPC was attracted. In the case in hand, the appellant has failed to prove that it was a case of suicide or self hanging. Conversely, the prosecution has succeeded in proving that it was a case of homicidal death due to head injury and pressure on neck. Therefore, this authority cannot be made applicable.

21. The learned counsel for the appellant has then relied upon Donthula Ravindranath @ Ravinder Rao Vs. State of Andhra Pradesh, AIR 2014 SC 1060 : (2014) AIRSCW 745 : (2014) CriLJ 1217 : (2014) 1 JT 491 : (2014) 1 SCALE 167 : (2014) 3 SCC 196 , to submit that, both in the case of death by strangulation and hanging, symptoms of death are more or less the same. Hence, in this authority, the Apex Court has held the accused guilty for the charge under Section 304(B) of IPC instead of section 302 of IPC. However, we found that in this reported authority, charge under Section 304B IPC was framed against the accused and he was tried for the said offence. As against it, in the present case charge u/s. 304B IPC is not framed against the appellant. The charge framed against him is for the offence punishable under Section 302 of IPC and he is tried for the said offence only. Therefore, this authority also cannot be made applicable to the facts of the present case. To sum up, therefore, we have no hesitation in coming to the conclusion that the trial Court has rightly held the guilt of the appellant to be proved beyond reasonable doubt for the offence under Section 302 and 498A of IPC. The appeal, therefore, holds no merit. Hence stands dismissed confirming the conviction and sentence of appellant for the offence punishable under Section 302 and 498 A of the IPC.