
(2001) 09 BOM CK 0070
In the Bombay High Court
Case No : Criminal Appeal No. 65 of 2000

Gokuldas Vaingankar Naik and Others	APPELLANT
Vs	
State of Goa	RESPONDENT

Date of Decision : 18-09-2001

Acts Referred:

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

Citation : (2002) 1 DMC 1

Hon'ble Judges : P.V. Hardas, J

Bench : Single Bench

Advocate : S.D. Lotlikar and A.D. Bhobe, for the Appellant; W. Coutinho, Addl. P.P., for the Respondent

Final Decision : Allowed

Judgement

P.V. Hardas, J.—The appellants stand convicted and sentenced for offences punishable under Sections 498-A and 306 read with Section 34 of the Indian Penal Code and are sentenced to suffer rigorous imprisonment for 2 years and to pay fine of Rs. 2,000/- each, in default simple imprisonment for one month and rigorous imprisonment for 5 years and to pay fine of Rs. 5,000/- each, in default simple imprisonment for 3 months respectively. It is this conviction and sentence passed by the Additional Sessions Judge-IIInd, Panaji in Sessions Case No. 43 of 1999, which is being assailed before me in the present appeal.

2. The facts necessary for the decision of the appeal are stated hereunder : The first appellant was married to deceased Anjani on 16th February, 1998. After marriage the name of deceased Anjani was changed to Disha. After marriage the deceased and the first appellant started residing at Bhamai. The second appellant is the mother-in-law of deceased Disha @ Anjani. According to the prosecution, deceased Disha, wife of the first appellant, was treated well during the initial six months of her married life but, thereafter,, both the appellants began to harass her and treated her with cruelty. The allegation against the first appellant was that he used to physically assault deceased Disha after consuming

liquor and the second appellant was alleged to be harassing her by using abusive language. On 29th June, 1999 the deceased was not found in the house by the appellants and, therefore, frantic search was undertaken for the deceased by visiting the house of her relatives, but in vain. Ultimately the dead body of the deceased was seen floating in a rivulet in Bhamai. P.W. 16 lady PSI Sunita Sawant was attached to the Bicholim Police Station and she received a complaint Exhibit 22 dated 30th June, 1999, signed by P.W. 19 Gangaram Salgaonkar, brother of deceased Disha. The complaint narrated about the various instances of ill-treatment and expressed suspicion that the appellants might have killed Disha, sister of the informant P.W. 10 Gangaram. P.W. 16 lady PSI Sunita registered an offence u/s 498-A read with Section 34 vide Crime No. 72 of 1999. A missing report in respect of Disha had been filed by P.W. 11 Babani Naik, brother of the first appellant.

3. As submitted on 1st July, 1999, the dead body of deceased Disha was noticed floating on the water of the rivulet at Bhamai. P.W. 6 Yatin Maralkar, Additional Deputy Collector, Mapusa, conducted the inquest Panchanama on 1st July, 1999 of the dead body of Disha after it was retrieved from the river. The said inquest Panchanama, Exhibit 15, was conducted in the presence of P.W. 4 Nisha Azgaonkar. The gold ornaments on the person of deceased Disha were seized by the police. The dead body was sent for post-mortem examination and the post-mortem was conducted by P.W. 1 Dr. E.J. Rodrigues, who opined that death was due to asphyxia as a result of drowning in the red mucky soil waters. The report of the post-mortem examination is at Exhibit 8. The first appellant came to be arrested on 1st July, 1999. During investigation the clothes of deceased Disha came to be attached under attachment Panchanama Exhibit 28 in the presence of Yaseen Bepari. After recording the statement of the witnesses, the charge-sheet against the present appellants came to be filed. The learned Additional Sessions Judge-IIInd, Panaji, framed a charge against the appellants for offences punishable under Sections 498-A and 306 read with Section 34 of the Indian Penal Code. Both the appellants denied the charge and claimed to be tried. In support of the prosecution case, the prosecution examined 16 witnesses. The appellants examined D.W. 1 Brahmanand Kuncolekar, who was working in the Department of Psychiatry and Human Behaviour as a Medical Superintendent.

4. The prosecution had examined P.W. 5 Sulakshana Azgaonkar, P.W. 7 Ratnakar Salgaonkar, P.W. 8 Shalini Salaonkar, P.W. 9 Gangadhar Azgaonkar and P.W. 10 Gangaram Salgaonkar, who are the relatives of deceased Disha and who spoke about the ill-treatment meted out to deceased Disha. P.W. 11 Babani Naik, brother of the first appellant, P.W. 12 Kalpana Naik, the neighbour of the first appellant and P.W. 13 Anandi Naik, sister of the first appellant were declared hostile by the prosecution. The learned Trial Court found that the prosecution had proved the offences against the appellants and convicted and sentenced them as aforestated.

5. P.W. 5 Sulakshana is the wife of P.W. 9 Gangadhar and elder sister of deceased

Disha. She in her evidence stated that initially for a period of 6 months deceased Disha was treated well by the appellants. Thereafter deceased Disha visited P.W. 5 Sulakshana and had narrated that she was harassed and assaulted by the first appellant and the second appellant used to abuse her. P.W. 5 Sulakshana stated that deceased Disha used to visit her once a fortnight or once a month. P.W. 5 Sulakshana stated that her husband P.W. 9 Gangadhar used to reach deceased Disha to her house and used to advise the appellants not to harass the deceased. The first appellant is alleged to have been assuring P.W. 9 Gangadhar that the deceased Disha would not be harassed. According to P.W. 5 Sulakshana, deceased Disha had visited her on 4 to 5 occasion prior to her death and had informed P.W. 5 Sulakshana regarding the ill-treatment and harassment at the hands of the appellants. P.W. 5 Sulakshana spoke of an incident on 18th June when she found the deceased Disha at her house along with P.W. 11 Babani, brother of first-appellant. P.W. 11 Babani is alleged to have informed P.W. 5 Sulakshana that the first appellant had assaulted deceased Disha for 3 days. The deceased Disha is "then alleged to have confirmed what Babani P.W. 11 had said. Incidentally P.W. 11 Babani, who was examined as a prosecution witness does not admit to have stated so. P.W. 5 Sulakshana further stated that on the same day the deceased Disha had informed that the second appellant used to complain that deceased Disha was not doing any household work. Deceased Disha then resided at the house of P.W. 5 Sulakshana and she was reached to her house after 4 days by P.W. 9 Gangadhar. Thereafter the wife of P.W. 11 Babani came to the house of P.W. 5 Sulakshana searching for deceased Disha. All the relatives had then gone to the village of the first appellant and on the next day, that is, on 30th June, 1999 a report came to be filed by P.W. 10 Gangadhar. In the cross-examination P.W. 5 Sulakshana strenuously denied that deceased Disha was taking any treatment in the mental hospital till her marriage. She also denied the suggestion that deceased Disha @ Anjani had not made any disclosure to her about the ill-treatment or the harassment by the first appellant. At this stage it needs to be observed that P.W. 5 does not speak about having noticed any injuries on the person of deceased Disha though deceased Disha is alleged to have been assaulted by the first appellant for 3 days.

6. P.W. 7 Ratnakar is the brother of deceased Disha. He stated that after the marriage deceased Disha used to complain of harassment at the hands of both the appellants. According to this witness, deceased Disha had narrated that the second appellant used to taunt deceased Disha by saying that she had not brought dowry with her and that the second appellant also made an issue that deceased Disha Was not given a gold bangle called Patli. The second appellant is alleged to have been complaining that the deceased was not doing any work in the house. The first appellant is alleged to be abusing and assaulting the deceased after consuming liquor. The second appellant was said to have said that deceased Disha did not do any work and that she was sleeping all the time. This witness also spoke of a demand of Rs. 3,500/- made by the first appellant, which was not met by this witness. On one occasion P.W. 7 Ratnakar claimed to have

gone to the house of first appellant and asked the appellants as to why they were harassing the deceased to which the appellants are alleged to have replied that deceased Disha was not doing any household work. This witness also referred to the fact that wife of P.W. 11 Babani had informed him on 29th June, 1999 that deceased Disha was missing from her house. He claimed to have gone to the house of the appellants on the next day, that is, 30th June, 1999. In the cross-examination this witness admitted that he had not stated to the police that the second appellant was harassing deceased Disha for not bringing a gold bangle called "Patli". Similarly he admitted not to have stated in his statement to the police that the first appellant had demanded Rs. 3,500/-. He also strenuously denied that his sister, deceased Disha, was taking any treatment for mental illness prior to her marriage. He also denied the suggestion that the relatives of deceased Disha had got the deceased married to the first appellant by suppressing her mental ailment.

7. P.W. 8 Shalini is the sister of deceased Disha. This witness claimed to have visited the house of the deceased two months prior to her death and had found the first appellant in an intoxicated condition assaulting the deceased by catching her hair and banging her against the wall. This witness said that this incident which she had witnessed had been narrated by her to her sister P.W. 5 Sulakshana.

8. The evidence of P.W. 9 Gangadhar, husband of P.W. 5 Sulakshana is completely hearsay. He spoke about his wife having narrated what the deceased had narrated to her. He stated that on 18th June, 1999 he had seen P.W. 11 Babani and deceased Disha sitting inside the house and P.W. 11 Babani informed this witness that deceased Disha was assaulted by the first appellant for the last 2 to 3 days. He stated that he had inquired from deceased Disha but she had kept quiet. Incidentally P.W. 11 Babani, though examined as a prosecution witness, does not support this part of the prosecution case. This witness claimed that on 20th June, 1999 he had gone to reach deceased Disha to the house of the appellants and the appellants are stated to have complained to him that deceased Disha was not listening to anybody and even though deceased Disha had been asked to attend a wedding of a neighbour, the deceased had left her house and had gone to the house of P.W. 5 Sulakshana and P.W. 9 Gangadhar. It was also complained that the deceased was not doing any work. This witness claimed that on 29th June, 1999 the wife of P.W. 11 Babani had informed him that deceased Disha was missing and, accordingly, he had gone to the house of deceased Disha. Some omissions have been brought out in the prosecution by this witness, which, unfortunately have not been proved. In the cross-examination this witness also stoutly denied the suggestion that the deceased was taking treatment in a mental hospital.

9. P.W. 10 Gangaram, who had lodged the report Exhibit 22 with the police, is the brother of deceased Disha. His evidence is completely hearsay. He has no personal knowledge regarding any ill-treatment or harassment meted out to the

deceased. He said that all this was narrated to him by his elder sister P.W. 5 Sulakshana. In the report Exhibit 22 a reference is made to the visit of deceased Disha on 18th June, 1999 and her narrating to P.W. 5 Sulakshana regarding the ill-treatment. In the said report there is no reference to any alleged harassment of the deceased at the hands of the second appellant. In the said report there is a reference that deceased Disha had told P.W. 5 Sulakshana regarding the harassment at the hands of the first appellant. In the said complaint there is no reference to an incident actually witnessed by P.W. 8 Shalini and which Shalini claimed to have narrated to P.W. 5 Sulakshana. P.W. 10 Gangaram admitted that whatever had been stated in his complaint was on the basis of what was told to him by P.W. 5 Sulakshana and not within his knowledge.

10. The incident witnessed by P.W. 8 Shalini is not referred to by P.W. 5 Sulakshana, though Shalini claimed to have informed her. The evidence of P.W. 9 Gangadhar and P.W. 10 Gangaram is purely hearsay and is based on what was narrated to them by P.W. 5 Sulakshana. The other prosecution witnesses do not assist the prosecution case in speaking about cruelty or harassment. The entire prosecution evidence, therefore, centres around P.W. 5 Sulakshana and P.W. 7 Ratnakar.

11. All the relatives of deceased Disha have strenuously denied that deceased Disha was taking any treatment in the mental hospital prior to her marriage. In this background, therefore, the questions which are posed before me by Mr. Lotlikar, the learned Senior Advocate appearing for the appellants, are whether the appellants have abetted the commission of suicide or whether deceased Disha was a schizophrenic patient and may have been informing P.W. 5 Sulakshana and P.W. 7 Ratnakar about the incidents which had not happened. In other words what is suggested is that deceased Disha, who was suffering from schizophrenia had a persecuting complex.

12. The learned Counsel for the appellants referred to the evidence of D.W. 1 Brahmanand, Medical Superintendent in the Department of Psychiatry and Human Behaviour. This witness had stated that deceased Disha, whose maiden name was Anjani Salgaonkar daughter of Soma and resident of Assonora, was treated for the first time in the Institute on 8th August, 1991. He deposed that as per the records the last time that she took medicines was on 24th May, 1999. The said witness had given a history that she had been taking treatment for the last 3 years from a private Psychiatrist. This witness further deposed that the deceased was suffering from schizophrenia. According to him, this condition can only be controlled and cannot be cured. It can be controlled by continuous medication and supervision by a Psychiatrist. On the basis of the report, the witness stated that the deceased Disha was admitted in the hospital initially on 24th February, 1994 and discharged on 17th March, 1994. According to him, she was required to be admitted in the hospital as she had suffered relapse on account of continuous abstinence from medicines. This witness stated that deceased must have visited the Institute for about 20 to 30 times from 1991 till

1999. This witness then admitted that the detection of schizophrenia is on the basis of signs and symptoms such as auditory hallucinations i.e. hearing voices when nobody is around or persecutory delusions i.e. being suspicious of people around without any evidence to the contrary. The other symptoms are inappropriate laughter, aggressive behaviour and sometimes even suicidal tendencies. These persons have no insight into their mental faculties. The normal practice is to give the dosage for one month to such persons and in instances where they do not personally come, we gather the condition of the person through the relation or next of kin and accordingly prescribe the necessary dosage. The patient was about 23 years old in the year 1991".

13. The record pertaining to deceased Disha, produced by D.W. 1 Brahmanand, are marked as Exhibit 37 colly. The record shows that she had a history of muttering to herself and making gestures Calling irrelevantly and complaining that her neighbours also talk about her. She had also history of sleep disturbance but keeps sleeping all the time in the bed and, if asked to get up, she becomes aggressive. The examination sheet of 12th September, 1991 shows that the deceased was complaining of auditory hallucinations and disturbed sleep. The last examination is of 24th May, 1999, where the deceased was examined and prescribed medicines. The case file shows that her address at the time of her initial examination in 1991 was the address of P.W. 7 Ratnakar, who was her brother.

14. P.W. 5 Sulakshana, P.W. 7 Ratnakar, P.W. S Shalini, P.W. 9 Gangadhar and P.W. 10 Gangaram had deliberately suppressed that deceased was suffering from schizophrenia. It is quite apparent from their conduct that they had also suppressed this fact from the appellants at the time of her marriage. Deceased Disha had been taking treatment in 1991 till one month before her death and she had been taking treatment two years prior to 1991 from a private Psychiatrist. It thus appears from the record that the deceased Disha as schizophrenic since last 10 years. The real reasons for going to her sister's place appear to be for examination and treatment at the hospital rather than for complaining about the harassment at the hands of the appellants. When a schizophrenic patient suffers from auditory hallucinations and persecutory delusions, it is quite possible that the deceased in this condition may have been imagining the harassment she was suffering. Her behaviour in the house was also abnormal as was complained of by the second appellant that the deceased was not doing any work and was sleeping all the while. In such circumstances the second appellant was justified in reprimanding the deceased for not doing the work. A reprimand in such nature cannot be construed as an act of either harassment or treating the deceased with cruelty. Be that as it may, in view of the fact that the mental illness of the deceased had been suppressed by the prosecution witnesses, a doubt arises as to whether the deceased was, in fact, treated with cruelty or whether she had narrated the instances of cruelty because she was hallucinating. Witnesses who deliberately speak a falsehood cannot be relied upon in respect of the other part of the testimony which is separated from the falsehood. Witnesses who make

deliberately false statements either in their examination-in-chief or in their cross-examination are unreliable witnesses. There is no guarantee that what they are speaking is the truth particularly when their falsehood is exposed. In such circumstances, I am afraid no reliance whatsoever can be placed on the evidence of P.W. 5 Sulakshana, P.W. 7 Ratnakar, P.W. 8 Shalini, P.W. 9 Gangadhar and P.W. 10 Gangaram. The oral evidence of these witnesses is not believable. There is no other evidence which establishes the offences against the appellants. The evidence of these witnesses is also not corroborated by evidence of independent witnesses so as to inspire confidence of the Court for the acceptance of their evidence. It is established by the appellants that the deceased was suffering from schizophrenia and, therefore, according to me, it is quite possible that she may be hallucinating or imagining the harassment. Even otherwise the evidence of P.W. 5 Sulakshana, P.W. 7 Ratnakar, P.W. 8 Shalini, P.W. 9 Gangadhar and P.W. 10 Gangaram does not inspire confidence at all. Thus, I find there is no evidence which would justify the conviction of the appellants for the offences under Sections 498-A and 306 of the Indian Penal Code.

15. In the result, therefore, the appeal is allowed. The conviction and sentence of the appellants for offences punishable under Sections 498-A and 306 of the Indian Penal Code are quashed and set aside and they are acquitted of the aforesaid charges. Their bail bonds shall stand cancelled. Fine, if paid, be refunded to the appellants.