

(2015) 01 BOM CK 0311
In the Bombay High Court
Case No : Criminal Appeal No. 169 of 2009

Harish	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

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

Citation : (2015) 01 BOM CK 0311

Hon'ble Judges : A.R. Joshi, J

Bench : Single Bench

Advocate : G.M. Shitut, for the Appellant; Tajwar Khan, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.R. Joshi, J—Heard rival arguments on this appeal preferred by the appellant, original accused No. 1 challenging the judgment and order of conviction passed by Ad Hoc District Judge-3 and Additional Sessions Judge, Nagpur dated 12/03/2009 in Sessions Case No. 328 of 2007.

2. By the impugned judgment and order, the present appellant/accused No. 1 was convicted for the offence punishable under Section 306 of Indian Penal Code and was sentenced to suffer R.I. for four years and to pay fine of Rs. 500/-, in default to suffer S.I. for fifteen days. He was also convicted for the offence punishable under Section 498-A of Indian Penal Code and was sentenced to suffer R.I. for one year and to pay fine of Rs. 1,000/-, in default to suffer S.I. for one month. Both the substantive sentences were directed to run concurrently. Original accused No. 2, mother of the present appellant was acquitted under the same impugned judgment and order. However, respondent-State of Maharashtra had not preferred any appeal challenging the said acquittal.

3. Case of the prosecution is as under?

The present appellant/accused No. 1 and victim Smt. Babita married some time

in April, 2004. Intermittently, there used to be quarrel between them and under intoxicated condition, the appellant used to beat his wife, the victim Babita. Out of the wedlock, they had one daughter and she was about 14 to 16 months at the time of the incident, which occurred on 30/03/2007. On that evening the victim jumped in the well and ended her life. This was the incident which resulted in lodging of the complaint by the sister of the victim for the offences punishable under Sections 306 and 498-A of Indian Penal Code against the appellant and his mother. In fact, this was the incident for which the appellant had lodged a report to the concerned Police and it was registered as an accidental death report (A.D.R.). According to the appellant, on the day of the incident, he was out of his house for having some other work and came back in the evening after about 8.00 p.m. Thereafter, at about 9.00 p.m. his wife told him that she was going to answer the nature's call as she was not feeling well due to some ailment and some stomach ache. According to the appellant, after about half an hour, she did not come back and somebody from the locality had informed him that his wife had committed suicide by jumping in a well in the nearby area. Accused and other persons rushed to the spot, but they could not find anything in the well. By that time, the Police personnels and also the fire brigade people arrived and they searched inside the well and could find the dead body of the victim woman. The dead body was taken out and inquest panchnama was conducted. On the same night appellant lodged his report, which was treated as A.D.R. as mentioned earlier.

4. According to the case of prosecution, the sister of the victim lodged the complaint on the next date of the incident alleging that the husband of the victim and his mother had ill-treated the victim on various counts and also abetted the commission of suicide. Said complaint was registered as first information report and investigation was started. After completion of investigation and recording the statements of various witnesses including the neighbour of the first informant and also the neighbours of the appellant, charge-sheet was filed and present appellant and his mother were charged for the offences punishable under Sections 306 and 498A read with Section 34 of Indian Penal Code.

5. During the trial, total eight prosecution witnesses were examined. Out of them, the only important prosecution witness is P.W. No. 1, first informant, Vandana, who is the elder sister of victim Babita. She lodged her first information report on the next day of the incident i.e. 01/04/2007. According to this witness, about three days prior to the incident of victim jumping in the well, victim had been to her house after she got herself aborted from the hospital/dispensary of one Dr. Kapse, who is examined as P.W. No. 5. According to the case of prosecution, for the purpose of such abortion, victim along with her neighbour one Pushpa had been to the hospital/dispensary of Dr. Kapse. According to the case of prosecution and the substantive evidence of P.W. No. 1-Vandana, said abortion was outcome of the force and compulsion practiced by the appellant and his mother on victim Babita. It appears that the trial Court was influenced by the substantive evidence of P.W. No. 1, on the aspect of the ill-treatment and

harassment allegedly meted out to the victim at the hands of the present appellant and his mother and as told by the victim to the said witness. So far as the substantive evidence of other prosecution witnesses is concerned, it is of no much significance or any help to the case of prosecution. P.W. No. 2 is the another witness, husband of the first informant Vandana. However, his evidence is of no help to the prosecution in order to establish the fact that the present appellant and his mother had aided and abetted the commission of the suicide by the victim. Moreover, his evidence did not show that there was any cruelty practised against the victim, thus attracting the provisions of Section 498-A of Indian Penal Code against the appellant and his mother. So, is the nature of evidence of P.W. No. 3, one of the neighbours of the victim. He also did not notice any quarrel between the appellant and the victim woman. P.W. No. 4 is the neighbour of first informant Vandana. However, she had also not supported the case of prosecution and declared hostile. Nothing was extracted from her cross-examination taken by the learned prosecutor. The evidence of P.W. No. 5-Dr. Kapse is of much significance, inasmuch as according to the case of prosecution, this doctor had performed the abortion and removed the foetus, which was of about a month or so. The substantive evidence of this witness is also of no help, inasmuch as, according to this doctor, the victim came along with one another woman to his dispensary and then some treatment was given to her due to menstrual irregularity. During the substantive evidence, it was found out that the said doctor had not specifically mentioned that he had performed the abortion, but the fact remained that the victim woman attended his hospital and also got discharged on the same day and some procedure was adopted for extraction of the foetus from the uterus of the victim. The significance of the evidence of Dr. Kapse lies in the fact that nowhere he mentioned that the present appellant, i.e. husband of the victim had also accompanied her to the hospital/clinic. So also, it is not the case of the first informant Vandana that the appellant had accompanied the victim and was physically present in order to see that the victim get herself aborted of the foetus. The substantive evidence of P.W. No. 6-Pushpa also corroborated the evidence given by Dr. Kapse inasmuch as she mentioned that she had accompanied the victim woman to the dispensary of Dr. Kapse and some medical procedure was conducted there and thereafter, the victim woman was discharged on the same day. P.W. No. 7-Kalawati is the another sister of the victim. However, she has also not supported the case of prosecution and apparently declared hostile and accordingly she was put the questions in the nature of cross-examination by learned A.P.P. The last prosecution witness is the Investigating Officer.

6. The entire case of the prosecution as mentioned earlier revolve around the substantive evidence of P.W. No. 1-Vandana. It is significant to note that according to P.W. No. 1, the fact of removal of foetus from the uterus of the victim occurred three days prior to the incident of victim jumping in the well. According to this witness, till the evening of 27/03/2007, i.e. the day on which the abortion was conducted, present appellant and the victim were at the house

of said Vandana and at that time there was a quarrel between the appellant and his wife/victim. According to P.W. No. 1, appellant had assaulted and made the victim fall on the ground by lifting her legs and thus tortured her and left the house of Vandana with his wife without taking meals. According to P.W. No. 1, this was the action on the part of the appellant which had prompted and in fact triggered the desire in the mind of the victim to end her life and apparently this evidence was accepted by the trial Court in order to come to the conclusion that this episode was sufficient to hold that the appellant-husband had instigated his wife/victim to end her life and commit suicide. On this aspect, it must be said that the trial Court lost sight of the fact that this part of the substantive evidence of P.W. No. 1-Vandana had not been supported by any other witness much less the neighbour P.W. No. 3. Even if it is accepted that on the night of 27/03/2007 such episode occurred at the house of Vandana, still it is required to be seen whether the said episode was of such a gravity so as to lead the victim compulsively end her life. In other words, it is to be seen whether the conduct alleged against the appellant on the day of the abortion of the victim, is of such a grave nature so as to lead the victim to end her life and that there was no other way for the victim to remain alive. Even this aspect was required to be viewed on the admitted position that for the purpose of abortion, the present appellant/husband of the woman was not present in the dispensary and this has been accepted by Dr. Kapse and also P.W. No. 6-Pushpa.

7. In the matters of offence punishable under Section 306 Indian Penal Code, it has to be ascertained as to the temperament of a particular person and the way in which an individual react on the treatment given to him. In the present matter it has to be seen whether the alleged act on the part of the appellant/husband behaving in cruel and unruly manner, with his wife at the house of Vandana was of such a magnitude that there was no alternative for the victim than to end her life. In the considered view of this Court, the said alleged act is not sufficient to establish that there was abetment by the appellant thus compelling his wife to end her life. Even so far as the offence punishable under Section 498-A is concerned, apart from the said incident of abortion and the unruly behaviour of the appellant at the house of Vandana on the evening of the same day of abortion, there is nothing on record to show that very often the victim was being treated with cruelty and was harassed on various counts. On this aspect, the substantive evidence of P.W. No. 1, if carefully seen, it must be said that the material produced before the Court during the trial had fallen short of that standard, which was required to bring home the guilt of the appellant/accused for the offences charged. Secondly, it must be said that the learned trial Court had fallen in an error to accept that the prosecution has established the charges beyond reasonable doubt. In the result, the present appeal must succeed and same is accordingly disposed of. Therefore, following order.

(1) Criminal Appeal No. 169 of 2009 is allowed.

(2) The impugned judgment and order dated 12/03/2009 is quashed and set

aside.

(3) The appellant is acquitted of the offences punishable under Sections 306 and 498-A of Indian Penal Code.

(4) The fine amount, if already paid, shall be returned back to the appellant.

(5) Appeal is accordingly disposed of.