

(2018) 02 BOM CK 0125
In the Bombay High Court
Case No : 575 of 2002

Jagdish s/o. Bhola Yadav

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 08-02-2018

Acts Referred:

Code of Criminal Procedure, 1973, Section 174 - Police to enquire and report on suicide, etc
Indian Penal Code, 1860, Section 34, Section 498A, Section 306 - Acts done by several persons in furtherance of common intention - Husband or relative of husband of a woman subjecting her to cruelty - Abetment of Suidde
Evidence Act, 1872, Section 32(1) - Case in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant

Citation : (2018) 02 BOM CK 0125

Hon'ble Judges : Rohit B. Deo

Bench : Single Bench

Advocate : P.R. Agrawal, N.R. Patil

Judgement

1. Challenge is to the judgment and order dated 21.9.2002 rendered by the 1st Adhoc Additional Sessions Judge, Nagpur in Session Trial 632 of 2000, by and under which, the appellant - accused is convicted for offence punishable under section 498-A of the Indian Penal Code (" IPC " for short) and is sentenced to suffer rigorous imprisonment for three years and to payment of fine of Rs. 300/-. The accused is acquitted of offence punishable under section 306 of the IPC. The co-accused Sau. Kavita Tirpude is acquitted of both the offences.

2. Heard Shri P.R. Agrawal, the learned counsel for the appellant and Shri. N.R. Patil, the learned Additional Public Prosecutor for the respondent / State.

3. The gist of the prosecution case is thus:

The accused and the deceased Gitabai entered into matrimonial alliance 22 years prior to the incident. The couple was blessed with two sons and one daughter from the wedlock. The acquitted co-accused Kavita was residing in the house of the accused since her childhood. She married one Pramod Tirpude and within three months of the marriage delivered a child. The case of the prosecution is that Kavita left her matrimonial home and again started residing with the accused and both were in a relationship.

Instigated by Kavita, the accused used to illtreat the deceased Gitabai. The accused used to quarrel with the deceased frequently. Gitabai used to disclose the illtreatment to her brother Mahendrakumar (PW 8). The son of the accused PW 9 Vikas is a witness to the persistent and continuous illtreatment. An altercation took place between the accused and Gitabai in the afternoon on 19.7.2000. The accused berated Gitabai and assaulted her at night. On the next day, at 3.00 p.m. PW 10 - Manish who is the son of Gitabai's sister, and who was a guest in the house since few days, came home after visiting the fair. Manish asked Gitabai for a glass of water. Accused Kavita had asked Gitabai to look after her daughter. Gitabai therefore asked Kavita to give water to Manish. An altercation ensued and at the instigation of Kavita, accused assaulted Gitabai who sustained injury to head and tooth. Gitabai took out a bottle of insecticide from the Almirah and consumed the insecticide, saying that it would be better if she dies so that the day to day quarrels can be

avoided. Gitabai was admitted to Savner hospital, and expired on 20.7.2000 while undergoing treatment.

Inquiry under section 174 of the Code of Criminal Procedure was initiated. Autopsy on the body was conducted. Spot panchanama was prepared, completion of investigation led to submission of the charge sheet in the court of Judicial Magistrate First Class, Savner who committed the proceedings to the Sessions Court. The learned Sessions Judge framed charge (Exh. 6) under section 306 and 498-A read with section 34 of the IPC, accused abjured guilt and claimed to be tried. The defence is of total denial and false implication.

4. Section 498-A of the IPC reads thus:

"498-A. Husband or relative of husband of a woman subjecting her to cruelty - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation - For the purpose of this section, "cruelty" means-

(a) 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; or

(b) 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 scrutiny or is on account of failure by her or any person related to her to meet such demand.)"

It is not the case of the prosecution that explanation (b) of section 498-A of IPC is attracted. The case of the prosecution is that the accused subjected the deceased Gitabai to cruelty within the meaning of explanation (a) of section 498-A of the IPC. The prosecution is obligated to prove that the conduct of the accused was willful, and 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.

5. I have given anxious consideration to the evidence on record in the light of the submissions advanced by Shri P.R. Agrawal and the learned Additional Public Prosecutor and the reasoning of the learned Sessions Judge, and having done so, in my opinion, the prosecution has proved the offence under section 498-A of the IPC beyond reasonable doubt.

6. It is irrefutable that the acquitted co-accused Kavita was residing with the accused and Gitabai. PW 8 Mahendrakumar is the brother of the deceased and the informant. He has deposed that since 5 years prior to the incident, the deceased was perturbed due to the relationship between the accused and Kavita. PW 8 states that the deceased narrated that she was subjected to physical assault frequently. The testimony of PW 8 is substantially, if not entirely, based on information received from the deceased. However, in view of the acquittal of the accused for offence punishable under section 306 of the IPC, the verbal statements of the deceased are not admissible under section 32(1) of the Indian Evidence Act since cause of death is not in issue as regards the offence punishable under section 498-A of the IPC. It would be necessary to scrutinize the other ocular evidence on record to ascertain whether the deceased Gitabai was subjected to cruelty as is statutorily defined for the purpose of section 498-A of the IPC.

7. The prosecution has examined the son of the accused Vikas as PW 9. Vikas has deposed that Kavita was residing in the house of the accused since childhood. Her marriage was performed by the accused. She delivered a child within three months of the marriage. Vikas has deposed that the accused and Kavita were sleeping together in the house and the accused was the father of the girl child born to Kavita. After delivery of the girl child, Kavita started residing with the family of the accused, is

the deposition. Vikas has testified as to the physical assaults to which his mother Gitabai was subjected by the accused at the instigation of Kavita. Gitabai was always depressed, is the deposition. He has deposed that on 19.7.2000 the accused assaulted his mother Gitabai. The accused and Kavita went to sleep and Gitabai was weeping the whole night. The next day when Vikas returned from school at 4.00 pm, he came to know of the incident.

Few omissions are brought on record in the cross examination. However, the omissions are not proved through the Investigating Officer Mahadeo Ande (PW 11) whom the defence declined to cross examine. Be it noted, that the testimony of Vikas that the accused and Kavita were sleeping together, is not challenged. Other than giving a general suggestion, there is no serious challenge to the testimony that Geetabai was subjected to physical assault. Testimony that the accused assaulted Geetabai on 19.7.2000 and while the accused and Kavita retired to bed, the deceased Geeta was weeping the whole night, is not challenged. The suggestion that Vikas is testifying at the instance of the brother of the deceased, is denied.

8. The other material witness is PW 10 Manish. He has deposed that when he asked Gitabai, the maternal aunt of the witness, for water, accused Kavita asked Gitabai to look after her daughter. Geetabai asked Kavita to serve water to Manish, Kavita did not serve the water and went to the courtyard and talked with the accused. The accused came inside the house and started assaulting Geetabai. Geetabai sustained injury to her head and loss of tooth. It was then that Geetabai consumed poison saying that in order to avoid the day to day quarrel it is better to die. The omissions brought on record, are not proved. The core

and substratum of the testimony is not seriously challenged. The evidence that Kavita refused to serve water, had a talk with the accused and Gitabai was physically assaulted by the accused, is not challenged.

9. The prosecution is successful in proving that the accused and Kavita were in illicit relationship. The accused did perform the marriage of Kavita. However, Kavita delivered a child within 3 months of the marriage and after the delivery again started residing with the accused. The accused and Kavita were sleeping together. Nothing further needs to be established for a judicial mind to hold that the illicit relationship is established. Such brazen illicit relationship, with the other woman in the life of the husband residing in the matrimonial home, is sufficient to cause serious injury to the mental and emotional health of a woman. The evidence on record is that, the deceased Gitabai and the accused quarreled frequently. Gitabai was subjected to physical abuse, she was assaulted not only a day prior to the incident, the incident of consumption of poison occurred after over trivial issue Geetabai was physically assaulted by the accused. The conscious of this Court is satisfied, on a holistic appreciation of evidence, that the conduct of the accused was willful and was such as is likely to cause injury to the emotional health of the deceased. The willful conduct was such as is likely to drive, even a woman of normal sensitivity and sensibility to consider taking the extreme step. The learned Sessions Judge, has correctly recorded a finding that the conduct of the accused was such as is likely to drive the deceased to commit suicide. The acquittal of the accused under section 306 of the IPC, after recording the said finding, is rather inexplicable. However, since the State has not challenged the acquittal under section 306 of the IPC, I refrain from making any

further observation.

(i) The appeal is sans substance and is rejected.

(ii) The accused be taken into custody forthwith to serve the sentence. The bail bond of the accused stand cancelled.

(iii) The accused shall be entitled to set of under section 428 of the Code of Criminal Procedure.

(iv) Fees of the appointed counsel are quantified at Rs. 5,000/-

(v) Police Station Officer, Police Station Savner, District Nagpur is directed to file a compliance report in the Registry of this Court within 15 days.