

(2014) 08 BOM CK 0129

In the Bombay High Court

Case No : Criminal Revision Application No. 113 of 2001

Kabulsing

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174
Penal Code, 1860 (IPC) — Section 306, 34, 498A

Citation : (2014) ALLMR(Cri) 3671 : (2014) 3 BomCR(Cri) 618

Hon'ble Judges : V.M. Deshpande, J

Bench : Single Bench

Advocate : S.G. Ladda, Advocate for the Appellant; Pratibha Bharad, A.P.P,
Advocate for the Respondent

Final Decision : Dismissed

Judgement

V.M. Deshpande, J.—The present Revision discloses a sordid tale of young woman along with her two minor children who were required to cut short their lives, due to atrocities committed on her by the present applicant.

Munawar Khan (PW 1) at the relevant time was a police patil of village Macchindra Pardi. On 24.1.1989 he was coming from Tanda and going to his village.

A well is situated in the agricultural field bearing Survey No. 126. When he went near the said well, he saw two dead bodies of children floating inside the well. Since he was not knowing the said children, he gave call to other boys from the village, who disclosed to him that those were the children of daughter of one Nanusing, resident of his village Macchindra Pardi. Accordingly, he gave a report to the police station. The said report is at Exh. 13. In pursuance of the said report, police officer came on the spot. The police officer was taken near the well by Munawar Khan.

2. Gopinath Sarode (PW 8) was working as Police Station Officer at Mahur police

station on 24.1.1989. He took the cognizance of the report Exh. 13 by taking necessary entry in the station diary register. The said entry is at Sr. No. 14 and he registered the report as accidental death vide A.D. No. 3 of 1989 u/s 174 of the Code of Criminal Procedure and proceeded to the spot. When he reached to the spot, he saw two bodies of the children floating in the well water. Those bodies were fished out and were kept on the wooden cot. The dead bodies were identified by their grand-father Nanusing (PW 3). That time, he suspected that his daughter who was not found in the house must have died. Since that suspicion was expressed by Nanusing, Gopinath Sarode (PW 8) the police sub-inspector directed to put iron hook in the well, and accordingly it was put, to take out the dead body of Radhabai, the mother of two unfortunate children and daughter of Nanusing.

The police officer thereafter drew inquest panchanama (Exh. 7). The spot panchanama was also drawn in presence of panchas. It is at Exh. 15. The bodies were sent for their autopsy at hospital at Wai. The said fact of noticing three dead bodies and its location were informed by police officer Gopinath Sarode to the police station Mahur through the police constable B. No. 562.

3. On 25.1.1989, Gopinath Sarode had been to village Pardi for investigation of another accidental death case. That time, PW 3 Nanusing gave oral report to him against the present applicant and one Nandabai. The report was reduced into writing. Same is at Exh. 17. On the basis of the said report, an offence punishable under Sections 498A, 306 r/w 34 of the Indian Penal Code was registered against the present applicant and Nandabai vide Crime No. 13 of 1989.

PW 8 Sarode carried the investigation of Crime No. 13 of 1989 and after its completion filed the charge sheet before the court of law vide charge sheet No. 10 of 1989 on 13.3.1989.

4. Since the offence was exclusively triable by Court of Sessions, the learned Judicial Magistrate, First Class, Kinwat passed an order of committal on 22.9.1989 and case was committed in the Court of Sessions at Nanded.

The Sessions Trial No. 172 of 1989 was made over to the file of 4th Assistant Sessions Judge, Nanded. The learned trial court, after a full dressed trial, vide judgment and order of conviction, dated 8.3.1990 was pleased to convict the applicant and co-accused Nandabai for the offence punishable under Sections 498A, 306 r/w 34 of the Indian Penal Code and they were directed to suffer rigorous imprisonment for three years and to pay fine of Rs. 500/- on each count and in default to pay the fine amount, they were directed to suffer rigorous imprisonment for five months. Needless to mention, the substantive sentences were made concurrent.

5. Both the applicant and co-accused Nandabai preferred Criminal Appeal No. 22 of 1990 before the Sessions Judge at Nanded. During the pendency of the said appeal, co-accused Nandabai expired.

The learned appellate court vide judgment, dated 19.4.2001, after hearing the applicant dismissed the appeal and confirmed the judgment and order of conviction, passed against him by the learned trial court.

It is against these concurrent orders, passed by the trial court as well as the appellate court, present Revision is filed.

6. The present Revision was admitted by this court for its final hearing on 20.6.2001 and the applicant was ordered to be released on bail. On 24.7.2014 the present Revision was finally heard by this court.

7. I have heard Shri S.G. Ladda, learned counsel for the applicant and Smt. Pratibha Bharad, learned Additional Public Prosecutor for the respondent/State. Both of them made extensive submissions.

According to the learned counsel for the applicant, the prosecution has failed to prove its case beyond reasonable doubt. He submitted that looking to the quality of the evidence, as brought on record during trial, the applicant is entitled for the benefit of doubt.

He further submitted that there is a delay in lodging the first information report. According to him, though the date of the incident is 24.1.1989, the first information report is lodged on 25.1.1989, though opportunity of lodging the report on very same day was available. He further submitted that the fact of informing the incident of death by Nanusing to the present applicant clearly shows that launching of prosecution against him is an after thought.

It is further submitted by the learned counsel that both the courts below committed an error in convicting the applicant for the offences punishable u/s 498A, 306 r/w 34 of the Indian Penal Code. According to him, there is no live link in between the alleged demand and the incident. According to him, even the case of prosecution is that the alleged demand was prior to three years of their evidence. He further submitted that there was no mens rea that the deceased should commit suicide. He submitted that the evidence of the prosecution is too short so as to hold the applicant responsible for commission of suicide by Radhabai along with her two children.

He submitted that the accidental death of Radhabai and her two children cannot be ruled out completely.

With these arguments, he submitted that the Revision needs to be allowed.

8. Per contra, the learned Additional Public Prosecutor submitted that both the courts below have correctly evaluated and appreciated the evidence brought on record by the prosecution. According to her, since the applicant has failed to demonstrate any perversity or illegality in the present Revision, in the Revisional jurisdiction of this court, this court should not upset the well reasoned order of conviction and prays for dismissal.

9. It is clear from the record that death of Radhabai along with her two children

Mahendrasingh and Rajusing, aged about 6 years and 21/2 years was unnatural. The question is, whether it is suicide as stated in the prosecution case or accidental death as suggested by the applicant.

10. Admittedly, at the relevant time, deceased Radhabai was residing along with her two minor children with Nanusing (PW 3) at village Macchindra Pardi. The applicant was residing at that time at Kinwat.

The dead bodies were found in an agricultural field of one Narendrakumar Balasaheb Makhare. The said well is situated at Survey No. 126. The said well is not situated in the village. The evidence of PW 1-Munawar Khan, police patil shows that the said well is situated near the village.

The spot panchanama (Exh. 15) and the evidence of Munawar Khan as well as Chandrashekhar (PW 2), the panch to the spot panchanama show that the well was a constructed well in stones having circumference of 10 feet. From the ground, length of water was 14 feet. The spot panchanama as well as the evidence of PW 2 Chandrashekhar show that an electric motor was fitted on the said well, obviously to draw water.

11. The learned counsel for the applicant has heavily relied on the statement made by PW 2 Chandrashekhar that usually passersby go to the said well for drinking the water.

In order to buttress his point of accidental death, the counsel for the applicant also points out from the evidence of PW 3 Nanusing that on the day of the incident there was no electricity and there were no servants in that field.

Thus, according to the learned counsel the possibility of falling into the well at the time of fetching the well water cannot be ruled out. A very bold statement is made during the course of the submission and also in the memo of Revision that her both kids might have approached at her in the well noticing their mother disappearing in the well.

These submissions made by the learned counsel deserve no consideration.

Firstly, reaching to near the well, if the death is accidental one, she will be there for the purpose of drawing water. It is evident from the spot panchanama that the well is fitted with electric motor, however, it appears from the evidence of PW 3 Nanusing that on that day there was no electric supply. If really Radhabai is approaching near the well for fetching the water, she will not take her two minor children near the well while fetching the water. The mother will never allow her children, that too aged 6 years and 21/2 years, to be in a position which will be very risky. Obviously, she would put her two children at a safe distance.

Secondly, a container along with the rope ought to have been noticed inside the well if Radhabai had accidentally fell in the well. Absence of noticing any container along with the rope completely rules out the accidental death. Further if Radhabai fell slipping accidentally in the well, there was no reason to find the

dead bodies of her two children in the well. The suggestion and the stand of the learned counsel while arguing on behalf of the applicant is that noticing their mother inside the well, they must have approached towards the well and in that process they must have also found themselves in the well. The only word that is available with this court to deal with such argument is "rejection". The age of those boys was 6 years and 21/2 years. From the evidence of PW 1 Munawar Khan, it is clear that the construction of the well was upto 1 feet in height than the ground level.

12. Therefore, there is no hesitation in my mind to record a conclusion that the unnatural death of these three persons was an outcome of suicide by Radhabai.

The next question to be answered is as to whether Radhabai along with her two children was required to cut short her life due to the persistent atrocities committed on her by the present applicant and deceased accused Nandabai.

13. The applicant was married with Radhabai prior to ten years. From their wedlock, Mahendrasingh and Rajusing were born to the couple. The applicant is having his hotel at Kinwat, which was there since his father Budhasingh and after the death of Budhasingh, the applicant was carrying further the said hotel business. The applicant and his father were also going from place to place for selling sweets (Mithai) in weekly bazar yatra. Even on the date of the incident, it has come on record that the applicant had been to village Natur, District Adilabad for yatra.

Though the applicant was married with deceased Radhabai, due to his lust, he kept a concubine Nandabai. She also gave birth to one son and one daughter from the applicant.

14. According to the learned counsel for the applicant, there is no independent witness in the entire prosecution case to point out the ill-treatment to Radhabai at the hands of present applicant and accused deceased Nandabai. According to him, to prove the ill-treatment, the interested and close relations of deceased Nandabai, namely Nanusing (PW 3), Motising (PW 4) and Gulabsing (PW 7), who are father, cousin brother and real brother of Radhabai are examined by the prosecution. He submitted that the evidence of PW 5 Laxmibai needs no consideration, as recording of her statement at belated stage and she being neighbour of Nanusing, the possibility of favouring Nanusing cannot be ruled out.

15. Merely because the witnesses in the prosecution case are closely related to deceased Radhabai, their evidence does not render untrustworthy or worthless. The court, in such situation, has to be on guard while evaluating their evidence with more caution and care. Further looking to the strata from which the deceased hailed, it cannot be expected of her that she will disclose the ill-treatment caused to her to any other person than her close relatives. Nanusing, Motising and Gulabsing are the most natural witnesses to whom Radhabai will disclose the atrocity committed on her. Further there is evidence on record in the nature of PW 5 Laxmibai, who is an independent witness. This lady, though

neighbour of Nanusing, does not belong to the caste of Nanusing.

16. The evidence of the prosecution witnesses on the point of ill-treatment shows that though for first 2-3 years there was no ill-treatment to Radhabai, however, scenario appears to have been changed when co-accused Nandabai came in the matrimonial life of applicant and deceased Radhabai. The evidence shows that Radhabai used to disclose, when she used to come to her parental house, about the ill-treatment at the hands of the applicant and deceased Nandabai. The atrocity, as disclosed to Nanusing, was that, she used to be kept in confinement for 3-4 days and was not provided food. In addition to that there used to be demand of Rs. 3,000/- to Radhabai from these accused persons that Radhabai should bring the said amount from Nanusing.

17. According to the learned counsel for the applicant, there is no live link of alleged demand and the date of the incident. According to him, the evidence of the prosecution witnesses was recorded on 19.2.1990 and 20.2.1990. He submitted that from the evidence of the prosecution witnesses, it is clear that the demand was prior to three years and since the date of the incident is 24.1.1989, there is no live link.

The persistent demand and atrocity on account of non-fulfillment of the demand cannot be evaluated by an arithmetical calculation. Therefore, the submission of the learned counsel needs no favourable consideration on that aspect.

The reason for demand of Rs. 3,000/- was for expansion of hotel business as disclosed by Radhabai to her father and brother. The cause for demand, as disclosed by Radhabai, does not appear to be unnatural.

18. The evidence of the prosecution witnesses shows that from Diwali festival to Makar Sankrant, deceased along with her two children was required to stay at her parents house. The duration speaks volumes. No married woman, without there being any reason and/or cause, will stay at her parental house for such a long time. In our society, the married woman always prefer to stay with her husband at her matrimonial house, because that is her abode. Long stay at parental house clearly shows and suggests that due to the ill-treatment Radhabai was forced to live with Nanusing, as appearing in the evidence, is substantially cemented. Further, the evidence of Motising (PW 4), who is cousin and stays with Nanusing, shows that when Radhabai had been to her parental house for Diwali festival, she disclosed about the demand of Rs. 3,000/- for hotel business and that is the reason for her ill-treatment. It was informed to Radhabai that due to paucity of funds they were unable to fulfill the demand of the applicant and thereafter she returned to her matrimonial house, is the evidence of Motising.

19. Laxmibai (PW 5), an independent witness, has also narrated in her evidence about the disclosure of ill-treatment to her by Radhabai. This witness is neighbour of Nanusing. From her evidence also it is clear that from Diwali of 1988 till Makar Sankrant of 1989, Radhabai had been to her parental house. It appears that Radhabai was not having mother, as there is no reference of her

mother in the prosecution case. Therefore, the disclosure of ill-treatment at the hands of the applicant and the co-accused Nandabai by Radhabai to Laxmibai is most natural.

20. According to the learned counsel for the applicant, from the evidence of PW 3 Nanusing and PW 4 Motising, it is clear that when Radhabai had been to her parental house in between Diwali and Makar Sankrant, she received a letter from the applicant and after reading the said letter, the said letter was burnt by Radhabai.

21. According to the learned counsel for the applicant, Nanusing has admitted in his cross-examination that after the receipt of the said letter Radhabai told him that she is willing to go to the house of her husband, and in fact, after the Makar Sankrant she left her parental house. The evidence of Motising shows that new clothes were purchased for Radhabai and her children when she left for her matrimonial house. What was written in the said letter is not known, since that letter was destroyed by Radhabai herself and the contents were not disclosed to any of the prosecution witnesses, however, the letter must have recited something which forced Radhabai to leave parental house immediately. The purchase of new clothes for Radhabai and her children, as appearing in the evidence of Motising, is insignificant. It is the tradition of Hindu Society, when a married woman is leaving her parental house, that time new clothes are given to the daughter and the grand children.

22. If really for good cause the applicant and Nandabai called Radhabai by sending a letter, she must not have returned back immediately after 2-4 days.

It is worth to mention at this stage that Radhabai along with her two children were not sent alone, but Gulabsing (PW 6) was sent along with them. His evidence would disclose that when they reached to the house of the applicant, the applicant did not allow them to enter the house, still Radhabai resided in the house. Gulabsing returned to his house on the next day.

From the evidence of Gulabsing, it is clear that Radhabai along with her children were definitely not welcomed at her matrimonial house. The learned counsel tried to demolish the evidence of this witness on the ground of his age. From the evidence, it appears that the age of this witness was 13 years. In such age, it is not impossible to notice and understand that his sister is not allowed to enter her matrimonial house. Therefore, merely because the age of the witness is 13 years, his evidence cannot be discarded.

23. There is consistency in the evidence of Nanusing, Motising, Gulabsing and Laxmibai that after Radhabai reached to her matrimonial house on receipt of the letter after Makar Sankrant, immediately after 2-4 days she again returned to her parental house. This fact substantiates the prosecution evidence of Gulabsing that at the time when they reached to Kinwat at applicant's place, the applicant did not allow them to enter in the house, still some how Radhabai made her entry.

24. After that last return, there is consistency in the evidence of all the prosecution witness that she was forced to leave her matrimonial house. In fact, the evidence of Motising, which remained unshaken in his cross-examination shows that even for that short period of 2-4 days, the applicant and co-accused confined Radhabai in one room and did not provide any food and beat her and she was driven away from her matrimonial house and also the threat was given to her that she should not come again to the house. In the evidence of Motising, following is appearing after her return for last time in her life:-

She said us why I should live alive. She was disturbed in condition due to misbehaviour by the accused.

This material piece of evidence has remained unshaken.

25. The court can take judicial notice that Makar Sankrant always fall on 14th of January every year. The date of the incident is 24.1.1989. Therefore, it is very clear from the evidence of the prosecution that there is proximity of commission of suicide due to ill-treatment and atrocity which Radhabai was suffering.

26. It is nobody's case that Radhabai was suffering from any physical disability forcing her to end her life. On the contrary, in the evidence of Laxmibai in the cross-examination following admission is brought on record.

Radhabai and her children were keeping health well prior to their death.

27. In the evidence of Nanusing, it is brought on record in the cross-examination that he owns agricultural field of 10-15 acres of land, though it is a dry land, he appears to have substantial agricultural land, which must have been the reason in the mind of the applicant Kabulsingh to demand money for expansion of his hotel business from his father-in-law. Further, from the evidence of Nanusing by way of cross-examination it is brought on record that the hotel business of the applicant was doing average. Thus, it appears that the demand of Rs. 3,000/- for extension of hotel business and atrocity on her for non-fulfillment of the said demand, as disclosed to the prosecution witness by Radhabai, as claimed by them in the evidence, cannot be termed as mere imagination, as sought to be put forth by the learned counsel for the applicant.

28. The mother will always try to protect her children. It will not be in the wildest dream of any mother that her progeny is in trouble. The ill-treatment suffered by Radhabai must be of highest degree, because for trivial wear and tear in the matrimonial life would never allow a mother to put an end to two budding lives along with her. This aspect clearly shows and suggests that the nature of the atrocity like beating, confining Radhabai for days together in one room and putting her on starvation is not exaggeration and imagination on the part of the prosecution witnesses.

The time lag between the atrocity, which the deceased was suffering continuously since last three years, clearly shows that the applicant and deceased accused were responsible to render the life of Radhabai in such a

miserable situation, forcing her to put to end of her life by committing suicide. Hence, in my view, the prosecution has successfully proved its case beyond all reasonable doubt.

29. One of the limb of submission of the learned counsel for the applicant is that, there is delay in lodging the first information report. According to the learned counsel, though the opportunity was available, the first informant Nanusing (PW 3) lost the first available opportunity to report the matter to the police when the police officer PW 8 Gopinath Sarode was present on the spot on 24.1.1989.

True, on 24.1.1989 Nanusing was present on the spot when the bodies were fished out and PW 8 Gopinath was supervising the said work of fishing out the bodies.

Technically, learned counsel is right in making submission that it was the first opportunity available to Nanusing (PW 3) to report about the atrocities committed by the applicant and the co-accused upon her daughter deceased Radhabai.

However, this court is of the view that merely because on 24.1.1989, though opportunity was available to Nanusing, he failed to report the matter to police as stated by him in his first information report, that by itself does not render the prosecution case as untruthful.

One has to visualise the mental condition of first informant Nanusing at the relevant time on 24.1.1989. In his presence, three bodies namely of his daughter and two minor children were fished out. He was required to witness the lying of three dead bodies at once. After witnessing the dead body of his daughter and not only that, but lying of the bodies of his two grand children in front of him, obviously ought to have made very great psychological and mental trauma on him and he was required to undergo the said trauma. Therefore, merely because, at that particular point of time the matter is not reported by Nanusing, that does not mean that on the next day Nanusing was reporting falsehood. Therefore, lodging of the first information report on the next day, in my view, in any way does not create any doubt in the prosecution case.

30. Another argument that was submitted by the learned counsel was that after the bodies were fished out, Nanusing had sent the information to the applicant informing about the death. According to the learned counsel, this fact itself demonstrates that the relations between Kabulsingh and his deceased wife were cordial, and subsequently Nanusing has cooked up a false case against him. The said submission is unacceptable.

In Hindu society, it is one of the etiquettes to inform the factum of death to his/her nearest relatives. Applicant Kabulsingh being the husband and the father of unfortunate persons was one of the nearest relatives. Therefore, merely because Nanusing has shown the courtesy to adhere with the custom and etiquettes of transmitting the information, that does not mean that his daughter was not

subjected to the cruelty at the hands of the present applicant.

31. Both the courts below, in my view, have not committed any error of law in recording the finding of guilt against the present applicant and sentencing the applicant to serve the jail sentence of three years.

32. Hence, I pass following order.

ORDER

(i) The judgment and order of conviction passed by the learned trial court as well as the appellate court against the applicant are confirmed.

(ii) The applicant shall surrender to his bail bonds immediately, else it is directed that the court below shall take immediate steps for serving the jail sentence awarded to the applicant.

(iii) Revision dismissed.

(iv) Rule discharged.