
(2016) 08 BOM CK 0165

In the Bombay High Court

Case No : Criminal Revision Application No. 34 of 2004

Kamlakar S/o Keshavrao Joshi

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:

Evidence Act, 1872 — Section 113A

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

Citation : (2017) 1 AIRBomRCri 94 : (2017) ALLMRCri 2245

Hon'ble Judges : N.W. Sambre, J.

Bench : Single Bench

Advocate : Mr. K.M. Babhulgaonkar, Advocate, for the Applicant; Mr. R.V. Dasalkar, A.P.P, for the Respondent/State; Mr. Girish K. Naik Thigle, Advocate, for the Respondent Nos. 2 to 4

Final Decision : Dismissed

Judgement

N.W. Sambre, J. (Oral) - Heard.

2. In Sessions Case No. 93 of 2002, the respondents/accused were acquitted of the offences punishable under section 498A, 306 r/w. 34 of the Indian Penal Code by the learned II Adhoc Additional Sessions Judge, Beed vide judgment and order dated 21/11/2003. As such, this revision by the complainant seeking remand.

3. Shri Babhulgaonkar, learned counsel for the applicant while trying to make out case for remand, would urge that the presumption under section 113A of the Indian Evidence Act, is required to be considered, as the incident in question has occurred on 9/4/2002, resulting into suicide by the wife of accused no.1 Avinash within 7 years from the date of marriage, which is 7/6/1995.

4. Apart from above, Advocate Shri Babhulgaonkar would urge that the contents of the suicide note exhibit 56 confirms the only conclusion that the cause of death of deceased Madhuri is the cruelty attributed by the respondents accused

for demand of dowry, which has prompted the victim to commit suicide. He would then submit that the evidence of PW1 - Prabhawati and PW2 - Kamlakar, the complainant is disbelieved by the Court below incorrectly and if the cumulative effect is given, there is strong case for conviction of the respondents/accused. According to him, therefore, the matter needs to be remanded.

5. Learned A.P.P. supported the learned counsel for the applicant/complainant and submits that the acquittal ought not have been ordered in the matter by the learned Additional Sessions Judge.

6. Shri G.K. Naik Thigale, learned counsel for the respondent nos.2 to 4/accused persons would submit that the acquittal, as is ordered, is based on the testimony of the witnesses, who were examined by the prosecution and the other documentary evidence. According to him, even if the suicide note which is relied on by the complainant at exhibit 56 does not attribute any criminal intention to the accused persons. He would then urge that the cause for deceased Madhuri, wife of accused no.1 - Avinash, to commit suicide, is her medical problem, for which, she was under treatment since long and was unable to conceive for the second time. According to him, the material available on record depicts that there was cordial atmosphere at the house of the accused persons, where deceased Madhuri was cohabiting with accused - Avinash. According to him, the revision needs to be rejected.

7. With the assistance of the respective learned counsel, I have perused the original record in the matter. The prosecution story, as appears from the contents of the FIR and other investigation papers, is that deceased Madhuri, daughter of PW1 - Prabhawati and PW2 - Kamlakar was married to accused no.1 - Avinash on 7/6/1995.

8. Thereafter, it appears that she was having some gynecological problem and was under treatment and as such, gave birth to a female child in September, 2000. After the birth of the child in 2000, Madhuri committed suicide by leaving behind suicide note exhibit 56 on 9/4/2002. Exhibit 56 suicide note was addressed to her husband i.e. the accused no.1, wherein she has not attributed a specific role to each of the accused in the commission of crime.

9. So far as accusation against the present respondents are concerned, charge came to be framed against them at Exhibit 9.

10. In support of the prosecution case, Prabhawati PW1, mother of Madhuri examined at Exhibit 16, Kamlakar, father of deceased Madhuri - informant is examined at Exhibit 24. PW3 Asaram at Exhibit 42, ASI - Shivaji Dhas examined at Exhibit 45 and handwriting expert - Parshuram Dhotre is examined at Exhibit 53, Investigating Officer PSI Shere is examined at Exhibit 67. In addition to exhibit 25, the complaint, inquest panchanama at Exhibit 43, the information tendered by accused - Balsaheb at Exhibit 46, seizure panchanama of inland letter exhibit 47, report of handwriting expert at exhibit 54, postmortem note exhibit 48, inland letters at exhibit 26. Exhibit 27 to exhibit 40 the letters written

by PW1 - Prabhawati to accused persons and deceased Madhuri.

11. While trying the case for conviction for the offences punishable under section 498A and 306 of the Indian Penal Code, it is required to be first find out, as to whether cruelty was practised on deceased Madhuri by accused persons or not and whether such cruelty was of such a gravity, which had driven Madhuri to commit suicide by causing danger to her life.

12. Apart from above, suicidal death and the abetment by the present respondents/accused persons or such act of cruelty practised by respondents/accused persons to drive Madhuri to commit suicide, is required to be appreciated from the material on record.

13. Panch witness - Asaram has proved the spot panchanama and the recovery of material, such as match stick box, burn pieces of the clothes. Initially, the accidental death case came to be registered in the crime and the investigation was set in motion. The scene of the offence is the matrimonial house of deceased Madhuri, where she used to reside with the accused persons. It is not in dispute that deceased Madhuri has died of 100% burns. The cause of death, as is stated in the postmortem report Exhibit 48 speaks of superficial to deep 100% burns and deep burns over the left thigh present. She died of cardio respiratory arrest due to superficial to deep 100% burns. As such, it was established by the prosecution that Madhuri has committed suicide by pouring kerosene on herself.

14. So as to find out whether deceased - Madhuri was subjected to cruelty or the accused persons have meted out any cruelty to Madhuri, the evidence of PW1 - Prabhawati and PW2 Kamlakar is required to be appreciated.

15. Before discussing the same, it is to be noted that the inland letter Exhibit 26 was noticed to have been written by deceased - Madhuri to her father and the said letter at Exhibit 26, suicide note Exhibit 56 a diary written by Madhuri was also sent for the opinion of handwriting expert and the opinion given by the handwriting expert speaks that the letter and the diary, both were written by the same person.

16. It is to be noted that PW1 and PW2 are the parents of deceased Madhuri, who have deposed that after the marriage in 1995, deceased Madhuri was treated well initially for six months. It is then claimed that an atmosphere was created that accused Avinash was having offers from about 34 persons with offer of dowry of Rs.23 Lakhs, however, Madhuri was subjected to cruelty for not fulfilling the demand of dowry. If the evidence of PW1 Prabhawati to that effect is appreciated, in which she has admitted that she cannot tell, as to when for the first time, she came to know about the demand of dowry made by the accused persons. It is also brought on record that there was no personal talk between these witnesses with the accused persons qua the payment of such dowry amount. Rather, the witness Prabhawati has admitted that accused persons never complained about any dowry issue to her and she never talked or discussed about the said issue with the accused persons.

17. So far as the evidence of PW2 - Kamlakar is concerned, he has also admitted that he has never talk with the accused persons as regards their complaint about dowry. It is then required to be noted that the complainant/Kamlakar and Prabhawati and family members of deceased Madhuri and herself visited the places of each other number of times and the atmosphere, as is reflected, as could be noted from the letters which were recovered vide exhibit 26 to 40 speaks of a very congenial atmosphere in between the parties. It is then to be noted that the fact remains that Madhuri used to frequently visit her parental house and while exchanging the letters, also, at no point of time, orally or in writing, she communicated about the cruelty based on the non-fulfilment of demand of dowry. It is then to be noted that Madhuri was having some gynecological problem and was required to be under treatment of the Doctors at Beed so also at Aurangabad. It is required to be noted that accused - Avinash, at times, used to accompany Madhuri to her parental house at Aurangabad for the treatment purpose and even at that point also, complainant or his wife never raised an issue as regards the cruelty meted out to their daughter.

18. The delivery of Madhuri after about 45 years from her date of marriage and the celebration to that effect, as is reflected in the evidence of both these witnesses, speaks of manner and mode in which Madhuri was treated by the accused persons. It will not be out of place to mention that Madhuri, a Science Graduate was well versed with the communication skills and as such absence of any opportunity to communicate, Madhuri could not have informed about the cruelty meted out by the accused persons to her, to her parents, is out of question.

19. The other issue, as regards the demand of amount of Rs.1,50,000/- for the purpose of construction of house made by the accused persons, it is required to be noted that accused no.2 Balsaheb was retired from the Government service as a Live Stock Officer and received about Rs.6 Lakhs as his retirement benefits. During the evidence, it is brought on record that certain amount was put into fixed deposit in the name of deceased Madhuri by the accused persons. Apart from above, it is in the year 1998, or even prior to that, two storied house was already constructed by all the accused persons and the fact remains that the family of accused persons consist of only 4 persons including that of Madhuri and as such, the demand of dowry for the purpose of construction of house and the financial instability of the accused persons, if required to be assessed from the evidence, the prosecution story to that effect, in my opinion, is required to be disbelieved and is rightly disbelieved by the learned Additional Sessions Judge.

20. This takes me to the further consideration as regards the suicide note left by the deceased Madhuri which is at Exhibit 56. The plain reading of the said document, which is written on April 9, 2002 gives an feeling that the same was written out of frustration by the deceased. It is to be noted that in the background of the fact that the medical problem faced by deceased - Madhuri, her attempt to become a mother for the second time and the fact that she was

required to undertake the medical aid time and again for that purpose, perhaps, is the cause for frustration, which has prompted her to take the extreme step of committing suicide. It is then to be noted that it was not brought on record during the evidence that any cruelty was practised on deceased Madhuri for demand of dowry and such cruelty was of such a high gravity, which has prompted her to commit suicide. Rather, it could be inferred from the record that the offence under section 498A of the Indian Penal Code was at all not proved.

21. The next charge, which is required to be faced by the respondents/accused, is in relation to section 306 of the Indian Penal Code. Once it is brought to my notice that deceased Madhuri was not subjected to cruelty and the atmosphere at home was rather healthy and the important background of the story that deceased Madhuri was required to undertake medical aid/treatment for the major gynecological issue, has prompted her to commit suicide, in any case, cannot be stretched to the extent of the offence punishable under section 306 of the Indian Penal Code. The day on which deceased Madhuri committed suicide, if it is to be assessed in the background of the prosecution story, the accused no.1 Avinash on the said day, had gone to his bank for duty purpose, accused no.2 Balsaheb and accused no.3 Sushilabai went to the place of brother-in-law Kalyanrao for certain celebration and it is at that point of time, at around 3.00 pm, a call was received by one Mr. Joshi, informing him about some serious issue and calling him to be at his place. All this eventuality depicts that no inference could be drawn qua the attempt on the part of the accused persons to drive deceased Madhuri to commit suicide.

22. So far as the presumption under section 113A of the Indian Evidence Act is concerned, it is required to be noted that the marriage of deceased with accused Avinash took place on 7/6/1995, whereas Madhuri died on 9/4/2002. The death is within the period of 7 years from the date of the marriage. Once it is held that Madhuri has committed suicide and the offence punishable under section 498A of the Indian Penal Code was not proved as against the accused persons, in my opinion, the presumption, as to the abetment of suicide under section 113A of the Indian Evidence Act, is not available and is rightly held so by the learned Additional Sessions Judge.

23. As such, no case for consideration in the revisional jurisdiction of this Court, is made out. The revision as such fails and is rejected. Rule stands discharged.