
(1989) 04 BOM CK 0003
In the Bombay High Court
Case No : Criminal Appeal No. 7 of 1986

Khushal

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 25-04-1989

Acts Referred:

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

Citation : (1989) 91 BOMLR 801 : (1990) 1 DMC 75

Hon'ble Judges : M.S. Ratnaparkhi, J

Bench : Single Bench

Advocate : S.G. Ghate, for the Appellant; A.S. Giradkar, Assistant Public Prosecutor, for the Respondent

Judgement

M.S. Ratnaparkhi, J.—The order of conviction and sentence recorded by the Additional Sessions Judge, Chandrapur, on 19-12-85 in Sessions Trial No. 114/84, convicting the accused No. 1 (present appellant) for the offence punishable u/s 498-A of Indian Penal Code and sentencing him to suffering rigorous imprisonment for 6 months and fine of Rs. 200/- or in default further rigorous imprisonment for two months, has been challenged in this appeal.

2. The present appellant along with his father and mother were prosecuted for the offence punishable u/s 306 and 498-A of Indian Penal Code. According to the prosecution, the deceased Antkala @ Suman was married to the present appellant. The appellant along with his wife (the deceased), father Maroti (original accused No. 2) and mother Bhiwarabai (original accused No. 3) were staying under the same shelter, It is the case of the prosecution that the accused No. 1 (present appellant) at the instance of accused Nos. 2 and 3 used-to ill-treat and harass his wife, so much so, that she was forced to commit suicide. It is the case of the prosecution that on 20th September 1984, the deceased Antkala left the house and she never returned back. In the evening of 21st September 1984, the body of one female was found floating in the tank of Bhagwanpur. It was taken out and it was identified to be the dead body of

Antkala @ Suman. The matter was reported to the Police Station. The offence came to be registered. On due investigation, accused, including the present appellant came to be charged for the offence punishable u/s 306 and 498A of Indian Penal Code.

3. Charge under Sections 306 and 498 Indian Penal Code came to be framed against all the three accused who pleaded not guilty to the same and claimed to be tried. Their defence was purely of denial.

4. The learned Additional Sessions Judge, Chandrapur, on trial appreciated the evidence that was produced by the prosecution. The learned Additional Sessions Judge found that Antkala @ Suman committed suicide. He, however, negated the case of the prosecution that accused Nos. 1 to 3 (including the present appellant) abetted the commission of suicide by her. The learned Additional Sessions Judge found that accused No. 1 being the husband of the deceased subjected her to cruelty. On this reasoning the accused No. 1 present appellant has been held guilty of the offence punishable u/s 498A of Indian Penal Code. The learned Additional Sessions Judge found the accused Nos. 2 and 3 not guilty of the offence punishable u/s 498A of Indian Penal Code. The accused Nos. 2 and 3, therefore, came to be acquitted of all the charges levelled against; him. Accused No. 1 (present appellant) was acquitted of the charge u/s 306 of Indian Penal Code. He has, however, been convicted of an offence punishable u/s 498A and has been sentenced to term detailed in the opening paragraph of this judgment.

5. Feeling aggrieved with this order of conviction and sentence, the appellant came up in appeal. Mr. Ghate, the learned counsel for the appellant strenuously urged before me that the finding of the learned Additional Sessions Judge that the death of Antkala @ Suman was suicidal, was not only wrong, but perverse as it is not based on any evidence that has been brought on record. Mr. Ghate took me extensively through the evidence led by the prosecution the undisputed facts which emerged from the record are that the deceased was married to the present appellant. On the morning of 20th September 1984, the deceased left the house, that she never returned back thereafter and lastly that on the evening of 21st September 1984, her dead body was found floating in the tank of Bhagwanpur. There is no much dispute at this stage that the tank where her dead body was found is about 3 miles away from the residential place of the deceased. There is also no much dispute regarding the fact that the deceased Antkala used to work on the fields of others and earn daily wages. In fact, the whole family of the appellant was the earning family and they used to go to different villages, work there and get the wages.

6. As a background, the prosecution has led the evidence to show that the appellant used to beat Antkala at times cruelly. We have the evidence of PW 1 (the mother of the deceased) to the effect that when Antkala came to her at the time of Pola preceding the date of incident, she reported that she was being ill-treated by her husband and in-laws. Except for this vague evidence, there is

nothing to corroborate that.

7. It will, therefore, be necessary to consider whether Antkala @ Suman met with suicidal death. As already pointed out, Antkala left the house in the morning of 20th September, 1984 and it is only in the evening of 21st that her dead body was found floating in the tank. The body was taken out and the inquest was made. The body was then sent for post mortem. The doctor (as is evident from the post mortem report Exhibit : 17) found the dead body in a highly decomposed state. So much so, that he could not give any probable cause of death, as the body was in advanced state of decomposition. The Viscera was preserved for Chemical Analysis, but it was never sent. The condition of the body could be found from the other notings made by the doctor during the course of post mortem In column 5 of the post mortem, the doctor has noted that the cause of death was not known. The body was wet with water. It appeared well nourished. There was a foul smell emitting. The abdomen was floated and it had a greenish black colour. There was discolouration of the whole body and peeling of the cuticle. There were maggots all over the body. There were few blisters on the right hand. Tongue was protruding out. Eyes were popping out. There was pilling of cuticle from almost all parts of the body which was the sign of advanced decomposition. These signs according to the doctor were all post mortem. Brain was totally liquified, plura was congested, little froth was seen in trachea, heart was flabby. Liver was decomposed. It is because of this condition of the body that doctor was unable to express any opinion about the cause of death. This is a case where there is no eye-witness. Medical evidence is unable to show the actual cause of death. There is no other evidence on record to show any other cause of death. On the other hand, suggestion has been made during the course of argument that the deceased was murdered and then the dead body was thrown into the tank. This is not only during the course of the argument that this suggestion came, but while PW 1 (the mother of the deceased) was in the witness box, she expressed this doubt even during her examination in chief. At the end of para 2 of her deposition, she states that the deceased was murdered and her dead body must have been thrown into the tank. She also states that her daughter would never go to commit suicide and that too at such a long distance of about 3 miles away from her residence, This shows the confidence the mother has in her daughter.

8. It is on the background of these circumstances that the learned Sessions Judge was called upon to find out whether it was a case of suicidal death and only suicidal death. The learned Additional Sessions Judge has recorded a positive finding that Antkala @ Suman committed suicide. In para 6 of his judgment, the learned Judge relied on some circumstantial evidence. The first circumstantial evidence was that, according to the inquest panchanama the tongue had come out little bit and the teeth were pressed into the tongue. According to the learned Additional Sessions Judge, these symptoms are not generally found in a suicide by drowning. The learned Judge found that the stomach of the deceased was bulging. Another circumstance which the learned

Judge found was that the face of the body towards the water, and therefore, it was a case of suicide. Argument was advanced before the learned Judge that this was a case of murder and then throwing the dead body into the water. On these circumstances, the learned Judge found that it was a case of suicide by drowning. He also referred to Medical Jurisprudence by Modi, 14th edition at page 181, wherein the learned author observed :

"The face is pale, the eyes are half open or closed, the conjunctives are congested, and the pupils are dilated. The tongue is swollen and sometimes protruded".

Thus, according to the learned Judge, these are the external symptoms of death by drowning. The learned Judge relied on these observations and has come to the positive conclusion that the death of the deceased was suicidal.

9. Mr. Ghate, the learned advocate for the appellant strenuously urged before me that the learned Judge has committed an error in arriving at this conclusion. What Mr. Ghate urged before me was that, these symptoms which have been relied upon by the Trial Judge were also before the Medical Officer when he conducted the post mortem. The doctor was definitely an expert in the field and inspite of finding these symptoms, the doctor did not express any opinion whether it was a case of suicide or that it was a case of death by drowning. There appears to be a considerable substance in what Mr. Ghate says. All these symptoms which were found by the learned Additional Sessions Judge were also before the Doctor who conducted the post mortem. He also found the eyes half open, abdomen dilated, the tongue swollen or protruded. As a matter of fact, the Doctor being an expert, he could have easily expressed his opinion. But the doctor did not express any opinion whether the death was a suicidal or homicidal. The learned Additional Sessions Judge has trodded into the arena of expert and he has arrived at an inference that these external symptoms convey the suicidal death. According to me the learned Additional Sessions Judge has erred in arriving on this conclusion, particularly when the expert also could not express any opinion about the cause of death. The body was so highly decomposed that the doctor could not even find that there were any injuries on the body.

10. It appears that the learned Additional Sessions Judge was much impressed with the oral testimony of PW 1, PW 3 and PW 4 who deposed that prior to the incident, the appellant used to beat his wife and this ill-treatment forced her to commit the suicide as she had no other alternative. As a matter of fact, the evidence as it stands is impotent enough to lead to the conclusion that the harassment was so strong that the wife was forced to end her life. On the other hand, taking the evidence of PW 1 at its face value, the deceased was with her mother near about Pola which was hardly some days prior to the date of the incident. Only a short time intervened between her visit to her mother and her death. But she never disclosed before her mother the agonies in the sense that she was harassed or cruelly treated to such an extent that she found life

impossible. Even PW 4 deposed before the Court that when she came to the village near about Pola she disclosed about the intensity of ill-treatment so much so that she harboured a feeling that her husband would kill her. But even at that stage she never expressed that she will end her own life. There is a difference between the suicidal death and homicidal death. She was expecting the end to her life at the hands of her husband. But she never made up her mind to end her own life. Thus, the evidence standing as it is, does not corroborate the theory of suicidal death.

11. The Trial Court has held that the death of Suman was a suicidal death and it is only on this assumption that he went on to apply Section 498-A Indian Penal Code. The reproduction of Section 498-A will be necessary. It reads as follows :

"Whoever, being the husband or the relative of the husband of a woman, subject 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 purposes 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".

(Reproduction of Clause (b) is not necessary for our purpose, because prosecution has not come with a case covered by Clause (b).

Thus for justification of a conviction u/s 498A of the Indian Penal Code, the prosecution has to establish not only the cruelty, but it has to establish a wilful conduct of such a nature which is likely to drive the woman to commit suicide or to cause grave injury or danger to life or limb or health. What the section contemplates is that, the woman (who is subjected cruelty) must drive herself to the death or injury or danger to life, limb or health. The cause of driving oneself to this consequence is the cruelty of the conduct meted out to her.

12. Thus, the main ingredient of Section 498A is the proof of suicide or a death, the author of which is the deceased himself. If the death is attributed to someone else other than the deceased, the offence cannot be covered by Section 498A. It may fall u/s 302 or such allied sections. What the prosecution has positively to prove for establishing an offence u/s 498A Indian Penal Code is that, the deceased herself or himself was the author of the same.

13. Can it be said with any degree of certainty that Antkala @ Suman was the author of her own death, in the sense that she herself jumped into the tank. To repeat it once again, the doctor has not been able to tell positively about the cause of death. The learned Additional Sessions Judge, has drawn the inference which an expert could not draw. There is one more interesting circumstance in this case. The post mortem report has been exhibited because the accused had no objection to exhibit it. It was admitted u/s 294 of Criminal Procedure Code. Thus, the admission of the document conveys that the document contains such

and such things and it contains such and such information. The doctor found some external as well as internal symptoms and these symptoms could not permit him to give any express opinion about the cause of death. The accused has admitted this part while not objecting to the exhibition of Exhibit : 17. It was still open for the prosecution to lead appropriate evidence to establish the cause of death. Even the learned Additional Sessions Judge has relied upon some external symptoms for coming to the conclusion that the death is suicidal. An expert could have been examined to establish that and the accused could have got an opportunity to cross-examine the witness. This has to be considered on other background also. It is in the testimony of PW 1 herself that she harboured a suspicion that her daughter was murdered and then was thrown into the tank. It was also the suggestion put during the course of cross-examination on behalf of the accused. In spite of this, the prosecution did not find it necessary to clarify the matter by examining an expert.

14. In these circumstances, I find myself unable to agree with the learned Additional Sessions Judge in his findings that the death was suicidal. In fact, there is no positive evidence coming on record which could lead to the unfettered conclusion that the death is suicidal and the suicidal only. The offence u/s 498A Indian Penal Code can be committed only when the death is suicidal and not otherwise. If the death is homicidal, there can be no offence u/s 498A of Indian Penal Code. This is exactly the error that has been crept into the judgment of the Trial Court.

15. Thus, disagreeing with the learned Additional Sessions Judge, I hold that there is no proof leading to the inescapable conclusion that the death of Antkala was suicidal and suicidal only. In view of this, I find myself unable with the finding of the trial court that the death of Antkala was suicidal. As a result, I find myself unable to contribute to the findings of the learned trial court that the accused is guilty of the offence punishable u/s 498A. In result, the appeal succeeds. The order of conviction and sentence imposed by the Trial Court on the appellant is hereby quashed and the appellant is directed to be acquitted forthwith of all the charges levelled against him. His bail bond shall stand cancelled. Fine if paid be refunded to the accused.