
(2012) 04 BOM CK 0056
In the Bombay High Court
Case No : Criminal Appeal No. 284 of 2001

Krishna Shinde

APPELLANT

Vs

The State of Maharashtra, (Copy to be served on the Public
Prosecutor, High Court Bench at Aurangabad

RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, 306, 34, 498A

Citation : (2012) BomCR(Cri) 289

Hon'ble Judges : S.S. Jadhav, J

Bench : Single Bench

Advocate : R.M. Deshmukh, for the Appellant; K.S. Patil, APP, for the Respondent

Final Decision : Allowed

Judgement

S.S. Jadhav, J.—The appellant herein was the original accused no.1 in Sessions Case No. 11/1997, decided by the Additional Sessions Judge, Beed. The present appellant was tried along with two other accused i.e. the father of the present appellant Sudam s/o Baburao Shinde and mother of the appellant namely Kusum Sudam Shinde. All the accused were tried for the offences punishable u/s 498-A, 306, 304B r/w Section 34 of the Indian Penal Code. The additional Sessions Judge, Beed by a judgment and order dated 26.6.2001 was pleased to acquit all the accused for the offences punishable u/s 304B and 306 r/w 34 of Indian Penal Code. The original accused nos. 2 and 3 were also acquitted for the offence punishable u/s 498-A of the Indian Penal Code. However, the accused No. 1 Krishna i.e. present appellant is convicted for the offence p/u/s 498-A of Indian Penal Code and is sentenced to undergo R.I. for two years and to pay a fine of Rs. 2,000/-, in default to undergo further R.I. for six months. Being aggrieved by the said judgment and order, the appellant herein has preferred the present appeal. The case of the prosecution in a nutshell is as follows :-

The present appellant was married to Chhaya sometime in the year 1996. The couple is blessed with one son and a daughter. On 21.8.1996, Chhaya was

admitted in Civil Hospital, Beed as she had sustained burn injuries. The parents were informed immediately and then reached the hospital on the next day. That, the statement of Chhaya was recorded in the Civil Hospital by the police at 11.20 a.m. Said statement is at Exh.77. In the said statement Chhaya disclosed that, on 21.8.1996 in the morning at about 06.00 a.m. the lamp which was placed on the T.V. table fell upon her. She was wearing a nylon sari at that time. Sari caught fire and she sustained burns. She had latched the door from inside and therefore, the outsiders could not enter the room immediately. Thereafter, she unlocked the latch and her mother-in-law and father-in-law took her to Talwada hospital and thereafter, for better treatment she was admitted in Civil Hospital, Beed.

2. The statement of Chhaya was also recorded by the Judicial Magistrate, Beed on the same day. Said statement is at Exh.75/C. In the said statement also she has narrated the history of accidental burns. Chhaya succumbed to the burn injuries on 25.8.1996.

3. Mandodari Nimbalkar, the mother of the deceased Chhaya lodged a report at police station, Beed on 26.8.1996. In the said report, Mandodari alleged that, at the time of marriage of Chhaya, the dowry was settled at Rs.11,000/-and Rs.9,000/-were paid to the husband of Chhaya. However, when Chhaya returned to her maternal house after six months of marriage, she had disclosed to her mother that she was being harassed and ill-treated on account of non-payment of remainder of the dowry i.e. Rs. 2,000/-. She had further alleged that on 21.8.1996 at about 9.00 p.m. she was informed that Chhaya had sustained 82% burns and is admitted in the Civil Hospital, Beed. She, therefore, visited the Civil Hospital, Beed and saw that Chhaya was severely burnt. She inquired to her about the incident and at that time, her daughter disclosed that her father-in-law, mother-in-law and her husband were harassing her on account of non payment of remainder of the dowry. She was fed up of the said ill-treatment and therefore, she attempted to commit suicide by setting herself ablaze. On the basis of the said report, Crime bearing No. 239/1996 was registered against the accused for the offences p/u/s 498-A and 306 r/w 34 of Indian Penal Code.

4. The accused nos. 1 and 2 were arrested on 28.8.1996. The investigation was completed and charge sheet was filed on 28.9.1996. The case was committed to the Court of Sessions and registered as Sessions Case No. 11/1997. The prosecution examined in all eight witnesses to bring home the guilt of the accused. The accused had examined two defence witnesses, who have recorded the Dying Declaration at Exh.75 and 77.

5. PW 2 Mandodari Nimbalkar is the mother of deceased Chhaya. According to her, dowry was settled at Rs. 11,000/-, however, an amount of Rs.2,000/-was due to be paid. After 4 to 6 months of marriage, Chhaya had disclosed to her mother that she was being harassed on account of non payment of remainder of the amount. PW 2 has deposed before the court that her son Sanjay had gone to fetch Chhaya at the time of Dipawali before the incident i.e. the Diwali of the

year 1995 i.e. about 10 months prior to the incident and at that time, the accused had demanded the remainder amount. PW 2 has further deposed before the Court that when they learnt about Chhaya having sustained burn injuries and was admitted in Civil Hospital, Beed, she, her brother, her son and daughter visited Chhaya in the hospital. Chhaya disclosed that she had committed suicide by pouring kerosene from the lamp on her person. She had also disclosed that she was frustrated due to ill-treatment at the hands of the accused and therefore, she has attempted to commit suicide. PW 2 has also deposed before the Court that Chhaya had disclosed to her that her statement was recorded by the police, however, at that time, she was pressurized by the accused. PW 2 Mandodari has proved the contents of the First Information Report lodged by her. Said report is at Exh.35. In the cross examination she has admitted that she has not filed the complaint to the police immediately or on the next day and that she had not filed the complaint till the death of Chhaya. She has also admitted that Chhaya had not disclosed to her that her statement was recorded by the Magistrate. The disclosure in respect of the recording of the statement under pressure of the accused does not find place in the record. She has deposed before the court that Chhaya had written a letter to her in which, she had stated that the remaining amount should be paid as she is being subjected to cruelty and ill treatment on account of non payment. The said letter is at Exh.36. However, the date of sending the letter is not mentioned and it appears that it was sent within six months after the marriage. The incident has occurred after more than six years of marriage. By application of the test of proximity, it is clear that it was almost more than five years before the incident and hence it has no nexus with the commission of suicide of Chhaya on that account. The accused are, therefore, rightly acquitted for offence p/u/s 304B and 306 of Indian Penal Code.

6. PW 3 Tukaram Nimbalkar is the father of deceased Chhaya. PW 3 has deposed in respect of oral dying declaration by Chhaya. He has deposed before the court that he had received two letters from Chhaya which are at Exh.39 and 40. The contents of Exh.39 would reveal that the in laws of Chhaya were disappointed with her, as she was unable to work efficiently and cope up with the domestic chores. The letter at Exh.39 was written on 1.8.1991. The letter at Exh.40 appears to have been written on 27.1.1994. In both the letters, there are no serious allegations against any particular member of the family. It is an omnibus statement that all the members of the family were disappointed with her as she was not efficient in her domestic work. There is nothing on record which would show that soon before the incident, she was ill treated by her family members and moreover, we cannot be oblivious of the fact that the accused nos. 2 and 3 have been acquitted on the basis of the same allegations.

7. PW 4 Sanjay Nimbalkar is the brother of the deceased. He has also deposed before the Court that Chhaya was subjected to ill-treatment. However, in the cross examination he has admitted that during the lifetime of Chhaya he had not disclosed to anybody that Chhaya was subjected to ill treatment. In the cross

examination, PW 4 was confronted with his earlier statement and he has denied to have stated the portion marked "A" in which he has stated that his sister was treated well for three years.

8. PW 5 is Girdhari Jogdand. He was working as P.S.O. at Police Station Talwada. On the basis of report of Mandodari, Crime No. 0/1996 was registered at Police Station, Beed City against the accused for offence p/u/s 498-A and 306 of Indian Penal Code. It was then transferred to Talwada Police Station, as the alleged offence had taken place in the jurisdiction of Talwada. PW 5 had registered the crime no.50/1996 on the basis of the report of Mandodari.

9. PW 6 Vasant Shingare has been examined by the prosecution as he was the panch for the scene of offence panchnama which was conducted on 26.8.1996. He has deposed before the court that the incident has occurred in a room. There was one television set which was placed on the sewing machine. He has proved the scene of offence panchnama which is at Exh.56. He has also stated that he had noticed the pieces of a burnt sari in the said room. In the cross examination, he has admitted that a gunny bag was lying in the said room and there was one lamp (Chimani) in the room which was lying on the gunny bag and sari. In any case, the accused/appellant is acquitted for offence p/u/s 306 of Indian Penal Code as the dying declaration is in respect of the accidental burns.

10. PW 7 Syed Saberoddin was the A.S.I, who has reduced into writing the oral report given by the PW 2.

11. PW 8 Ram Umajirao More is the Investigating Officer, who has filed the charge sheet. It is material to note that PW 8 Ram more has categorically admitted in the cross examination that he had received a copy of dying declaration recorded by the Magistrate along with the complaint which is at Exh.35. He has also admitted that in fact the Magistrate as well as PHC Suryawanshi who had recorded the dying declaration of Chhaya were cited as prosecution witnesses. However, it is clear that at the time of trial, these two material witnesses had been withheld and the accused has rightly examined them as defence witnesses. PW 8 has proved the omissions and contradictions of PW 2, 3 and 4. The accused has examined two defence witnesses. DW 1 is Ramrao Shinde, who had recorded the dying declaration of Chhaya which is at Exh.75. He has proved the contents of the dying declaration. The dying declaration clearly establishes that Chhaya had sustained accidental burns and she had not attempted to commit suicide. D.W.2 Jyotiram Suryawanshi has recorded the dying declaration which is at Exh.77. In the said dying declaration also Chhaya had disclosed that she had sustained accidental burns. There is no reason to discard the two dying declarations.

12. This is not a case where death is a logical culmination of a continuous long process, as if it was a finale of the story. The very fact that the accused is acquitted for an offence p/u/s 306 of Indian Penal Code, implicit reliance cannot be placed on the oral testimony of the interested witnesses who have attributed

the ill-treatment and cruelty to the present appellant. It is manifest that, all these statements are being highlighted only after the death of the deceased. Chhaya had survived for five days and no complaint was made by PW 2, PW 3 and PW 4 when she was alive. Hence, cruelty and illtreatment cannot be inferred.

13. In the above mentioned circumstances, the evidence in respect of ill-treatment meted out to Chhaya is borne out only from the evidence of PW 2, 3 and 4. However, the record would go to show that PW 2 Mandodari the mother of deceased Chhaya has lodged the report only after Chhaya had succumbed to the injuries, although she claims that as soon as she had arrived in the hospital, Chhaya had disclosed to her that she has attempted to commit suicide being fed up of the ill-treatment meted out to her. PW 3 Tukaram Nimbalkar, the father of deceased Chhaya has tried to rely upon the letters which are at Exh.39 and 40 to show that Chhaya was ill treated and harassed. However, on the basis of same evidence, the accused nos. 2 and 3 have been acquitted of the offence p/u/s 498-A of the Indian Penal Code. There is no incriminating material against the present appellant which would establish that he had committed an offence p/u/s 498-A of the Indian Penal Code. In fact, the accused are acquitted for the offences p/u/s 306 and 304-B of Indian Penal Code. Hence, there was no reason for harassing Chhaya. The letter at Exh.39 is addressed to PW 2 Mandodari in the year 1991. At that time, the family members may be disappointed with Chhaya, however, there is nothing on record to show that the ill treatment had continued till the date of incident. Hence, for the above mentioned reasons, the appeal deserves to be allowed and the accused deserves to be acquitted of the offence for which he is convicted. In the result, the appeal is hereby allowed. The conviction and sentence recorded by the Additional Sessions Judge, Beed in Sessions Case No. 11/1997 is hereby quashed and set aside. The appellant/accused is hereby acquitted of the charge levelled against him. The Bail Bonds of the accused are cancelled. The fine amount, if paid by the accused/appellant be returned to him.