
(2005) 10 BOM CK 0130
In the Bombay High Court
Case No : Criminal Appeal No. 282 of 1996

Krushnarao Govindrao Gadfane

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 14-10-2005

Acts Referred:

Evidence Act, 1872 — Section 113A
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2005) 10 BOM CK 0130

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : R.M. Daga, for the Appellant; S.Y. Deopujari, APP, for the Respondent

Final Decision : Allowed

Judgement

A.H. Joshi, J.—Accused was tried for offences punishable under Sections 498-A and 306, Indian Penal Code.

2. Prosecution case rests upon testimonies of PW1, namely, Ramkrushna, brother of Sheela (Exh. 16), PW2 Ashok, a neighbour (Exh.20), PW6-Sunanda, sister of deceased Sheela (Exh.34) and medical evidence of PW10-Dr.Ramesh [Exh.44].

3. Other witnesses, namely PW4-Motiram, PW5 Panditrao and PW7 Ramdas have turned hostile. Perusal of testimonies of these witnesses does not reveal anything to support the prosecution case. These testimonies, therefore, need to be ignored.

4. Prosecution case is, thus, assessed on the basis of testimonies of PWs 1, 2, 6 and 10.

5. Prosecution relies upon testimony of PW.10 in order to demonstrate that while Sheela died due to suicidal death due to poisoning, Post-mortem report reveals the injuries on her person which were possibly inflicted by a belt recovered from the house of the accused. The prosecution has, thus, tried to co-relate the

injuries with the belt, and, in turn, wants to attribute those to the accused.

6. In so far as cause of death is concerned, it reveals from the post-mortem examination as follows:-

"22. Spine and spinal cord opinion as to the cause probable cause of death:

Death due to poisoning like Endrene organo-Phosphorous compound."

[quoted from Column 22 at page 174 of the paper book].

It is also seen from the Post-mortem Report that viscera has been preserved.

7. Investigating Officer [PW11] has stated in the Examination-in-Chief that he had forwarded the viscera for chemical analysis.

8. It is seen from the report of Chemical Analysis that the articles referred for chemical analysis are seven in number, which do not consist of viscera. It is suggested that Item No.5 Which reads as follows:-

"5) Greenish Coloured liquid in a bottle labelled - Ex.No. A. V. - Art. - No. 110/89."

[quoted from para 5 at page 189 of the paper-book].

is not shown to be the viscera.

Item No.6 is earth wrapped in a paper consisting of vomited substance.

The report of analysis reveals that Item No.5, i.e., the substance in the bottle, revealing a positive meaning, thereby organ of phosphorous insecticide is tested in it, while as far as Item Nos.4 and 6, i.e., stained Jangya and the earth are concerned, on which vomiting had occurred, no recognizable poison is detected.

9. It is seen from the testimonies of Prosecution Witnesses 1, 2 and 6, that they reveal the factual background, which can be referred to, and stated as follows:-

[a] PW1 Ramkrushna.

This witness states that:-

"Shila was always saying that accused Nos. 1 to 3 always used to beat her. She was saying that her father-in-law and mother-in-law, insists her husband, accused No. 1 for saying her to bring the amount from her brother and as she was refusing they were beating her. On the demand by Shila, I have paid her the amount of about Rs.200/- to Rs.500/- for about three four times. Subsequently Shila demanded me amount of Rs.3,000/- - saying that it is needed for purchasing agricultural land. I, therefore, in about the year 1987 or 1988 borrowed an amount of Rs.3,000/- from Shankar Jairamji Thakare of village Belaj and have paid that amount to accused No. 1 Krushnarao at Tahsil office Achalpur at the time of registry."

[quoted from Para 1 at pages 86 and 87 of the paper-book].

Further, in the Examination-in-Chief, this witness does not depose any specific act of ill-treatment. He admits that he had not lodged a police complaint about the incident of ill-treatment between 1985 to 1988. He admits that about ill-treatment, he did not complain anything in the complaint [Exh. 17].

Apart from these incidences, this witness does not depose anything about ill-treatment to Sheela. The testimony of this witness, thus, pertains to the incidences referring to some period between 1985 to 1988, however, no specific information, is narrated as oral evidence.

[b] PW2-Ashok [Exh.20].

In this evidence, PW2 has stated that he accompanied Ramkrushna [PW1] to the house of Sheela, because he had learnt that Sheela was beaten. Either PW1 or PW2 are not able to give the names of the persons from whom they came to know that Sheela was beaten. This witness does not state anything, except this, and this witness, therefore, does not render any help to the prosecution.

[c] PW6-Sunanda [Exh.34].

This witness has stated in her examination-in-chief that Sheela used to visit her house at Belaj for Diwali and summer every year. Sheela used to complain till she had first son. However, her father-in-law and mother-in-law used to beat her on the point of demand of money. She stated that her mother-in-law and father-in-law used to poison the ears of her husband on account of demand of money and he used to beat her.

This testimony of PW3 that she had revealed to Police about monetary demand by in-laws of Sheela, however, that it was not finding place in the statement recorded by the Police. Assuming that all that is stated is true, unfortunately, for the prosecution, this witness does not reveal any specific information as to how and in what manner by any specific instances, the way Sheela was ill-treated.

10. The learned Advocate for the Appellant urged, in this background, that all that the witnesses are stating does not, in any manner, demonstrate specific acts of ill-treatment by the accused. Moreover, the prosecution witnesses are not sure and certain as to what the prosecution stand is. The version of the brother is one, while sister gives another. The injuries on the person of deceased go unexplained, is a fact, however, by no stretch, in absence of evidence of ill-treatment, any presumption for such injuries was possible.

11. According to learned Advocate Shri Daga, when the Recovery Panchanama of an article was not proved, the assault by use of alleged belt recovered from the house of accused is not connected with the injuries and/or with the accused. In this situation, the injuries on the person of deceased remain a fact without any attribute thereof to the accused.

12. Learned Advocate Shri Daga placed reliance on reported judgment of this Court in case of Deepak Bhimrao Bharne and others v. State of Maharashtra,

2004(2) Mh.L.J. 987. The reliance is placed to urge that in absence of direct evidence falling in the category of "primary evidence", it would not be permissible to hold the accused guilty.

13. Learned Additional Public Prosecutor, on the other hand, emphasized that the poison found in the bottle pertains to viscera only. Learned APP further argued that since medical evidence revealed that it would not be possible to administer poison of 300ml in volume unless the victim was willing, it turned out to be a case of suicide. The injuries on the person of the deceased were liable to be explained by the accused, since, admittedly, immediately prior to death, Sheela was in the company of the accused. Therefore, with the background of ill-treatment proved by the prosecution, burden had shifted on the accused. Admittedly, the death was within seven years from the date of marriage and presumption u/s 113-A of Evidence Act did apply.

14. Upon testing rival submissions, and considering the evidence that has come on record, this Court arrives at a conclusion that accepting the testimonies PW1 and 6 on the face, the value of the gospelity, even then and upon accepting all that is stated to be true, the picture that would be thereby portrayed, would not emerge the description of harassment, ill-treatment or cruelty due to illegal demands, which could be described as either dowry related, or otherwise, illegal demands.

15. Testimony of PW2 is of absolutely no use. True it is that loss of a sister is a matter of grave agony for the brother and sister. Some or many displeasures incurred by the in-laws could be a cause of grudge and being disgruntled in so far as relatives of deceased are concerned, however, these matters of anguish to not take place of evidence to fill in the paucity of positive evidence to hold the accused guilty. It is for this reason all that is stated by the witness does not conform to the positive acts on the part of the accused of ill-treating the deceased, or abetting her suicide or instigating it, or harassing or ill-treating her to such manner and extent that she would thereby be driven to commit suicide.

16. In the facts and circumstances, this Court has arrived at a conclusion that the evidence on record is insufficient to demonstrate:-

- (a) Ill-treatment in relation to dowry related, monetary or other illegal demands.
- (b) Any cruelty, ill-treatment, abetment or instigation done by the accused so as to incite her to commit suicide.

17. In the result, appeal succeeds, judgment and order of conviction and sentence is set aside.