
(1994) 06 BOM CK 0064
In the Bombay High Court
Case No : Criminal Appeal No. 601 of 1993

Laxman Irayya Yenganti

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 14-06-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235
Evidence Act, 1872 — Section 3, 59
Penal Code, 1860 (IPC) — Section 107, 306, 498A

Citation : (1995) 1 BomCR 219 : (1995) 1 DMC 458 : (1995) 1 MhLj 403

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : R.S. Syed, for the Appellant; S.B. Patil, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

M.F. Saldanha, J.—This appeal presents a horrifying set of facts and is filed by the accused through jail. I need to record that Kumari Syed has argued the matter with considerable competence and has advanced a very strong and fervent plea that the conviction u/s 306 of the Indian Penal Code be set aside and in the alternative that the two sentences awarded to the accused be made concurrent instead of consecutive.

2. The accused comes from a very poor strata of society and was residing with his deceased wife Samakka and his three year old daughter Ambubai at Shashikala Nagar in Solapur city. At about noon on 18th March, 1992, smoke was noticed coming out of the hut and the neighbours forced opened the door only to find Samakka and the child Ambubai lying dead as a result of extensive burn injuries. The matter was reported to the police who commenced their investigations. The father of the deceased Samakka, who resided not too far away by the name of Vyankatesh (P.W. 3), also came to the spot. He lodged a complaint with the Police to the effect that the accused had been unemployed

ever since the marriage, that the wife Samakka used to earn a little money by working as a bidi-roller and that the accused was addicted to the consumption of alcohol. According to Vyankatesh, the accused used to extort money from the wife and used to threaten to kill her if she did not part with whatever meagre remnants out of her earnings that were left with her. The accused was also alleged to have been in the habit of mercilessly assaulting the wife. The general complaint of Vyankatesh was to the effect that even though the wife had committed suicide, she was driven to do this because of the persistent, grave and long-standing cruelty inflicted on her by the husband. The accused was accordingly placed under arrest for charges under sections 306 and 498-A of the Indian Penal Code. The learned 4th Additional Sessions Judge, Solapur recorded a conviction under both heads and sentenced the accused to suffer rigorous imprisonment for five years and to pay a fine of Rs. 500/- in default, to undergo rigorous imprisonment for three months under the first head of charge. Under the second head of charge, the accused was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 500/- in default, to undergo rigorous imprisonment for three months. The learned trial Judge did not direct that the substantive sentences were to run concurrently. The accused has been in custody from the date of his arrest and has preferred the appeal against this set of convictions and sentences.

3. Kumari Syed, learned Counsel appearing on behalf of the accused commenced her submissions by stating that, undoubtedly, on a first reading of the facts, a high degree of prejudice would normally and naturally be generated. She contended that the deaths of the young wife and the three-year-old child are, undoubtedly, most unfortunate and distressing, but it was her principal submission that the nexus between the incident or the cause thereof and the accused is non-existent and that the inferences drawn by the learned trial Judge that the accused was responsible for the suicide is unwarranted. For this purpose, Kumari Syed relied heavily on the fact that the evidence itself indicates that the accused was not on the scene when the incident took place or for that matter that there is nothing to indicate that he was at the scene of offence even prior to the incident. On the contrary, Kumari Syed relied heavily on the fact that the only entrance to the hut, namely the door, was closed and fastened from inside which clearly indicated, according to learned Counsel, that the accused could not have even set fire to the deceased persons and run away thereafter. Under these circumstances, Kumari Syed advanced the contention that the misconduct of the accused who admittedly was unemployed and was addicted to liquor on the top of it, led the Investigating Authorities and for that matter the neighbours and even the father of the deceased to the wrong conclusion that the accused was responsible for what had happened. It is the contention of learned Counsel that in the absence of direct clinching evidence that neither of the two charges were sustainable and that the accused has wrongly been convicted. In this regards, Kumari Syed placed reliance also on the fact that unfortunately the deceased Samakka was not alive when the neighbours reached her and,

consequently, there is no dying declaration on record which could have been the strongest piece of evidence against the accused.

4. In this background, it is necessary to examine the heads of evidence which have been relied upon by the prosecution. As indicated by me above, Samakka and the child Ambubai were found in a burnt condition by the neighbours who broke open the door of the hut. The medical evidence conclusively indicates that the cause of death was due to extensive burn injuries, and the short question that arises is as to whether these could have been accidental or whether the deaths were as a result of suicide. The Panchanama of the scene of offence and the condition of the clothes, the objects that was found there etc., very clearly indicate that the deaths could not have been accidental in so far as kerosene oil had been poured on the clothes of both the persons and these had been ignited with the use of a match-stick. Though there are no eyewitnesses to this incident, the circumstantial evidence indicates that the deaths were not as a result of an accident and that they were suicided. The child Ambubai was hardly two or three years old, as rightly concluded by the learned trial Judge that Samakka decided to put an end to her life, the cause being the unbearable conditions in which she was living, it was obvious that she did not want to leave the young child to continue in such a horrifying existence and, therefore, decided that it would be the better option to put an end to her life also. The finding of the learned trial Judge, therefore, that the deaths were suicide is correct and deserves to be confirmed.

5. We have on record the evidence of Sanjay Waghmare (P.W. 2), who is the neighbour and the person who initially reported the incident to the police. He is virtually a formal witness and does not know anything about the background of the case. Vyankatesh (P.W. 3) is the father of the deceased Samakka and is a most crucial witness in this case. According to him, the accused was married to his daughter about three years back and it is his charge that the accused never did any work right from the time of the marriage that he was addicted to liquor, that he used to live on the wife's earnings which he used to extort from her by threatening to kill her and that he was unduly violent and used to assault her from time to time. Samakka had left the accused twice and he had taken her back after giving assurances to the parents as also to the Panchas. What is material about his evidence is that he states that he used to reside closely at Vijay Nagar and that he used to visit his daughter very often. He also states that she used to come to the parents sometimes when she was in grave need of food or money and that they used to help her. It is his direct allegation that the accused because of his grave cruelty drove the daughter and the grand-daughter to commit suicide. He has been cross-examined and nothing of any consequence has emerged from his cross-examination. On the contrary, it transpired that inspite of the misbehaviour of the accused, Vyankatesh (P.W. 3) and he were not on hostile terms and used to speak to each other cordially whenever they met each other. He has denied the charge that he has lodged a false complaint against the accused in order to extort money from him.

6. Kumari Syed has submitted that this witness is the father of the deceased Samakka and is naturally biased and hostile to the accused, particularly because of his unemployment and bad behaviour. She submitted that it is this prejudice which has carried through in his making the allegations and that to Vyankatesh and his unsophisticated mind the automatic conclusion which came up was that because the accused was a no good person that he was responsible for the deaths. Learned Counsel submitted that admittedly this witness was not residing with the daughter and as inevitably happens in poverty conditions because the relationship was not too good between the spouses that he has falsely implicated the son-in-law. I have carefully considered the evidence as also the grounds on which it has been assailed. Strangely enough, I do not find any bias on the part of Vyankatesh (P.W. 3) and, to my mind, he has very clearly and truthfully spoken about the painful facts. There is no dispute about the fact that he used to reside closely and the daughter was in regular contact, with the parents and it is but natural that she would convey to him about her woeful life. Under these circumstances, I do not see any ground on which this evidence can be discarded.

7. The next head of evidence consists of the deposition of Jagdevi (P.W. 5), who is a neighbour and who categorically corroborates everything that Vyankatesh (P.W. 3) has deposed about and adds to the fact that the deceased Samakka used to tell her from time to time about the terrible situation under which she was living. The manner in which the accused used to assault the deceased Samakka and extort money from her for liquor and that he even threatened to kill her has been deposed to by this witness. The principal ground on which Kumari Syed assailed her evidence is that admittedly the mother-tongue of the deceased Samakka was Telugu and this witness admits that she does not know Telugu. She has clarified in the evidence that the deceased Samakka knew Marathi and she used to talk to Jagdevi in this language. To my mind, the latter represents the correct position, more so since the deceased was residing in that locality and would have most certainly picked up enough of the local language to be able to communicate with others. Her having disclosed to Jagdevi about the happenings between the accused and herself is most natural. On the aspect of quarrels between the husband and the wife, the unemployment of the accused, the extortion of money and the physical assaults on the deceased Samakka, we have the evidence of Suresh (P.W. 6) and Ramalu (P.W. 7), both of whom are neighbours and who had also come to the scene immediately after the incident. As far as this evidence is concerned, Kumari Syed sought to contend that these persons shared the general bias and prejudice which had been generated against the accused, who was obviously not behaving well and therefore, they had gone wholehogg against the accused. This is hardly any ground on which the evidence can be assailed because the witnesses have been cross-examined and their evidence is by and large unscathed. They establish quite clearly that everything which Vyankatesh (P.W. 3) has deposed about was, in fact, true. I am conscious of the fact that there is no dying declaration in this case. There are no eyewitnesses and, therefore, it is on the basis of the aforesaid material alone

that the charge will either stand or fall.

8. The learned trial Judge has scrutinized the record of the case carefully and has come to the conclusion that the evidence adduced by the prosecution which was to the effect that the accused who was an unemployed person and who used to regularly and severally assault and threaten the deceased Samakka and extort money from her was not only a liability but a serious threat to the deceased wife. Obviously she could not carry on any longer with such a gruesome existence and, therefore, decided to commit suicide. The evidence that has been adduced by the prosecution does establish this case to the hilt. To my mind, therefore, the findings recorded by the trial Judge do not deserve to be interfered with.

9. Kumari Syed advanced two contentions, both on points of law. Dealing with the charge u/s 498-A of the Indian Penal Code, Kumari Syed submitted that it is a painfully true fact that having regard to the economic situation in which the accused was placed, the fact that he was unemployed and given to bad habits that put him under the mental stress whereby there can hardly be any cordiality between him and the wife. Without defending the conduct of the accused, Kumari Syed submitted that the type of ill treatment or cruelty contemplated by section 498-A of the Indian Penal Code, which is sufficient to drive a wife to commit suicide, must be far more serious and far more grave than what is alleged in the instant case. Learned Counsel's submission was that an unemployed, drunkard and badly behaved husband is not an unusual feature in these levels of society and that the poor wife Samakka had coped up with the situation for several years by working hard and earning money to keep the family going and under these circumstances even if the evidence was true that the charge u/s 498-A of the Indian Penal Code is still not made out. The learned A.P.P., on the other hand, submitted that the cruelty was sufficiently serious and came squarely within the ingredients of the section.

10. As far as the law is concerned, I need to record that there are no absolute standards with regard to the type of gravity of cruelty that are required to drive a person to suicide. There may be instances where a sensitive person would react to a far less degree of cruelty and there may be situations of the present type where a woman would endeavour to withstand the cruelty and exist despite it, but would still reach a breaking point when she can take it no longer. To my mind, the fact that husband in this case refused to work and that the wife had to work for herself and her child and her husband, itself casts heavy burden on her. What compounded the situation was the fact that instead of allowing her to use those meagre earnings for their virtual survival, he used to threaten, torture and beat her up and take the money away only to squander it on alcohol and come back in a more fearful and violent condition. The evidence indicates that this course of cruelty had continued for as many as three years. It is, therefore, obvious that the cruelty which, to my mind, was extremely grave had virtually pushed the wife Samakka beyond the point of toleration and driven her to suicide. The persistence and the length of time over which the acts of cruelty

were committed are really some of the tests for purposes of ascertaining whether it was sufficient enough to have pushed the wife to suicide. To my mind, section 498-A of the Indian Penal Code contemplates just these types of situations and the ingredients of the section are fully made out in the present case.

11. As regards the second charge, Kumari Syed advanced a stronger submission in so far as she contended that the charge u/s 306 of the Indian Penal Code is overlapping. She also submitted that there is nothing on record to indicate that the accused participated in the act of suicide or for that matter that he did anything which resulted in the same. Kumari Syed relied on the fact that the accused was not present when the incident took place and he was not instrumental in getting anybody else to abet the suicide. She, therefore, submitted that the conviction u/s 306 of the Indian Penal Code is legally unsustainable. The learned A.P.P., on the other hand, has submitted that the accused and no one else was responsible for the suicide and that in these circumstances the conviction is fully justified because it was the act of the accused which resulted in the suicide.

12. A scrutiny of the definition of the concept of "abetment" as appears in section 107 of the Indian Penal Code would clearly indicate that the law takes into account the acts that instigate the commission of an offence. The strongest example of such a situation would arise in cases of suicide where the offending party acts, speaks and behaves in such a way and manner as to ensure that the victim commits suicide. The crudest situation could be where there is physical participation, but the law also includes that set of cases where the accused creates a situation whereby the evidence very clearly indicates that it amounts to instigation. A normal healthy person will not commit suicide unless there is sufficient provocation and instigation. Where the accused is responsible for the latter, it would clearly come within the first part of the definition u/s 107 of the Indian Penal Code and as provided for u/s 109 of the Indian Penal Code, the accused would still be responsible for the offence. In the present instance without being physically present when the suicide took place, the evidence indicates that the accused over a long period of time had done everything that would trigger off the suicide and to that extent, therefore, he would be guilty of having instigated the suicide. To my mind, the conviction u/s 306 of the Indian Penal Code is, therefore, well-founded and fully justified.

13. Lastly, Kumari Syed makes a fervent plea that the sentences of five years and three years" rigorous imprisonment respectively should be made concurrent instead of consecutive. She submitted that the accused is a very poor person, that he is also a young man, that admittedly according to the witnesses he wept when he came back to the scene of offence, that he is repentant and that he has gone through the agony of losing his wife and a child and that on this ground leniency ought to be shown to him. The learned trial Judge has pointed out that two young lives, namely, a young wife and a tender child, have been lost, thanks to the callous misbehaviour of the accused. In these circumstances, the learned

trial Judge has observed that no leniency is called for. While I share that view, I need to further record that particularly in the sociological context of this country, and more so in relation to the strata of society from which this accused comes, atrocities against females, be they wives or daughters, will have to be dealt with extremely firmly and any misguided or misplaced sympathy or leniency shown to persons responsible for such acts would be against the principles of doing justice. Learned Counsel appearing on behalf of the accused is justified in advancing the plea for leniency because she is required to do her duty which she has done with high sense of responsibility, but propriety would not permit a Court to accede to this plea. It is in these circumstances that the order of the trial Court stands confirmed.

14. The appeal accordingly fails and stands dismissed.