

(2015) 06 BOM CK 0318
In the Bombay High Court
Case No : Criminal Appeal No. 305 of 2000

Mahadeo Nivrutti Pawar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 11-06-2015

Acts Referred:

Evidence Act, 1872 — Section 113-A
Penal Code, 1860 (IPC) — Section 306, 34, 498-A

Citation : (2015) 4 BomCR(Cri) 326

Hon'ble Judges : V.M. Deshpande, J.

Bench : Single Bench

Advocate : P.D. Bachate, Advocate, for the Appellant; Pratibha Bharad, A.P.P., for the Respondent

Final Decision : Allowed

Judgement

V.M. Deshpande, J.—Being aggrieved by the judgment and order of conviction, dated 30.6.2000, passed by the learned II Additional Sessions Judge, Beed, in Sessions Case No. 185 of 1999, whereby the appellant is convicted for the offences punishable under Sections 306 and 498-A of the Indian Penal Code, and consequently, sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs. 2,000/- and in default of payment of fine to suffer further rigorous imprisonment for six months on account of his conviction under Section 306 of the Indian Penal Code; and sentenced to suffer rigorous imprisonment for 1 year and to pay a fine of Rs. 500/- and in default of payment of fine to suffer further rigorous imprisonment for three months on account of his conviction under Section 498-A of the Indian Penal Code, the appellant is before this court.

2. The prosecution case is as under:--

"On 25.6.1999, the appellant informed to police station, Beed that his wife Sangita committed suicide by hanging. The said information was in writing (Exh. 29). P.S.O. Ratan Waghmare entered the said information in station diary at Sr. No. 11. He also registered A.D. No. 25 of 1999."

Ratan Waghmare then handed over the inquiry of said A.D. to Vasant Ganpatrao Gaikwad (PW 7). In pursuance to the same, Vasant Gaikwad went to the spot. It was located in front of Navgan College in Shiwajinagar area of Beed. It was the house of the appellant. Many persons were present there on the spot. He saw, in a room dead body was in hanging condition. He took dead body on the ground in presence of two male panchas and one female panch. Inquest was done. Inquest panchanama (Exh. 13) was drawn.

At that time, altercations were going on in between the complainant party and the accused party on the spot. Vasant Gaikwad (PW 7) pacified the said altercation. He then called panchas for preparing spot panchanama. Spot panchanama was prepared in presence of PW 6 Shaikh Pasha. It is at Exh. 27. The dead body of Sangita was sent to the hospital for postmortem.

Dr. Pradeep Joshi (PW 5) was attached to the District Hospital, Beed as a Medical Officer. He performed postmortem over the dead body. Postmortem report is at Exh. 25. According to the postmortem report, cause of death is "cardio respiratory arrest due to asphyxia due to hanging".

In the mean while, Raosaheb Shinde (PW 1), the father of the deceased, lodged report at police station, Beed (City). Sukhada Belnekar (PW 2), a lady Police Sub-Inspector was attached to police station, Beed. When she was discharging her duty as Duty Officer, PW 1 Raosaheb Shinde narrated the incident to her. It was reduced into writing. The report is at Exh. 12. She registered crime vide C.R. No. 226 of 1999 against two accused, namely appellant and Arunabai w/o Shrimant Pawar, for the offences punishable under Sections 498-A, 306 r/w 34 of the Indian Penal Code. Thereafter, she handed over investigation to P.S.I. Vasant Gaikwad (PW 7).

3. PW 7 Vasant Gaikwad arrested the appellant on 25.6.1999 and accused No. 2 was arrested on 1.7.1999. Viscera was sent to the Chemical Analyser, Aurangabad. The report of the chemical analysis is at Exh. 30. Statements of witnesses were recorded by PW 7 Vasant Gaikwad. After completion of entire investigation, charge sheet was filed against both the accused in the court of the learned Judicial Magistrate, First Class, Beed on 6.9.1999.

On 20.11.1999, the learned Chief Judicial Magistrate, Beed, committed the case to the Court of Sessions. Thereafter it was registered as Sessions case No. 185 of 1999. The learned II Additional Sessions Judge, Beed, on 13.1.2000 framed the charge against the present appellant and other accused Arunabai for the offence punishable under Sections 498-A and 306 r/w 34 of the Indian Penal Code. The charge reads that, appellant kept illicit relations with accused No. 2 and both of them caused illtreatment to deceased on account of demand of money and other articles. They were also charged that, they have abetted Sangita to commit suicide by subjecting her to physical and mental cruelty.

Both the accused denied the charge and claimed for their trial.

In order to bring home the guilt of the accused persons, during trial, prosecution examined 7 witnesses and also relied upon the admitted documents. The witnesses examined are:--

"PW 1 Raosaheb Shinde, father of the deceased, who has also lodged the first information report.

PW 2 Sukhada Belnekar, Police Sub-Inspector, who has recorded first information report.

PW 3 Ram s/o Raosaheb Shinde, the brother of the deceased on the point of cruelty to deceased

PW 4 Chandrakant Shinde, uncle of the deceased on the point of cruelty to deceased

PW 5 Dr. Pradeep Joshi, who has performed postmortem over the dead body and has proved the postmortem report Exh. 25.

PW 6 Shaikh Pasha, a panch witness, who has proved the spot panchanama Exh. 27.

PW 7 Vasant Gaikwad, investigating officer."

4. After full dressed trial, learned trial court acquitted respondent No. 2 Arunabai w/o Shrimant Pawar from both the charges. However, learned Judge of the court below convicted the appellant for the offences punishable under Sections 306 and 498-A of the Indian Penal Code.

5. I have heard Shri P.D. Bachate, learned counsel for the appellant and Smt. Pratibha Bharad, learned Additional Public Prosecutor for the State in extenso. With their able assistance, I have gone through the notes of evidence and also entire record and proceedings of the Sessions trial.

Both the learned counsel and learned Additional Public Prosecutor strenuously urged before me in respect of their respective prayers.

6. Exh. 12 the complaint reveals that, marriage of Sangita was performed with the appellant in the month of May, 1994. After marriage, he kept Sangita with his parents at village Limba Ganesh. Appellant was working in Police Department, and therefore, he was residing at Beed and he used to go intermittently to his parents. It is also alleged in the first information report that the brother of the appellant by name Shrimant was also in the police department, however, he died in an accident and his widow Arunabai (acquitted accused) was residing with appellant. It is also stated in the first information report that father-in-law of Sangita took her from Limba Ganesh and reached at Beed, however, for the purpose of agricultural operations the appellant used to send deceased to village Limba Ganesh and he used to stay with widow of his brother. It is also alleged in the first information report that there was a demand from the appellant that she should bring golden ring and clothes, since it was not done in the marriage of

niece of appellant.

7. During the substantive evidence in examination-in- chief itself, PW 1 Raosaheb Shinde specifically asserts as follows:--

"She committed suicide as there were illicit relations in between accused No. 1 and accused No. 2 and they were beating and illtreating her."

According to PW 3 Ram Raosaheb the brother of deceased, the deceased told to his wife in respect of the illicit relations. PW 1 Raosaheb Shinde does not claim that deceased, at any point of time, disclosed about the illicit relations between appellant and Arunabai. Even PW 3 Ram Raosaheb is not claiming that the same was disclosed directly to him, but he learnt the same from his wife. Prosecution has not examined the wife of PW 3 Ram Raosaheb to throw light on the said aspect. Thus there is no reliable evidence available in prosecution case about illicit relationship between applicant and widow of his brother.

8. Evidence of PW 1 Raosaheb Shinde shows that when the brother of the appellant Shrimant met with the accident, that time deceased Sangita was residing with him. Therefore, he along with Sangita and his other family members went to Fugewadi to see the family members of Shrimant. Shrimant, who died on the spot in the accident, was working as a Police Constable at Yousuf Wadgaon.

It is specifically admitted by PW 1 Raosaheb Shinde that at the time of accident, accused No. 2 along with her children were residing at Yousuf Wadgaon and after death of Shrimant, his children were admitted in the school at Beed.

At the relevant time, the appellant was working as Police Constable at Beed. The children were admitted in the School at Beed. Therefore, if accused No. 2 was residing at Beed with appellant, that by itself is not sufficient to raise even suspicion on the part of first informant that there were illicit relations between the appellant and widow of his brother.

9. Further, learned trial court has already acquitted Arunabai from both the offences under Sections 498-A and 306 of the Indian Penal Code. No appeal is carried against the said order of acquittal. Looking to the fact that the first informant was not having any direct information from deceased Sangita, PW 1 Raosaheb Shinde and PW Ram Raosaheb about the illicit relations between the appellant and Arunabai and in view of the specific admission given by PW 1 Raosaheb Shinde that for education purposes the son and daughter of deceased Shrimant were staying at Beed along with their mother, that by itself cannot be branded as any relations between Arunabai and present appellant, as alleged against the appellant.

10. In that view of the matter, the prosecution has utterly failed to prove that, in view of any illicit relations between the appellant and widow of his brother, appellant caused any illtreatment and due to that Sangita committed suicide, as stated by PW 1 Raosaheb Shinde.

11. In so far as demand is concerned, according to the prosecution, appellant has demanded Safari dress and golden ring at the time of marriage of Radhabai, the daughter of acquitted accused.

From the evidence of PW 1 Raosaheb Shinde, the aforesaid demand was learnt by him from the appellant himself. His evidence would reveal that he replied to the appellant that he is unable to give Safari dress and golden ring. His evidence further discloses that, "Aher" of simple dress in the marriage of Radhabai was accepted by the appellant (Aher means gift offered to son-in-law in the marriage from the side of his wife). It is not the case of the prosecution that simple Aher was not accepted by the appellant. If really the appellant was insisting for golden ring and Safari dress, normally he would not have accepted the simple Aher. Second acceptance of Aher is at the time of house warming ceremony of the appellant at village Limba Ganesh. Evidence of PW 1 Raosaheb Shinde discloses that even that time the appellant accepted the simple Aher. Acceptance of simple Aher on these two occasions is also corroborated by PW 2 Ram Raosaheb.

12. The evidence of material witnesses PW 1 Raosaheb Shinde and PW 3 Ram Raosaheb in respect of illtreatment show that it is with full of improvements and all the omissions are duly proved by the investigating officer.

13. The marriage between the appellant and Sangita took place in the year 1994, however, there was no issue to the said couple. PW 1 has given evasive replies during his cross-examination in respect of taking deceased to the doctor by the appellant since she was not conceiving child.

14. The prosecution, in the present case, has utterly failed to prove that the deceased was subjected to cruelty at the hands of the present appellant.

Sweeping allegations of matrimonial cruelty by themselves would not be sufficient to give rise to the presumption about the accused in commission of suicide by the deceased. In that view of the matter, the presumption under Section 113-A of the Evidence Act cannot be pressed into service against the appellant. The presumption under Section 113-A of the Evidence Act requires consideration of "all other circumstances of the case" before it is pressed into service. Therefore, where the wife has committed suicide within 7 years of marriage but the evidence is lacking to show that due to the illtreatment she committed suicide, the statutory presumption is not available to the prosecution.

15. In the present case, on re-appreciation of the evidence, this court is of the view that the charge of illtreatment on account of demand of money is not at all proved by the prosecution and further due to the fact that deceased was not conceiving for a period of five years, creeping of frustration in her mind cannot be completely ruled out. Hence, the judgment of conviction under challenge is liable to be quashed and set aside.

16. In the result, the appeal is allowed.

The judgment and order of conviction, passed by the learned II Additional

Sessions Judge, Beed, in Sessions Case No. 185 of 1999, dated 30.6.2000 convicting the appellant for the offence punishable under Sections 306 and 498-A of the Indian Penal Code is hereby quashed and set aside.

The appellant is acquitted from the charge under Sections 306 and 498-A of the Indian Penal Code.

The bail bonds of the appellant stand cancelled.

The fine amount, if any paid by the appellant, be refunded to him.