
(2011) 02 BOM CK 0054

In the Bombay High Court

Case No : Criminal Appeal No. 120 of 1999

Mahendra Baliram Kamble

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2012) BomCR(Cri) 796 : (2011) 2 DMC 428

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

Bench : Single Bench

Advocate : L.V. Sangit, for the Appellant; S.G. Nandedkar, for the Respondent

Final Decision : Allowed

Judgement

S.S. Shinde, J.—This appeal is filed challenging the judgment and order dated 03rd March, 1999 in Sessions Case No. 205 of 1995 passed by the Additional Sessions Judge, Osmanabad, thereby convicting the Appellant/Mahendra Baliram Kamble for the offence punishable u/s ec. 498A of the Indian Penal Code and awarding him sentence to suffer R. I. for six months and to pay fine of Rs. 1,000/ and in default to pay fine to suffer further R. I. for one month. However, the Appellant/accused is acquitted for the offence punishable u/s ec. 306 of the Indian Penal Code.

2. The brief facts of the case are as under:

Mahadeo Bhagappa Dupargude lodged F.I.R. Exhibit 13 against the accused contending that deceased Vandana was his daughter. Her marriage was performed to accused in May 1995. Accused was driver residing at Thane. Vandana was cohabiting at the house of accused at Keshegaon. Distance between Keshegaon and native village of complainant is about 5 kilometers. When accused was working as a driver at Thane, he used to visit his native place Keshegaon occasionally particularly to the festivals. Complainant Mahadeo used

to visit house of the accused in order to see his daughter. He brought his daughter Vandana for the festival of Gudi Padwa. Vandana told complainant that on the count of unchastity, accused is beating her. He went to the house of accused along with Vandana. On that day, accused refused Vandana entry in the house. He used to drove her out of the house and he beat Vandana in his presence. Then he tried to convince the accused and returned to his house. He narrated entire incident to his wife P.W. 2. After two days, he again went to the house of accused and Vandana told him that accused is illtreating and beating her. He returned to his house and on the very day, he received information that Vandana was missing and dead body of Vandana is floating in the water of the well. There upon he along with his relatives went to the said well and found dead body of Vandana floating on the water in the well. Said dead body was taken out and after preparation of panchanama it was sent for autopsy and then he lodged F. I. R. Exhibit 13.

3. Investigating officer P.W. No. 5 on the basis of report of Police Patil registered A. D. No. 15/1996. He visited spot and removed dead body of Vandana from the well and he prepared spot panchanama Exhibit 17. Then he prepared inquest panchanama Exh. 10. After lodging F.I.R. Exhibit 13, he registered Crime No. 58/1996 and investigated the case. He received postmortem report Exhibit 11 and on completion of investigation submitted charge sheet in the Court.

4. To bring home the guilt of the accused the prosecution examined five witnesses. After completion of prosecution evidence, accused was examined u/s 313 of the Code of Criminal Procedure and incriminating circumstances were explained to him in Marathi. The defence of the accused is of total denial. He has not illtreated Vandana and Vandana never committed suicide and it was not abetted by him. On the contrary Vandana died accidentally due to fall in the well.

5. The learned Counsel appearing for the Appellant submitted that, the complainant/P.W. 1 in his complaint has not stated anything about alleged demand of Rs. 5,000/ or gold. The learned Counsel submitted that, there is no single word in the complaint about demand of Rs. 5,000/ or gold, however, for the first time before the Court the complainant has stated that there was demand of Rs. 5,000/ and also of gold by the accused/Appellant. The counsel further submitted that, in all five witnesses have been examined by the prosecution. So far alleged demand is concerned, the evidence of P.W. 1 to 3 is relevant. According to the learned Counsel for the Appellant, when the P.W. 1 has not stated anything about demand of Rs. 5,000/ and gold, for first time he has stated before the Court about the said demand in that case evidence of P.W. 1 became doubtful. It is further submitted that to attract the ingredients of Section 498A of the I. P. Code, two things are required. Firstly, willful conduct of the accused which is of such a nature as is likely to drive a woman to commit suicide. Secondly, any harassment or ill-treatment in connection with the demand. The counsel further submitted that, accused/Appellant is acquitted from the offence punishable u/s ec. 306 of the I. P. Code. Therefore, provisions of

Section 498A Explanation (a) cannot be made applicable. So far Explanation (b) is concerned, the prosecution has failed to prove the demand and the evidence of prosecution witnesses suffers from material contradictions, omissions and discrepancies, therefore is not reliable. The learned Counsel in detail commented upon the contents of complaint visavis deposition of P.W. 1 before the Court and submitted that, on perusal of contents of complaint and deposition of P.W. 1 before the Court, there are material contradictions, omissions, improvements, and therefore, his evidence cannot be believed. It is further submitted that, the evidence of P.W. 2 is hear say evidence and what was narrated by the P.W. 1 has been stated by the P.W. 2 before the Court. The counsel further submitted that, so far evidence of P.W. 3 is concerned his presence itself was doubtful. Though the complainant has stated in the complaint that, P.W. 3 accompanied him to visit the house of accused/Appellant. However, in his evidence before the Court he has not stated so. Therefore, the counsel for the Appellant would submit that, the Appellant/accused is entitled for the acquittal.

6. On the other hand, the learned A.P.P. relied on the findings and reasons recorded by the Trial Court submitted that, the evidence of prosecution witnesses and in particular evidence of P.W. 1 is corroborated by evidence of P.W. 2 and P.W. 3 and, therefore, the Trial Court has rightly convicted the Appellant/accused for the offence punishable u/s ec. 498A of the Indian Penal Code. Therefore, this Court may not interfere in the impugned judgment and order of the Trial Court. Therefore, he prayed for dismissal of the appeal.

7. I have given due consideration to the rival submissions. At the outset it would be relevant to refer to the provisions of Section 498A of the Indian Penal Code which reads thus:

498A. Husband or relative of husband of a woman subjecting her to cruelty. Whoever, being the husband or the relative of the husband of a woman, subjects 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 purpose of this section, "cruelty" means

(a) any willful 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; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

8. Bare perusal of Section 498A of the I. P. Code make it clear that, if there is any willful conduct of the accused of such a nature that which would drive the woman to commit suicide, in that case conviction can be sustained u/s ec. 498A. However, in the instant case, the Appellant is acquitted from the offence

punishable u/s ec. 306 of the Indian Penal Code. Therefore, the explanation (a) of the Section 498A cannot be helpful for the prosecution.

So far explanation (b) is concerned, the prosecution has to prove that the harassment or ill-treatment should be in connection with the unlawful demand. In this respect, I find considerable force in the arguments of the learned Counsel for the Appellant that, there is no single word in the complaint of the complainant about alleged demand of Rs. 5,000/ and gold. The entire complaint is silent about the demand of Rs. 5,000/ or gold. I have carefully perused the complaint with the assistance of the learned Counsel for the Appellant and also learned A.P.P. and I find that there is no whisper about the alleged demand of Rs. 5,000/ and gold in the complaint as stated by the complainant i. e. P.W. 1 before the Court. The submission of the learned Counsel for the Appellant is required to be accepted that, for the first time the P.W. 1/complainant has stated before the Court that, there was a demand of Rs. 5,000/ and gold.

Careful perusal of the evidence of P.W. 1 before the Court and the contents of the complaint, the position would emerge that, there are many contradictions, omissions and improvements. As stated earlier there is no mention about demand of Rs. 5,000/ and gold in the complaint. I also find some substance in the contention of the learned Counsel for the Appellant that, the complainant has stated in the complaint that P.W. 3 accompanied to go to the house of accused. However, same assertion of the complainant is missing in the deposition before the Court. It has also come in the complaint that, Vandana narrated the complainant that she is happy at matrimonial house. The evidence of the complainant before the Court that, complainant went to the house of accused after Gudi Padwa and he found that accused/Appellant was beating and assaulting the deceased has not been stated in the complaint by the complainant i. e. P.W. 1.

9. The another aspect of the matter is that, both the families know each other. It has come in the evidence of complainant that the accused/Appellant is son of his sister. That apart, it is the case of the complainant and prosecution that the Appellant was working at Thane. His visit to his house has been stated for every month. If the contents of the complaint and deposition of the P.W. 1 before the Court is read in its entirety coupled with the evidence of P.W. 2 and P.W. 3 before the Court, it does not inspire confidence that the Appellant/accused was beating and ill treating and harassing the deceased Vandana.

10. On perusal of the entire evidence of the prosecution witnesses, it appears that, omnibus statements have been made by the witnesses. P.W. 1 has not stated anything in his evidence before the Court about the conduct of the Appellant that he was suspecting the character or chastity of the deceased. However, he has stated the same in the complaint. Though it is appearing in the evidence of P.W. 2 and P.W. 3 before the Court, however, since the P.W. 1 has not stated before the Court about said conduct, the evidence of the P.W. 2 which appears to be hear say evidence cannot be read as a substantive evidence, since

she has admitted in her deposition that her husband narrated her about the ill treatment given by the Appellant to the deceased. It is admitted position that, there is no any previous complaint filed by the P.W. 1, P.W. 2 or P.W. 3 that, there was any ill-treatment and harassment by the Appellant to the Vandana. From reading the complaint and the deposition of P.W. 1 before the Court in its entirety, it clearly appears that the deposition given before the Court is after thought. The entire new story has been built up in the evidence before the Court which does not find place in the complaint. There is no mention of demand of Rs. 5,000/ and gold. However, in the evidence before the Court, the P.W. 1 has not specifically stated about the ill-treatment or suspicion by the Appellant about the character/chastity of the Vandana. Therefore, to sustain the conviction unless the evidence brought on record inspires confidence, it would not be safe to sustain the conviction. If at all there is doubt, benefit of doubt should go to the accused. In this case the prosecution has failed to prove its case beyond reasonable doubt, and therefore, benefit should go to the accused. The version of the complainant in the complaint and before the Court does not inspire confidence. There is total improvement while deposing before the Court. After all the evidence has to be appreciated in its entirety and it is necessary to find out truth from the contents of complaint visavis deposition before the Court. Therefore, I am of the opinion that, the evidence brought on record by the prosecution suffers from material contradictions, improvements and also omissions and does not inspire confidence to sustain the conviction of the Appellant/accused u/s ec. 498A of the Indian Penal Code. As stated earlier, the accused Appellant is already acquitted from the offence punishable u/s ec. 306 of the Indian Penal Code. Therefore, there is no question of applying Section 498A Explanation (a). If the case in hand is considered u/s ec. 498A Explanation (b) in that case, there should be clinching, cogent and sufficient evidence on record to lead to the only conclusion that there was harassment or ill-treatment. However, in the instant case, the evidence brought on record is general in nature and there are no specific instances brought on record which would lead to the conclusion that, there was unlawful demand of Rs. 5,000/ and gold. Therefore, all in all, in my opinion, the prosecution has failed to prove its case beyond reasonable doubt. Therefore, the benefit of doubt is required to be given to the Appellant/accused. Hence the appeal is allowed. The impugned judgment and order is quashed and set aside. The accused/Appellant is acquitted from the offence punishable u/s ec. 498A of the Indian Penal Code. His bail bonds stand cancelled. The original record and proceedings be sent back to the concerned Court forthwith. The appeal is accordingly allowed and disposed of.