

(2000) 06 BOM CK 0102
In the Bombay High Court
Case No : Criminal Appeal No. 396 of 1992

Maulaali Yakub Jamadar and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 22-06-2000

Acts Referred:

Evidence Act, 1872 — Section 113, 113A, 32

Penal Code, 1860 (IPC) — Section 109, 304B, 306, 34, 498A

Citation : (2001) ALLMR(Cri) 317 : (2000) 102 BOMLR 544

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.A. Bobde, J.—The appellants/original accused have been convicted and sentenced by the IIIrd Additional Sessions Judge, Sangli in Sessions Case No. 125 of 1990 for offences punishable u/s 498-A r/w Section 34 and Section 306 r/w Section 109 of the Indian Penal Code (I.P.C.). Against this judgment and order of conviction and sentence, the accused have preferred this appeal.

2. The prosecution story is as follows:

Mumtajbi, the deceased, was the daughter of one Nabilal Baban Mulla. She was given in marriage to accused No. 1 Maulaali Yakub Jamadar. Accused No. 2, Tajbi, is the sister of accused No. 1. She is married. Accused No. 3, Khutijabi, is the mother of accused Nos. 1 and 2. At the relevant time, accused No. 1, Maulaali, along with his wife was residing at Shivnagar area of Islampur in a rented room and was working as a driver with the Maharashtra State Road Transport Corporation. Maulaali and Mumtajbi had three sons from their marriage.

3. It is the case of the prosecution that on 27.3.1990 in the night at 10.30 p.m. Mumtajbi set fire to herself. She was taken to the Civil Hospital, Sangli by Maulaali, her husband, his mother, Khutijabi and his brother. She was admitted in the Burn Ward at about 1.00 a.m. on 28.3.1990.

4. On receiving this information, the P.S.O., Market Yard Police Station, Sangli arranged for recording the dying declaration of Mumtajbi. He requested the Special Executive Magistrate, Mrs. Salama Shirolkar to do so. She recorded the dying declaration of Mumtajbi between 1.45 to 2.50 a.m. On 28.3.1990 at the hospital. A copy of this dying declaration was forwarded to the Market Yard Police Station, Sangli. Thereafter this dying declaration was forwarded to Islampur Police Station. On receipt, this dying declaration was treated as F.I.R. and the P.S.O., Islampur, H.C. Dorkar registered the Offence bearing Crime No. 65 of 1990 against the accused under Sections 498-A and 306 of the I.P.C. The investigation was entrusted to one A.S.I. Ramble and subsequently to P.S.I. Ghogare. On 2.4.1990 P.S.I. Ghogare handed over the investigation to P.I. Pawar. After completion of the investigation, chargesheet was forwarded to the Court of Judicial Magistrate, First Class, Islampur on 30.4.1990. The Judicial Magistrate, First Class Islampur, committed the case to the Court of Sessions, Sangli for trial.

5. After the charge was framed against accused Nos. 1 to 3 for offence punishable u/s 498-A r/w Section 34 of the I.P.C. and further for offence punishable under Sections 304-B r/w Section 34 and 306 r/w Section 109 of the I.P.C., the accused pleaded not guilty and claimed to be tried.

6. The prosecution examined eight witnesses. Notably, P.W.-1 Nabilal, father of the deceased, P.W. 3 Salama Shirolkar, the S.E.M. who recorded the dying declaration and P.W. 4 Dr. Milind Arvind Killedar, who endorsed the dying declaration. In respect of the medical evidence, the prosecution has examined P.W. 5 Dr. Manohar Chavan.

7. The defence has examined D.W. 1 Dr. Subhash Budruk, who has deposed that the deceased was first brought to his private hospital at about 10.40 p.m. on 27.3.1990, and D.W. 2 Sudhakar Awati, branch manager of Ratnakar Bank Limited, who deposed to having dealt with a fixed deposit made by accused No. 1 in the name of his deceased wife Mumtajbi and the minor sons. I have gone through the entire evidence on record and the relevant documents and have perused the judgment of the Sessions Court with the assistance of Mr. Shetye, learned Counsel for the appellants and Mr. Galeria, learned A.P.P.

8. Mr. Shetye made three submissions:

(i) that there is no sufficient evidence to show that the deceased committed suicide. The evidence on record strongly points out the possibility of an accidental death caused due to the explosion of the stove.

(ii) That the dying declaration was never recorded and the same is a fabricated document.

(iii) Even accepting the dying declaration to be true, no case has been made against the accused u/s 306 r/w Section 498-A of the I.P.C. in respect of the incident in question.

9. It is agreed by both the learned Counsel that if the appellants are successful

on point No. (iii), then it is not necessary to decide the first two points.

10. The matter thus hinges on the dying declaration (Exhibit 20), which is also the F.I.R. This dying declaration was recorded by P.W. 3 Salama Shirolkar at the Civil Hospital, Sangli. She has stated that on receiving information she went to the Burn Ward at the Civil Hospital, Sangli. She enquired from the doctor about Mumtajbi, The doctor then led her to cot No. 3. She then introduced herself to Mumtajbi, who was conscious and able to speak. She enquired with Mumtajbi her name, address etc., and started recording her declaration. This declaration is recorded in the form of questions and answers. P.W. 3 has stated that she started recording the declaration at 1.45 a.m. and completed it at 2.30 a.m. The dying declaration was thus recorded about 12 hours prior to the death of Mumtajbi and I am satisfied that the deceased was fully conscious and capable of giving her cogent declaration. There is also an endorsement to the effect that Mumtajbi was fully conscious and capable of giving this statement. The deceased died on 28.3.1990. It is noteworthy that P.W. 3 took care to ensure that no undesirable relative or friend of the deceased was present at the time of recording her declaration. Only the Hospital staff was allowed to remain there.

11. The crucial statements in the dying declaration, relevant u/s 32(1) of the Evidence Act (1 of 1872) at Exhibit 20 are : (a) the deceased stated that she received the burn injuries after she poured kerosene on herself and set her on fire, (b) The reason was that her husband and mother-in-law Khutija and sister-in-law Tajbi have always been quarrelling with her. She had quarrel with them two days ago and her husband had not talked with her. Therefore, she had poured kerosene on her person and set herself on fire, (c) The husband was sitting outside when she set herself on fire because he was not talking with her, and (d) that she has a complaint against her husband, mother-in-law and sister-in-law who have been quarrelling with her.

12. In the dying declaration she has also described the saree she was wearing and how, after she ran out of the house, the husband removed her clothes and while doing so he also received burn injuries.

13. The deceased did state in her dying declaration that she was married five years ago but that does not seem to be true since her own father has stated that they were married some time in 1982-83. According to the defence, their date of marriage is 7.1.1982. This is not disputed by the prosecution. This means that the deceased and accused No. 1 were married prior to a period of seven years preceding the date of her death. Thus, this case is not liable to be considered u/s 113-A or Section 113-B of the Evidence Act.

14. Now taking the statement in the dying declaration, learned Counsel for the appellant submitted that the deceased, in effect, stated that she set fire to herself because her husband, her mother-in-law and sister-in-law were always quarrelling with her. Learned counsel submitted that substantially nothing else emerges from the F.I.R. as to the cause why she committed suicide. It is

submitted that the allegations of quarrel, without pointing out any reason as to the cause of the quarrel such as demand for dowry or any serious harassment caused to the deceased by the accused for the stated purpose, are not sufficient to attract the provisions of Section 498-A of the I.P.C. There is no mention as to the cause of the quarrels or their intensity. It has been contended that an essential ingredient of the offence is "any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide...."

15. Learned A.P.P. submitted that there is sufficient evidence in the form of the dying declaration and corroborated by P.W. 1, father of the deceased; that this is a case under Sub-clause (a) of Section 498-A of the I.P.C.

16. What now falls for consideration is whether the statements of the deceased in her dying declaration prove, in this case

(a) that there was such wilful conduct on the part of the accused as was 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; in this case, or

(b) whether there was such harassment with a view to coercing her to meet any unlawful demand for any property or valuable security.

17. I am of the opinion that, while there is no doubt that the deceased was in such a mental condition that she set herself on fire, the statements in the dying declaration are not such as to unerringly establish that the appellants wilfully behaved with her in such a manner as was likely to drive her to commit suicide. This is due to the following:

(a) The allegations are general, in the sense they are against all, that they used to "always quarrel" with her. This does not enable one to infer the wilful conduct of such a nature which the accused knew was likely to drive her to commit suicide. The statement that they quarrelled with her, to my mind, does not cross the threshold of proof beyond reasonable doubt that is necessary to hold that the accused are guilty. Quarrels are a common phenomenon and just a statement that there were quarrels is not enough to drive home the charge under this section. Further a quarrel is a bilateral phenomenon. In fairness, there should be a sufficient description of the quarrels as would enable one to conclude that the persons accused were without sufficient cause or provocation, acting maliciously and cruelly in a manner which they knew would drive the woman to her death. I am of the view that if it is only proved that, as in this case, the accused used to quarrel with the deceased, it is not sufficient to find the husband, the mother-in-law and the sister-in-law guilty.

(b) The deceased has not, in her dying declaration, attributed any demand for dowry or money as the cause for the quarrels. She has not specified what the quarrels were about such as whether they were on any other subject-her character or fidelity or any such reason, which could injure the feelings so brutally that they could drive a woman to commit suicide.

(c) She has generally stated that her husband, her mother-in-law and sister-in-law have always been quarrelling with her. Over what, is not given out by her. Neither, who did or said what can be known.

(d) With particular reference to her husband, she has stated that after the quarrel "they had" with her two days ago, "my husband did not talk with me." If the fact that after the quarrel, the husband did not talk to her for two days was the provocation which drove her to commit suicide, then it seems possible that the deceased could have been overwhelmed by her own emotions which in sane person are hypersensitive and intense.

18. Having given my anxious consideration to the effect of the dying declaration, I have come to the conclusion that it is not possible to be free of doubt as to the guilt of the appellants u/s 498-A of the I.P.C. It is possible that there were quarrels between the appellants and the deceased but there is nothing to show that the quarrels, which are a fairly common feature of married life, were of such a nature, or that the appellants acted in such away and said or did such things, as was likely to drive the deceased to commit suicide.

19. In this regard, it is very pertinent to note that the prosecution has not examined any neighbour or friend of the family even though statements of five persons were recorded. This is evident from the evidence of P.W. 8 P.I. Ghogare.

20. Further, as regards the complicity of appellant Nos. 2 and 3 i.e., the mother and sister of appellant No. 1, the allegation appear more improbable in view of the fact that appellant No. 2 was a married woman and lived in her own house. This means that there was no question of daily or regular confrontation or quarrel taking place with her. As regards appellant No. 3, mother of appellant No. 1 husband, also it appears that the chances that there were sufficient occasions to behave in such a manner so as to bring about the result of driving the deceased to commit suicide, are remote. This is because the mother lived separately on the agricultural farm. This is not disputed by the prosecution.

21. As regards appellant No. 1 husband, I consider it of some consequence that the deceased has not attributed any specific overt act of cruelty to him other than the general statement that he along with others used to have quarrels with her. The deceased moreover stated that after they had quarrel, the husband had not talked to her for two days. This is an indication of the temperament of the man that he is someone who avoids escalation of an unpleasant situation rather than engage in further quarrel with his wife. Moreover, it is an unchallenged fact that the accused had, within his means, made fixed deposits in a Bank in the name of his wife and two minor sons. This conduct of the appellant-husband takes him further from the charge that he was guilty of cruelty. In the circumstances, the question of the guilt of the accused is, in any case, not free from doubt. I would consider it an appropriate case to grant the benefit of doubt to the accused.

22. Mr. Galeria, learned A.P.P., argued that the evidence of P.W. 1 Nabilal, father

of the deceased, corroborates the dying declaration of the deceased. He has referred to a statement in the deposition of P.W. 1 where P.W. 1 has stated that the last time the deceased visited him, she requested him to help her and to give her a sum of Rs. 25,000/-. It is important to note that nowhere in her statements or in the entire declaration has the deceased stated that her husband, appellant No. 1, has asked her father for any sum of money. A plain reading of the testimony of the witness also does not contain a statement that the deceased told him that her husband had asked her to demand money from her father. The father (PW-1) has stated that his daughter told him that her husband intends to purchase some land for which she was requesting him to give him a sum of Rs. 25,000/-. I find this statement, coming from the father P.W. 1, rather unusual because the deceased herself, in the course of her dying declaration, has nowhere stated that her husband had asked her to get some money from her father and since she did not get the money from her father, he was angry with her. Mr. Shetye, learned Counsel for the appellants, has rightly emphasised on a statement made by P.W. 1 that he does not remember whether his daughter narrated any incident to him except her demand to provide money for purchase of a plot. It is further argued that assuming it to be true that the daughter on her own, without being prompted by the husband, requested her father for assistance by way of some money, it would be a normal request, not an unlawful one, and certainly not the cause of any harassment or torture to her. If that was the case, it would certainly have been reflected in the dying declaration. I find sufficient reason, in the circumstances to reject the argument of the prosecution.

23. It is important to note that in the cross-examination of the father, the father has categorically stated in paragraph 4 that when his daughter was about to leave the house, she was weeping and he, therefore, inferred that she was in trouble at her house at the hands of appellant Nos. 1 to 3.

24. After considering the evidence of P.W. 1, the Trial Court has disbelieved P.W. 1 and observed that his statement that his daughter demanded Rs. 25,000/- appears to be false and that the said P.W. 1, who has gone to the extent of making improvement by speaking of demand of money, which was not referred to by the deceased in her dying declaration, is an afterthought.

25. I further find that if there is no evidence of demand accompanied by any harassment, it would not be an unlawful demand within the meaning of Section 498-A. In any case, I agree with the Trial Court that the evidence of P.W. 1 is not reliable.

26. For reasons which are not clear, however, the Trial Court has in paragraph 15 (page 32 of the judgment) observed that "in all probability, the accused was demanding some help from the father-in-law for purchase of plot, cannot be ruled out." As observed earlier, the learned trial Judge has disbelieved P.W. 1 who has stated that the daughter demanded some amount from him. There is no reference to any other evidence on the basis of which the Trial Court has made

this observation that it was probable that accused No. 1 was demanding some help from the father-in-law. I consider this observation wholly unjustified because even in his own deposition P.W. 1, the father, has not stated that his daughter was asked by her husband, appellant No. 1, to demand money from her father.

27. Learned Counsel for the appellants has drawn my attention to a judgment of this Court in the case of Ravindra Pyarelal Bidlan and others Vs. State of Maharashtra, wherein this Court observed as follows:

24. There is one more reason why I am not inclined to place implicit faith in the allegations of demand for articles and the consequent ill-treatment and beating on account of the demands not being fulfilled. The entire evidence in this respect is of general allegations. No specific instances of demands and ill-treatment have been given. General allegations are made against all the accused. An omnibus statement is made regarding demands, harassment and beating. An improved version, is also made regarding Rukmini and Meena being starved and not being given proper meals. I am, not inclined to place reliance on the above evidence.

This Court has further observed:

that harassment has to be with a definite object, namely to coerce the woman or any person related to her to meet any unlawful demand. Hence, mere harassment by itself is not cruelty. Mere demand for property etc., by itself is also not cruelty. It is only where harassment is shown to have been committed for the purpose of coercing a woman to meet the demands that is cruelty and this is made punishable under the section. In other words, it is not every harassment or every type of cruelty that would attract Section 498-A. It must be established that the beating or harassment was with a view to force the wife to commit suicide or to fulfil illegal demands of the husband or the in-laws.

I consider these observations to be relevant to the facts of the present case.

28. There are similar observations in the other judgment cited by the learned Counsel in the case of Smt. Sarla Prabhakar Waghmare Vs. State of Maharashtra and others, . It is not necessary to refer to that judgment in detail.

29. Learned counsel for the appellants further, with reference to charge u/s 306 of the I.P.C., cited a judgment of the Madhya Pradesh High Court in the case of Harishchandra and Another Vs. State of Madhya Pradesh, in which that Court has observed as follows:

20. The law is well settled that it is the intentional aiding the active complicity which form ; the gist of the offence of abatement of suicide. There is no cogent and convicting evidence on record that any overt or covert act or conduct on the part of the appellants-accused had contributed to the commission of suicide by Mst. Mina. In the absence of any cogent proof regarding any sustained cruelty, ill-treatment, or, harassment to Mst. Mina by the appellants-accused, they cannot be held to have excited or instigated the prosecutrix to commit suicide. No

doubt. Mst. Mina had committed suicide, but what drove her to kill herself is not found to be something, directly resulting from any instigation or incitement by the appellants-accused. Mst. Mina may well have been in some unhappy state of mind, when she had decided to kill herself by self immolation. But, one knows not as to why, she had come to have such an unhappy state of mind. The cause of her such immolation, in the absence of cogent evidence, just remains a matter of surmise. It could, well, be then consequence of her own frustration and pessimism, "she" might have been impelled to end her life. She could, well be a sensitive and sentimental woman, not liking the drinking-habits of the appellants-accused or their weakness for non-vegetarian food. The way of life of the appellants-accused and their habits of food and drinks, being not to the liking of the orthodox Mst. Mina, could, and pessimism, prompting her to end her life, with the feeling of her own, that she did not fit well in the particular social environment of the appellants-accused and their family, so as to adjust herself in the new surroundings. The appellants-accused cannot be held responsible for such suicide, resulting from her own psychotic or emotional disorders; and as such, they cannot be held to have abetted Mst. Mina for committing suicide in the particular circumstances, when they had not instigated Mst. Mina in the least, to end her life. The appellants-accused, therefore, being not guilty of the offence u/s 306 of the I.P.C., are entitled for acquittal.

30. The evidence led by the prosecution in the present case also appears to me to be such as not offering any cogent and convincing evidence on record that any overt or covert act or conduct on the part of the appellants had contributed to the commission of suicide by Mumtajbi.

31. In the circumstances, I allow the present appeal and set aside the judgment and order of conviction and sentence passed by the IIrd Additional Sessions Judge, Sangli in Sessions Case No. 125 of 1990 on 7.7.1992 and hereby acquit the appellants. Their bail bonds stand cancelled. Fine, if paid in the Trial Court, be refunded, The appellants be released forthwith if not required in any other case.