

(1993) 02 BOM CK 0086
In the Bombay High Court
Case No : Criminal A. No. 263 of 1990

Nand Kishore Vishwanath Neware

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-02-1993

Acts Referred:

Penal Code, 1860 (IPC) — Section 306, 307, 498A

Citation : (1993) 2 DMC 195

Hon'ble Judges : B.U. Wahane, J;A.A. Desai, J

Bench : Division Bench

Advocate : Ram Lambat, for the Appellant; D.N. Kukde, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A.A. Desai, J.—The finding of conviction for the offences punishable under Sections 498A and 306 of Indian Penal Code impugned in this appeal is based on the dying declaration of Panchfula, who succumbed to burn injuries on 25.5.1988. Shri Lambat, the learned Counsel appearing for appellant-accused, has assailed the finding of conviction mainly on the ground that the dying declaration of Panchfula does not bring out any ingredient of abetment so as to hold that appellant-accused, by his cruel treatment, instigated or forced his wife, Panchfula, to bring an end to her life. On the other hand, Shri Kukde, the learned Additional Public Prosecutor appearing for the State, tried to support the finding of conviction. Considering the rival claims, we propose to examine the text of prosecution claim.

2. Undisputedly, the marriage between the parties took place in 1981. Out of wedlock, they had three children. The claim of prosecution is that on 5.5.1988. Panchfula, wife of appellant-accused, poured kerosene oil on her person and set her on fire. She was admitted in the Hospital. PW 3 Chule, Executive Magistrate recorded her dying declaration (Exh. 37-A and B). Therein she refers an incident of kicking by husband and thereafter her pouring kerosene oil on her person. She

also refers some bickerings earlier in the morning. This has been taken as an abetment on the part of the husband to hold him guilty for the offence punishable u/s 306 of Indian Penal Code. We gave our anxious consideration.

Even accepting the words in the dying declaration that there was scolding, bickering or kicking by husband, these incidents in their entirety would not lead to an abetment so as to hold appellant-accused guilty for the offence punishable u/s 306 of Indian Penal Code. Besides this, deceased Panchfula in her dying declaration has also referred that at about 10 O'clock in the night, corner of her saree fell on the burning lamp and she caught fire. This version in the dying declaration completely demolishes the story of commission of suicide by Panchfula. The learned Additional Sessions Judge tried to assess this dying declaration observing that two portions of the dying declaration are separable and one can be read independent of another. We find it difficult to agree with this reasoning.

The story as narrated that at the relevant time, corner of her saree came in contact with the burning lamp completely demolishes the second part of commission of suicide. Moreover, the reason as assigned by her for bringing an end to her life is not sufficient. Undisputedly, marriage between the parties took place about seven years before the incident. They had three children. Last child took birth only about six months before the incident. At the relevant time, he was in the cradle. Under such circumstances, it becomes extremely impossible for us to reach a conclusion that Panchfula took a decision to commit suicide. Besides this, the important aspect is that she had referred presence of her husband at the relevant time and his making an attempt to extinguish the fire. This has reflection in the injury certificate (Exh. 20) of appellant-accused. It indicates that appellant-accused also received injuries. Taking all these aspects into account, the claim of prosecution for suicidal death of Panchfula appears to be highly improbable. In view of this, the finding of conviction as recorded cannot be sustained.

3. In the result, appeal is allowed. The finding of conviction and sentence for the offences punishable under Sections 498A and 306 of Indian Penal Code as recorded by the Additional Sessions Judge, Yavatmal vide order dated 11.9.1990 is hereby set aside. The bail bond of appellant-accused stands cancelled.