

(2007) 03 BOM CK 0011
In the Bombay High Court
Case No : Criminal Appeal No. 503 of 1996

Pannalal Sadulmal Kothari and Others	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision : 08-03-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34, 342, 498A

Citation : (2007) 2 DMC 440

Hon'ble Judges : P.V. Hardas, J

Bench : Single Bench

Advocate : Shashi P. Deshmukh and R.M. Deshmukh, for the Appellant; N.H. Borade, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.V. Hardas, J.—The appellants/original accused Nos. 2, 4, 5 and 8 who stand convicted for an offence punishable u/s 498A read with Section 34 of the Indian Penal Code and sentenced to R.I. for one year and to pay fine of Rs. 1,000 each, with a default condition of undergoing further R.I. for three months in the event of non-payment of fine by the Additional Sessions Judge, Amalner, by judgment dated 29.8.1996, in Sessions Case No. 8 of 1989 (41 of 1987), by this appeal question the correctness of their conviction and sentence.

2. Such of the facts as are necessary for the decision of this appeal may briefly be stated thus:

P.W.13 PSI Patil who was attached to Amalner Police Station as a P.S.I, received a certificate from the Chief Medical Officer, Amalner regarding death of one Manjula w/o Mulchand, original accused No. 8. He accordingly registered an accidental death vide A.D. No. 29 of 1986. Thereafter one ASI Sapkale drew the inquest Panchnama at Exh. 31. On 16.7.1986 P.W. 13 PSI Patil took over the investigation of this case and drew the scene of the offence panchnama at Exh. 32. He recorded the statements of witnesses and thereafter lodged his complaint

at Exh. 134. On the strength of the aforesaid complaint at Exh. 134 an offence vide Crime No. 102 of 1986 was registered. Thereafter statements of other witnesses came to be recorded and on 21.7.1986 he arrested some of the accused. The investigation was thereafter handed over to T. J. Patil, P.I., Local Crime Branch, Jalgaon. Upon completion of the investigation a charge-sheet against the present appellants and other accused came to be submitted.

3. On committal of the case to Court of Sessions, Trial Court vide Exh.I framed a charge against the appellants for offence punishable under Sections 302, 342, 201, 498A read with Section 34 of the I.P.C. The accused denied their guilt and claimed to be tried. As a consequence of this, prosecution examined 13 witnesses in order to substantiate the charge against the accused. The Trial Court principally relied upon the evidence of P.W. 1 Shantilal, P.W. 2 Pramila, P.W. 3 Ratanlal and P.W. 4 Ratnabai and convicted and sentenced the appellants as aforestated while acquitting the appellants and the other accused for offence punishable under Sections 302, 342 and 201 of the Indian Penal Code.

4. Mr. S. P. Deshmukh, learned Counsel appearing on behalf of the appellants has urged before me that the evidence of P. Ws. 1 to 4 in respect of the alleged harassment or cruelty meted out to deceased Manju is unbelievable and in any event the aforesaid instances which have been narrated by the prosecution witnesses would not amount to "cruelty" within the meaning of Section 498A of the I.P.C. Learned A.P.P. appearing on behalf of the respondent-State has supported the judgment of conviction and has urged for dismissal of the appeal.

5. In order to appreciate the submissions advanced by the learned Counsel for the respective parties, it would be useful to refer to the evidence of the witnesses. P.W. 1 Shantilal, father of deceased Manju states that deceased Manjula, who was affectionately called "Manju", was the eldest of seven children and was married to original accused No. 8 on 27.4.1980. He states that after the marriage Manjula went to reside at the house of her husband at Amalner. Manjula returned back after few days and had no complaints whatsoever. After 11/2 months Manjula again came back to the house of P.W. 1 Shantilal and complained to P.W. 1 Shantilal that her sister-in-law Tarabai and brother-in-law Vinod used to ill-treat and harass her by finding faults in the household chores which Manjula was doing. Manjula, it is alleged, also complained that her parents-in-law used to take the side of her sister-in-law and brother-in-law if Manjula complained to them about the harassment and ill-treatment. P.W. 1 Shantilal further states that deceased Manjula along with her husband had been to Solapur on 23.4.1986 for attending the marriage ceremony of Pramila and Swarna, the sisters of Manjula. Shantilal further states that at the time of marriage of his two daughters Manjula had again complained against the family members that her in-laws used to ill-treat her. According to Shantilal, members of family of Manjula were not behaving properly with the children of Manjula. About a year and half prior to the death of Manjula, Manjula had telephoned Shantilal and had disclosed that her brother-in-law had beaten her and therefore

she requested Shantilal to come along with the maternal uncle of Manjula. Shantilal accordingly went to Bombay and along with P.W. 3 Ratanlal maternal uncle of Manjula, went to Amalner. He accordingly asked accused No. 2 Pannalal as to why he was not looking after Manjula as son of Pannalal had beaten Manjula. Pannalal had stated that a mistake had been committed and henceforth it would not be repeated. Shantilal further states that at that time original accused No. 3 Durgabai had uttered that some brothers-in-law not only just burn but burn them alive. On 15.7.1986 at about 9.45 or 10.00 p.m. Shantilal received a message from original accused No. 6 Trilokchand that Manjula had caught fire while cooking. As soon as a message was received, P.W. 1 Shantilal along with his daughter P.W. 2 Pramila and others started for Amalner. He waited at the Railway Station as the train was late. Since Shantilal experienced some discomfort and pain in the chest, he was admitted in the hospital and, therefore, could not go to Amalner. Thereafter Amalner police had come to Shantilal and had recorded his statement. In cross-examination he has admitted that P.W. 3 Ratanlal had been to Solapur and on 18.6.1986 he had a talk with him. He further states that on 19.7.1986 when statement of Shantilal was recorded, at that time P.W. 3 Ratanlal was not present at Solapur. Shantilal further states that he does not remember if on 16.7.1986 P.W. 3 Ratanlal had given in writing to the Amalner police that P.W. 3 Ratanlal had no suspicion about the death of Manjula. He has admitted to have stated in his statement that whenever Manjula had visited Solapur Manjula was narrating instances of ill-treatment to her mother and not to P.W. 1 Shantilal. Omission has been duly proved that he had not stated in his statement that when he and Ratanlal had gone to Amalner, Manjula had disclosed the instances of ill-treatment. Similarly omissions has been proved in respect of the dowry of 24 to 25 Tolas of gold, etc. alleged to have been given by P.W. 1 Shantilal to Manjula at the time of marriage. Omission had been proved that he had not stated in his statement that all the accused were not treating children of Manjula properly. He has admitted in cross-examination that original accused No. 3 had not stated in his presence that some brothers-in-law are of such nature who not only burn but burn them alive.

6. Prosecution has also examined P.W. 2 Pramila, sister of deceased Manjula. She states that in April, 1986 sister Manjula along with her husband had attended her marriage and had complained to her about the ill-treatment and harassment at the hands of her in-laws. Manjula had also met her after two months at the marriage of a relative at Dhule. Pramila states that Manjula had also disclosed to her that her parents-in-law, brothers-in-law and sisters-in-law vided to harass and tease her on trivial matters and Manjula wanted to go to Solapur to disclose the facts to her parents. She states that she had received a letter at Exh. 39 which is in the handwriting of Manjula. In cross-examination she has admitted as true that Manjula had delivered twins on 15.2.1983. She has further admitted that on 16.8.1986 her parents had learnt about death of Manjula. She further admits that she had learnt from her maternal uncle P.W. 3 that he had visited Amalner on 16.7.1986 and had returned back. She states that she could not

remember if letter Exh. 39 was produced before the police either at Solapur or at Lasalgaon.

7. P.W. 3 Ratanlal, maternal uncle of deceased Manjula states that after first delivery, Manjula had complained to him that her sisters-in-law used to point out her mistakes on trivial matters and used to harass her and also instigate Manjula's parents-in-law, her husband and brother-in-law. P.W. 3 Ratanlal states that he convinced Manjula to try and adjust herself and to tell husband of Manjula to stop the ill-treatment. He further states that he met original accused No. 8 Mulchand and had asked him to behave properly with Manjula as Manjula was his wife. He states that in the year 1984 he had received a message from P.W. 1 Shantilal and P.W. 1 Shantilal had requested him to come to Amalner as the in-laws of Manjula were ill treating her. He states that Manjula had told him that her brother-in-law Vinod had slapped her two or three times and had further disclosed to him that her sister-in-law was having illicit relations with her father-in-law and on that count her sister-in-law quarrels with her. He further states that Manjula had told him that when she had complained to her mother-in-law, her mother in law had stated that he had simply beaten her, but some brothers-in-law are of such nature who burn their sister-in-law alive. P.W. 3 Ratanlal goes a step forward and states that Manjula had personally seen her sister-in-law and father-in-law in a compromising position and since then the in-laws were ill-treating her and harassing her. Ratanlal states that Manjula had further told him that her father-in-law Pannalal had once thrown a bundle of currency notes at her and had asked Manjula to maintain same relations like her sister-in-law if Manjula wanted to lead a happy life. Ratanlal further states that Manjula had disclosed to him that when Manjula had narrated this incident to her mother-in-law, her mother-in-law had touched her feet and had requested her not to disclose this to any one as the prestige of the family was involved. Ratanlal then states about giving of his statement Exh. 50 before the police on account of the various threats of accused Pannalal and accused Trilokchand and that some sort of pressure being exerted on him by P. W. 13 PSI Patil. He has produced on record letter at Exh. 41 alleged to have been written by Manjula to him. In cross-examination he has admitted that, apart from the letter Exh. 41 he had not produced any other letter written by Manjula. He has further stated that till he had given a letter at Exh. 49 dated 19.7.1986 to the police, he had no suspicion against Pannalal, Prakash, wife of Prakash (Tara) and Vinod. He admits that on 16.7.1986 at 4.00 p.m. the funeral of Manjula was performed. He admits to have given Exh. 50 his statement to the police. He was unable to state as to what sort of threats were extended by either the in-laws of Manjula or PSI Patil. Omission was duly proved in respect of accused Trilokchand threatening P.W. 3 Ratanlal. Ratanlal has admitted that Manjula had not narrated the incident of illicit relations between Pannalal and his daughter-in-law Tara and about Pannalal throwing a bundle of currency notes at Manjula. P.W. 3 Ratanlal admits not to have narrated this incident to P.W. 1 Shantilal. P.W. 3 Ratanlal has admitted that till death of Manjula he had not informed Shantilal about this fact, but admitted

to have disclosed it to a newspaper reporter at Amalner who had met him after the death of Manjula.

8. P.W. 4 Ratnabai is mother of deceased Manjula. She states that deceased Manjula was married on 27.4.1980. She states that for the first period of 1 1/2 years of married life Manjula had no complaints. The delivery of the first child of Manjula had taken place at Amalner. She states that she and P.W. 1 Shantilal had gone to Amalner to see Manjula and at that time Manjula had not made any complaints about ill-treatment. After one month Manjula had come to Solapur and at that time she had stated that her sister-in-law Tarabai used to complain about the domestic work of Manjula to her mother-in-law and, therefore, mother-in-law and Tarabai used to cause her harassment. It is further stated "she was telling that they used to point out her mistakes and used to abuse her. She was also telling me that the said ladies were saying to her as to whether such things are being taught by her parents i.e. by us". She further states that Manjula had conceived on the second occasion after a period of two years from the delivery of her first child. Manjula had delivered twins at Amalner. Accordingly P.W.I Shantilal and P.W. 4 Ratnabai had gone to the hospital. She further states that Manjula had resided with them for about 1 1/2 months after her second delivery and at that time Manjula had complained that her husband's brother Vinod had beaten her four or five times and, therefore, she had called P.W. 1 Shantilal and P.W. 3 Ratanlal. She states that Manjula had also told her that accused Tarabai had illicit relations with Pannalal and about Pannalal throwing a bundle of currency notes and about Pannalal telling her that Manjula should maintain relations like Tarabai if she wanted to lead a happy life. Ratnabai also states about Manju informing her that she had narrated the incident to her mother-in-law and that mother-in-law had begged her not to disclose it as the prestige of the family was involved. She states that in the month of January Manju had come to Solapur and was stating that accused Trilokchand was telling her children that they should ask their father i.e. husband of Manju to bring a new mother for them. She states about going to Amalner on receipt of a message regarding demise of Manju and about P.W. 1 Shantilal experiencing discomfort and chest pain at the Railway Station.

9. In cross-examination she has admitted that her statement came to be recorded after about 4 to 5 days of death of Manju. She has admitted that P.W. 3, Ratanlal had narrated the entire incident to her. She has admitted that since 1980 to 1986 she used to stay at the house of accused whenever Manjula used to visit at Amalner. She was confronted with portion marked "A" from her statement that she had called Manju for her first delivery but Manjula had declined to come. She has denied to have made that statement. Omission has been duly proved that she had not stated in her statement that Manjula had complained to her when she had come to Solapur after her first-delivery that Tarabai used to complain to mother-in-law about the manner in which Manjula was committing mistakes and that Manjula's mother-in-law used to abuse her also by saying that this is how she was taught by her parents. Omissions had

been duly proved about Manjula not feeling well and one of her sons suffering from diarrhea and in such circumstances Manjula being required to do all domestic work. Omission has been also duly proved about Manjula telling her that Vinod had slapped her. She has then admitted that during 1980-86 there was no phone at her house. She has admitted not to have stated in her statement dated 19.7.1986 about Manjula telling her that Tarabai had illicit relations with Pannalal and Manjula having observed them once. Omission has been duly proved about Pannalal throwing a bundle of currency notes at Manjula and asking her to behave like Tarabai if Manjula wanted to lead a happy life. Omission has been duly proved regarding Manjula narrating this incident to her mother-in-law and about mother-in-law touching feet of Manjula with a request not to state these facts to any one as the prestige of the family was, involved. Similarly omission has been duly proved about Trilokchand asking children of Manjula that they should request their father to bring a new mother.

10. A careful scrutiny of the evidence of all these four witnesses reveals that all that Manjula had complained was that her sister-in-law Tarabai and her mother-in-law used to scold her because Manjula was not able to do the household chores properly. Omission has been duly proved about Tarabai having illicit relations with Pannalal and Pannalal throwing a bundle of currency notes at Manjula and asking her to behave like Tarabai if Manjula wanted to lead a happy life. P.W. 4 Ratnabai who is the mother of Manjula and would be the best person in whom Manjula would confide, has not stated all these instances in her statement before the police. Coupled with this Exh. 50 is the statement which is alleged to have been given by P.W. 3 Ratanlal to the police. In the said statement there is no reference at all to any ill-treatment which was meted out to Manjula much less any ill treatment of such gravity as was likely to cause any injury or would drive Manjula to commit suicide. In the aforesaid statement at Exh. 50 which is in the handwriting of P.W. 3 Ratanlal, it is stated that he had no suspicion regarding death of Manjula. This was done immediately on 16.7.1986 i.e. before funeral of Manjula was performed. They thereafter returned back to Solapur and the statement of P.W. 1 Shantilal and others came to be recorded on 19.7.1986. Thus, in the interregnum between 16.7.1986 to 19.7.1986, it appears that all the instances of cruelty which have been now stated by the witnesses came to be manufactured in the minds of the witnesses, at least such inference is possible to be drawn on the basis of the evidence on record. It is extremely difficult to place reliance on these witnesses in the face of omissions on vital aspects of ill-treatment to arrive at a conclusion that deceased Manjula was ill-treated by the appellants and the ill-treatment was of such gravity as would fall within the ambit of Section 498A of the I.P.C. The Trial Court has acquitted the appellants of offences punishable under Sections 302, 342 and 201 of the I.P.C. "Cruelty" as defined in Section 498A of the I.P.C. has to be distinguished from the normal wear and tear of married life. The instances which have been narrated i.e. about the mother-in-law and sister-in-law finding faults and correcting Manjula in the performance of her household chores, are instances of

normal wear and tear of life. They cannot, by any stretch of imagination be said to be instances of cruelty which would attract provisions of Section 498A of the I.P.C.

11. After giving my anxious consideration to the submissions advanced by the learned Counsel for the parties, according to me prosecution has miserably failed to bring home the offence against the appellants beyond reasonable doubt. The appellants thus are entitled to be given the benefit of doubt.

12. Accordingly Criminal Appeal No. 503 of 1996 is allowed and the conviction and sentence of the appellants is hereby quashed and set aside and the appellants/accused are acquitted of the offences with which they were charged and convicted. Fine if paid by the appellants be refunded to them. Their bail bonds stand cancelled.