

(2015) 02 BOM CK 0354
In the Bombay High Court
Case No : Criminal Appeal No. 782 of 2003

Pradeep Govind Revaskar and Others	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision : 17-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162
Penal Code, 1860 (IPC) — Section 304-B, 306, 34, 498A

Citation : (2015) 02 BOM CK 0354

Hon'ble Judges : Sadhana S. Jadhav, J.

Bench : Single Bench

Advocate : Hrishikesh Mundargi, Advocate, for the Appellant; P.P. Shinde, APP, for the Respondent

Final Decision : Disposed Off

Judgement

Sadhana S. Jadhav, J.—The appellants herein are convicted for the offences punishable under Sections 498A read with Section 34 of Indian Penal Code and are sentenced to suffer R.I. for 3 years and fine of Rs. 3,000/- in default S.I. for 3 months. The appellant No. 1 is also convicted for the offence punishable under Section 306 of IPC and is sentenced to suffer R.I. for 7 years and fine of Rs. 5,000/- in default S.I. For 5 months by Addl. Sessions Judge, Mumbai in Sessions case No. 265 of 2000 vide Judgment and order dated 31.3.2003. Hence, this appeal.

2. Such of the facts necessary for the decision of this appeal are as follows :-

(a) That appellant No. 1, who happens to be the son of appellant No. 2, got married to Shubhangi on 27.12.1997. It is alleged that except for the first few days, the appellant No. 1 had started harassing his wife and subjected her to cruelty. The relatives upon learning about the same, had intervened and had tried to pacify the couple. They had also assembled at the house of a social worker Shri Koparkar. At the end of the meeting, it was decided that the couple should move into a separate household and lead the married life by themselves.

The said decision would be a burden on the appellant No. 1 and, therefore, he had allegedly started asking his father-in-law i.e. father of Shubhangi to extend financial aid to him. As a solution, the couple had moved into a flat owned by the uncle of the appellant No. 1 in or about July, 1999.

(b) It is the case of the prosecution that the said decision of living separately also did not bear the expected results. That Shubhangi was being ill-treated and harassed at the hands of appellant No. 1. It is alleged that she could not take the ill-treatment any more and, therefore, on 12.12.1999, Shubhangi committed suicide by immolating herself in the kitchen room of her flat. That she had locked up herself when she had set herself ablaze. Her husband and neighbours had to push open the door. Shubhangi succumbed to the burn injuries instantly. The information was given to her parents. The brother of Shubhangi namely Suhas Nagotkar lodged a report at Kanjurmarg Police Station against the appellants and others on the basis of which Crime No. 86 of 1999 was registered against the accused for the offences punishable under Sections 306, 498A, 304-B read with Section 34 of IPC. After completion of investigation, charge-sheet was filed. Charge was framed accordingly. The prosecution examined 13 witnesses to bring home the guilt of the accused. The defence had also examined two witnesses to substantiate their innocence.

3. PW-1 Ashok Nagotkar happens to be the father of deceased Shubhangi. He has deposed before the Court that she was subjected to harassment and ill-treatment in her matrimonial house. He has deposed that appellant No. 1 was working as Clerical Assistant in Oriental Assurance Co. Ltd. at Mumbai. Shubhangi was also working as a Receptionist in a private company. She had continued her job even after marriage. Initially, for 5 -7 months, the relations between the members of the family were peaceful and cordial. When Shubhangi had visited her maternal house on a few occasions, she had complained that she was being harassed by her mother-in-law on petty domestic matters. That PW-1 and his wife had persuaded her to keep peace and have patience. They had also persuaded her mother-in-law not to harass their daughter. In October 1998, when Shubhangi visited her maternal house, she had informed her mother that she was being taunted on account of getting irregular menses. Her mother-in-law was taunting her that she is incapable of conceiving. She had also informed that due to the attitude of her mother-in-law, her husband has started consuming alcohol and also assaulting her. PW-1 and his wife had visited the matrimonial house of Shubhangi, but they did not get proper response.

4. According to PW-1, one of the major grievance of his daughter against her husband was that after he returned home from work, he used to watch TV and did not take her for outing. She was expected to carry on the domestic chores and her husband used to watch TV beyond mid-night. That members of her matrimonial family did not sympathize with her and therefore, she felt mentally harassed. Another grievance of Shubhangi, according to PW-1, was that her husband had informed her that he could not bear the expenses for her

gynaecological problems. That a meeting was arranged in the house of the maternal uncle of Shubhangi i.e. Narayan Asinkar. That the accused had apologised for their conduct and had also given an oral undertaking that Shubhangi would not be harassed. In April, 1999, Shubhangi had complained that her brother-in-law was insisting upon the couple to stay separately. The parents had again confronted the accused with the said allegations. PW-1 has narrated several instances of the ill-treatment meted out to his daughter as narrated by her. It is further alleged that on 18.5.1999, there was a quarrel between the members of the matrimonial family of Shubhangi. Her brother-in-law and father-in-law had told the couple to leave the house instead of quarreling. The appellant No. 1, it is alleged to have taken his wife outside the house at about 11 to 11.30 p.m. They went upto Vikhroli Railway Station. There the appellant No. 1, is alleged to have told his wife that they would now stay at the Railway Station. He abandoned her on the platform. She got frightened and informed her parents on the phone. Her elder brother had received the phone call. His son had brought her home. Soon thereafter, the police had been called as they were informed that Shubhangi was missing from the house. The information was given to the police by the parents-in-law of Shubhangi. Shubhangi continued to stay in her matrimonial house for near 1-1/2 month. Thereafter, since July 1999, the couple was residing separately in the house of her paternal uncle.

5. According to PW-1, Shubhangi had not visited maternal house after she had started staying separately, but she had sent a message that she was being harassed, ill-treated and assaulted by her husband. On 25.11.1999, PW-1 received the message that Shubhangi was admitted in the hospital at Bhandup. They rushed to the hospital. She was discharged on 30.1.1999. It was revealed that she had conceived pregnancy and had become anemic. On 9.12.1999, PW-1 and his wife had been to the house of Koparkar and informed him about the health of Shubhangi as well as he handed over a chit given by Shubhangi. On 12.12.1999, PW-1 received the information that Shubhangi had sustained burn injuries.

6. It is admitted in the cross-examination that the marriage between appellant No. 1 and Shubhangi was an arranged marriage. That Shubhangi was treated well for the first six months. That there were petty differences between the couple. PW-1 has candidly admitted that even before the marriage, Shubhangi used to carry on the household chores. It is also admitted that the members of her matrimonial family were aggrieved since Shubhangi used to complain to her parents about the family affairs and that they used to persuade her husband. This conduct of PW-1 and his wife were taken as interference in the family affairs of Shubhangi. The witness is confronted with his statement under Section 162 of Cr.P.C. The inherent omissions and contradictions are recorded. That PW-1 was informed by Shubhangi that appellant No. 1 was insisting upon her to take ayurvedic or homeopathic medicines and had not taken her to a gynecologist.

7. PW-2 Suhas Nagotkar happens to be the brother of deceased Shubhangi. He is the first informant. He has also reiterated the narration and has proved the contents of the first information report which is at Exhibit 23.

8. PW-3 is the mother of the deceased and she has also reiterated the same allegations as levelled by PW-1 and therefore, it is not necessary to discuss the said evidence separately.

9. PW-4 Parshuram Koparkar is a social worker. He happens to be the good friend of Narayan Ashinkar, who is resident of Thane and who had requested PW-4 to mediate between the quarrelling couple. He has deposed before the Court that he had attempted to mediate. In the course of mediation, Pradeep appellant No. 1 had told him that Shubhangi was adamant. She was demanding chocolates which he could not afford. At the instance of PW-4, a meeting was held in the course of the mediation, father of Shubhangi had given him a note purportedly written by Shubhangi which is at Exhibit 24. PW-4 was not acquainted with either of the family prior to marriage of Pradeep and Shubhangi. PW-4 admitted before the Court that after it was decided that the couple should live separately. The family members of Pradeep had no objection. It is also admitted that Pradeep had never demanded any money for the flat. He had found Shubhangi to be adamant and pampered. He had also learnt that Shubhangi had attempted to assault Pradeep.

10. PW-5 Narayan Ashinkar happens to be the uncle of deceased Shubhangi. He has deposed before the Court that his brother-in-law had informed him that there are casual dispute between Shubhangi and her husband and that her parents-in-law are troubling on account of not conceiving pregnancy. PW-5 along with father of Shubhangi had tried to bring out an amicable settlement. That Pradeep had assured him that he would not trouble Shubhangi any more. Subsequently, he had learnt that there were disputes between Shubhangi and other members of her matrimonial family. According to him, PW-4 had drawn a conclusion that the dispute amongst the members is due to shortage of space and therefore had suggested that the couple shall reside separately. PW-5 has reiterated that the police and Shubhangi had informed him that the cause of quarrels is due to shortage of space.

11. The records of the case would show that on 19.5.1999, Pradeep lodged a report at the police station alleging therein that on 18.5.1999 at about 8 p.m. when he returned home, he found his wife sitting in the chair. He requested her to occupy another chair. She got enraged, raised a quarrel and had left the house and had in all probabilities, gone to her matrimonial house at Kalwa. The said report was lodged at 1.30 p.m. in the afternoon and was registered as N.C. No. 314 of 1999. On the same day, at about 2.30 p.m., Shubhangi had lodged a report against her husband Pradeep at the same police station alleging therein that on 18.5.1999 at about 8 p.m. she was seated on a table and was having key. Her husband Pradeep had asked her to get up from the table. They quarreled over the said issue and at that time, Vivek brother of Pradeep had

asked the couple to leave the house. The couple had left the house and at that time, Pradeep had assaulted her with his hand and had left her midway. This would sufficiently indicate that there were trifling quarrels between the spouses.

12. P.W.6 Baban Bhandari happens to be the neighbour of Revaskar family. He has deposed before the Court that at the time of incident, the couple was residing separately from the other members. That they were residing there since six months. On 12.12.1999 in the afternoon at about 13.15 hours, Pradeep had called upon his neighbours and informed them that his wife had latched the door of the kitchen from inside. PW-6 and his son went to the house of Pradeep. They saw Pradeep kicking at the door. The son of PW-6 helped him to break-open the door and when they opened the door they found Shubhangi lying on the floor. She was fully burnt. Pradeep poured water on her. At that time, television set was on. PW-6 informed the police, but he learnt that police had been informed about the incident much before. In the cross-examination, he has admitted that he had not heard them quarrelling.

13. PW-7 Simon Baras Gonsalvis is the panch for the seizure of a diary. He has proved the said panchnama which is marked at Exhibit 36. The diary was produced by Suhas Nagotkar.

14. PW-8 Raju Kamble is also a panch for seizure of the diary. He has proved the contents of the panchnama at Exhibit 38. The extracts of the diary are placed on record.

15. PW-9 Manohar Shivsharan is the Medical Officer who has proved the post-mortem notes which are at Exhibit 45.

16. PW10 Asha Garude had acted as a panch for the inquest panchnama which is at Exhibit 47.

17. PW-11 S.T. Jadhav was an architect by profession. He is also residing in the same building where the incident had occurred. He has also deposed before the Court that the kitchen was latched from inside and Shubhangi was lying in a burnt condition.

18. PW-12 Purshottam Gawande was the P.I. attached to Goregaon Police Station. He has deposed before the Court that on 12.12.1999, a telephonic information was received from a lady informing the police that a lady has got burnt at Prashant Sagar Society Jaideep Nagar, Bhandup (East). The police immediately reached the spot. The woman had died before the police reached the spot. She was taken to the hospital where she was declared dead. On the basis of information received by him, he had realized that a cognizable offence is made out and hence C.R. No. 86 of 1999 was registered against the husband and parents-in-law of the deceased for the offences punishable under Sections 498A and 306 of IPC. He had conducted the investigation in accordance with law. It is admitted that initially, accidental death was registered and after recording statement of the brother of the deceased, offence was registered against the

accused persons.

19. In the cross-examination, the investigating officer PW-12 has proved the omissions and contradictions of the witnesses. He has admitted that he has not recorded the statements of the neighbours of the complainant. That he had not recorded statements of the neighbours of the family of the accused No. 1 nor of Govind Nargortkar who happens to be the mediator for the marriage. That has not recorded statement of Rejendra Tambe.

20. PW-13 Bhiku Mahadi is also the Investigating Officer. He has seized the Stridhan articles of the deceased.

21. The accused have examined defence witness. DW-1 Dr. Shobha Thatte was attached to KEM Hospital and was practising as a clinical psychologist since 30 years. She had dealt with at least 4 to 5 thousand cases of marital therapy. Dr. Anand Nadkarni had referred Shubhangi Revaskar to her. The couple was referred for marriage counseling. On the first day of consultation i.e. 6.9.1999, Shubhangi was reluctant to talk. DW-1 had conducted personality test. According to DW-1, after conducting necessary tests, she had found personality disorder in the said patient. She has deposed before the Court that Shubhangi appeared to be an aggressive personality with mood changes. She has placed the test report on record. It is marked Exhibit 60. After interviewing her, the defence witness No. 1 had conducted another test and filed a report which is marked at Exhibit 61. It is further stated that when DW-1 was trying to explain the test report to her, Shubhangi had started shouting and had become aggressive. When her husband tried to restrain her, she bit his hand and ran out of the room. DW-1 has further clarified that she remembers the said incident distinctly since it is a rare incident. She has opined that Shubhangi appeared to be aggressive and non-co-operative.

22. In the cross-examination, the reports at Exhibits 60 and 61 are not seriously challenged. Hence, the said opinion is confirmed. It is admitted by the defence witness that the findings were not recorded in the said report. The witness has admitted that M.C.M.I.2 is given to a patient who has mental disorders. Upon perusal of the report at Ex.60, it is clear that the witness had given her final opinion in the following words :-

"From the above summary, it seems that her personality problem seems to be playing a major role in their marital disharmony. She will need a prolonged therapy to deal with her marital problems as well as interpersonal problems.

Similarly, Exhibit 61 shows the report that when Pradeep tried to pacify Shubhangi, she had snatched his hand and bit his right wrist. The doctor was, therefore, of the opinion that it was necessary to speak to her.

23. DW-2 is Reshma Kashid, who happens to be the neighbour of the appellant No. 1. She has deposed before the Court that Shubhangi was temperamental and adamant in nature. She would assault her husband, if he returned home late

from work. She has witnessed Shubhangi assaulting her husband. When people tried to pacify, she would get annoyed. All that is elicited in the cross-examination is that the witness had not stated the facts before the police.

24. Upon perusal of the records, it further appears that couple was visiting Dr. Shobha Thatte for treatment since 29.9.1998. On 14th and 15th October, 1998, she was admitted in the hospital for the purpose of investigation. On 20.11.1998, ultrasonography was performed on Shubhangi. That on 9.11.1999, examination of urine of pregnancy test was positive and on 12.12.1999, she committed suicide.

25. Upon perusal of the extracts of her diary, it appears that she was passing through a disturbed state of mind. She had stated in the diary that she was assaulted by her husband. She was a working woman. She has admitted that she was taking treatment. Similarly, it cannot be ignored that the appellant No. 1 had similar grievance against the deceased. Initially, it was presumed that due to lack of space, a discordant note has temporarily struck between the spouses. However, even after they had started living separately, their relations had not improved.

26. Upon taking stock of the records of the case, it appears that the spouses were incompatible. Incompatibility or the consequence of incompatibility cannot be considered as ill-treatment or cruelty. It is simple that the wavelength between the spouses would not match and they would react to each other in an irritable manner. It is not the case of the prosecution that the deceased had made any efforts to improve the relationship. It is simple that the style of living did not match with each other and therefore there were indifferences which resulted into altercations on any trifling issue. It appears from the record that the spouses were in disagreement with each other over any and every issue. It is as if in the matrimony, the spouse had agreed to disagree with each other on each and every issue. That both reacted to each other spontaneously but in an irritable manner and therefore, the relations between the spouses had reached a dead end. The opinion of the doctor i.e. DW-1 Dr. Thatte cannot be ignored at this stage. Upon holding several test, she had arrived at a conclusion that deceased was passing through a disturbed stated of mind. She was adamant, that she could not controlled by anybody. That therefore it cannot be inferred that the appellants herein were instrumental in her act of commission of suicide. By no stretch of imagination, it can be said that the appellants abetted, instigated or facilitated her commission of suicide. In fact, the deceased was a working woman. When she could not get along with her husband, she could always look forward to sever her relations and reside with her parents who had been supportive to her at all stages and in all circumstances. Suicide could not have been the ultimate action to be adopted. It appears that in a fit of rage, she had committed suicide. There is nothing to indicate that soon before her commission of suicide, there had been some prelude which must have triggered off or that the appellants induced her to commit suicide. In such circumstances,

the appellants deserve to be acquitted.

27. Hence, the following order :-

(i) Appeal is allowed.

(ii) The conviction of the appellants passed by the Additional Sessions Judge, Greater Bombay vide Judgment and Order dated 31.03.2003 in Sessions Case No. 265 of 2000 is hereby quashed and set aside.

(iii) Appellants are acquitted of all the charges levelled against them. Fine amount, if paid, be refunded to the appellants.

(iv) Bail Bonds of the appellants stand cancelled.

(v) Appeal stands disposed of.