

(2015) 01 BOM CK 0074
In the Bombay High Court
Case No : Criminal Appeal No. 69 of 2001

Premila

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 306

Citation : (2015) ALLMR(Cri) 2560 : (2015) 4 BomCR(Cri) 444

Hon'ble Judges : S.B. Shukre, J.

Bench : Single Bench

Advocate : S.M. Bhagde, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.B. Shukre, J.—This is an appeal preferred against the judgment and order convicting both the accused persons of the offence punishable under Section 306 of the Indian Penal Code rendered on 20/02/2001 by 4th Additional Sessions Judge, Nagpur.

2. Briefly, stated, the facts of the case are as under.: Accused No. 1 is wife of accused No. 2. Deceased Shantabi, daughter of Sumanbai Waghmare, used to go to the field of one Tulshiram Dharmik for performing agricultural labour work. At that time accused No. 2 was the servant of one Tulshiram Dharmik and he used to visit the house of the complainant quite frequently for giving messages on behalf of his master. Whenever accused No. 2 used to visit the house of the complainant, accused No. 1 used to remain present on the agricultural field for performing labour work. Accused No. 1 had heard that there was some affair going on between her husband, accused No. 2 and deceased Shantabi. Therefore, she broached the subject with Sumanbai, mother of the deceased. Sumanbai was not aware of the alleged illicit relation, but she advised accused No. 1 to catch her daughter red handed in the act, if she could. Therefore, accused No. 1 started keeping her watch on deceased Shantabi since the date 02/3/1994.

About two days later on, which was Friday and the day of 04/3/1994, at about 8.00 a.m., accused No. 1 came to the house of Sumanbai and told her that she was called by her husband to discuss the subject and verify the truth. Sumanbai, however, did not oblige. Therefore, sometime thereafter, both the accused visited the house of Sumanbai when Shantabai was also present. Both the accused persons questioned deceased Shantabai on the issue and specifically asked her if she was involved in illicit relations with accused No. 2 or not. Deceased Shantabai refuted the allegations but accused No. 2 would not let it go just like that. He intervened and remarked to deceased Shantabai as to why she was not telling that she indeed had illicit relations with him. Listening to these words, deceased Shantabai fell into the state of extreme depression and suddenly went inside the house. Her mother Sumanbai followed her inside the house only to find that smell of some poisonous substance had filled the air inside the house. Therefore, she took smell of mouth of her daughter and noticed that deceased Shantabai smelt of some poisonous substance. Alarmed over the incident, Sumanbai put Shantabai in a bullockcart and then after crossing some distance shifted her to an autorickshaw and took her to a Government hospital, which was Government Health Unit at Saoner. She was admitted at the hospital at about 11.00 a.m. of 04/3/1994 and in about 20 minutes thereafter, deceased Shantabai passed away while undergoing treatment in the hospital.

The doctor at Saoner hospital had already intimated Saoner police of admission of Shantabai in unconscious state. Police had tried to record her statement but could not succeed as Shantabai never regained her consciousness. An autopsy was conducted on the dead body of Shantabai. Sumanbai's statement was recorded which was treated as first information report. Spot panchanama was prepared and certain seizures were made. The statements of witnesses were also recorded. Postmortem report disclosed that the probable cause of death was cardio respiratory arrest due to organophosphorous poison. It was, however, made subject to report of the Chemical Analyser as the viscera of the dead body of Shantabai had been sent to the Chemical Analyser for analysis and report. After completion of investigation, it was found that there was sufficient material available to proceed against the appellants for an offence punishable under Section 306 I.P.C. and accordingly chargesheet came to be filed.

The accused persons pleaded not guilty to the charge of abetment of suicide of deceased Shantabai punishable under Section 306 I.P.C. and, therefore, were tried in accordance with law. On merits, learned Additional Sessions Judge found that the prosecution succeeded in establishing the charge framed against both the accused persons and accordingly convicted both of them and sentenced them to suffer rigorous imprisonment for two years and also to pay fine of Rs.100/- each together with default sentence by his judgment and order dated 20/02/2001. Dissatisfied with the same, both the appellants have preferred this appeal.

3. In this appeal, initially, argument was advanced by the learned Counsel for the

appellants for some time and only small portion of the argument had been left out which could not be heard on the same day due to paucity of time. The matter was therefore adjourned to the further date and it came to be adjourned further as the learned Counsel for the appellants did not remain present. Ultimately, this Court had to pass an order on 05/01/2015 that by way of last chance the matter was being kept for final hearing on 08/01/2015. It was also made clear that if the learned Counsel for the appellants did not appear on 08/01/2015, his argument shall be treated as closed and this Court shall proceed to hear the argument of learned Additional Public Prosecutor of the State and then decide the matter in accordance with law. This order as passed by this Court is in consonance with the law settled by the Apex Court in the case of Bani Singh and others Vs. State of U.P., .

4. Today also, learned Counsel for the appellants, in spite of calling this matter twice, did not appear before this Court. No alternate arrangement has been made by him. Therefore, the argument of the side of the appellants has been treated as closed and argument of learned Additional Public Prosecutor for the State has been heard by me. I have also perused the record of the case and the impugned judgment and order. Now, following points arise for my determination.:

(1) Whether the prosecution has proved that deceased Shantabai died a suicidal death?

(2) Whether the prosecution has proved that the accused abetted the commission of suicide by deceased Shantabai?

(3) What offence, if any, and by whom?

5. This is a case wherein the accused have not disputed suicidal death of Shantabai. Even otherwise, the evidence of Medical Officer, P.W.7 Dr. Chandrakant Mankar who had conducted autopsy on the dead body of Shantabai sufficiently establishes the fact that Shantabai's death was suicidal in nature. It is true that he has made his opinion that probable cause of death of Shantabai was cardio respiratory attack due to organophosphorous poisoning subject to Chemical Analyser's report and is actually not supported by the Chemical Analyser's report as the C. A. report vide Exh.47 proved by the prosecution through the evidence of P.W.8 Shivangi Apte, Assistant Chemical Analyser, discloses that during the course of analysis, no recognizable poison was detected. But, the reason for failure to detect the poison in the viscera of the deceased has been given by P.W.8 Shivangi Apte and it is that conduct of the analysis about eight months after collection of the viscera gave rise to a great possibility of evaporation of the chemical substances and their being broken down and converted into different compounds due to process of detoxification. Therefore, only because the C. A. report vide Exh.47 shows that no recognizable poison was detected in the viscera, it cannot be said that the opinion of the Medical Officer, P.W.7, Dr. Chandrakant Mankar about probable cause of death is falsified.

6. In such a case, other evidence available on record would have to be considered for reaching a reasonable conclusion about the probable cause of death. This other evidence is in the nature of observations of P.W.7 Dr. Chandrakant Mankar in the postmortem report itself and also the evidence of eye witnesses, such as P.W.3 Chandrakala Waghmare, the cousin aunt of Shantabai, P.W.4 Ranibai Waghmare, mother-in-law of Chandrakala and P.W.5 Kaushyalya Dahat, neighbour of Shantabai. It has been noted in the postmortem report that about 100 ml. fluid was found to be present inside the stomach of Shantabai and it was smelling of organophosphorous compound. P.W.1 Sumanbai as well as other eye witnesses, P.W.3 Chandrakala, P.W.4 Rani and P.W.5 Kaushyalya all were present when the defamatory allegations were levelled by both the accused against Shantabai and all of them consistently stated that hearing those allegations, Shantabai went inside the house and immediately fell unconscious. P.W.1 Sumanbai has also stated that her daughter consumed poison. The spot panchanama vide Exh.37 shows that smell of insecticide was present inside the house where the incident took place. It also took note of presence of one round shaped cashew colour bottle with lid lying nearby. No possibility of homicidal or accidental death of Shantabai has been suggested by anybody. All these facts and circumstances together, therefore, sufficiently establish the fact that death of Shantabai had occurred only as a result of her voluntarily consuming poison, which was an organophosphorous compound, and as such it was a suicidal death. The learned Additional Sessions Judge has rightly found it to be so and I see no reason to make any interference with this finding.

7. The evidence of the eye witnesses such as P.W.1 Sumanbai as well as other eye witnesses, P.W.3 Chandrakala, P.W.4 Rani and P.W.5 Kaushyalya is consistent with each other and there are no material omissions or contradictions in the testimonies of any of these witnesses. All of them have stated that in the morning of 04/3/1994, both the accused visited the house of P.W.1 Sumanbai when Shantabai was already present there, and levelled allegations against Shantabai that she was involved in an illicit affair with accused No. 2. It was accused No. 1 Pramila who first took the lead in making these allegations and was later on joined by accused No. 2 when he said that Shantabai was having illicit relations with him. Of course, there is omission in evidence of P.W.1 Sumanbai in relation to her oral report or the F.I.R. vide Exh.36 and it is to the effect that in the deposition she does not state that accused No. 2 had questioned Shantabai over the issue and even suggested to her as to why was she not coming clean and telling the world that she was having illicit relations with him. The FIR vide Exh.36 makes a mention to such questioning of Shantabai by accused No. 2 which is not stated about in the evidence of P.W.1 Sumanbai. But, the evidence on the whole shows that both the accused had made very specific allegations against Shantabai in the presence of other persons that she was having illicit relations with accused No. 2. This was not just an isolated incident, as the evidence suggests. Therefore, the omission in the evidence cannot be said to create doubt about version of P.W.1 Sumanbai. There is also an

admission given in her cross-examination by P.W.1 Sumanbai. She admits that no talk took place between Shantabai and accused. But, she denies the suggestion given to her by learned Counsel for accused that accused had not come to her house and had not made those defamatory allegations. This only shows that both appellants had gone to house of P.W.1 Sumanbai at a time when Shantabai was also present and in her presence levelled allegations of illicit relationship. Thus, I find that those animals at so far as the making of allegations of deceased Shantabai having illicit relations with accused No. 2 are concerned, the prosecution has reasonably proved the same.

8. Now, the question would be whether making of these allegations would amount to abetment of suicide by the accused or not. Under Section 107 of IPC abetment is instigating a person to do a certain thing or intentionally aiding that person in doing that thing or engaging with another person in any conspiracy for doing of that thing. Here, in this case, there is no act attributed to accused which was in aiding Shantabai consume poison by her in committing suicide nor is it the case of the prosecution that the accused had assisted Shantabai in any manner in consuming the poison. Similarly, there is no evidence of any conspiracy between both the appellants. But, this case, in my considered opinion, would fall within the other category of offence of abetment by instigation. The allegations made by both the accused in the house of deceased Shantabai in the morning of 04/3/1994 was not an isolated incident. There was, as the evidence suggests, a tirade of allegations launched by the accused against Shantabai. This can be seen from the evidence of P.W.1 Sumanbai, which is duly supported by the FIR Exh.36. These allegations had a bearing upon the character of a woman who was unmarried and were so reckless, scandalous and defamatory as to have depressing and deleterious effect on the mind of an unmarried woman. Such a woman is bound to feel that as these allegations having been made publicly and that too by a person who is married with another woman and were of such a nature that they would paint her image in the society at large as a girl of easy virtues, would not only permanently damage her marriage prospects but make it difficult for her to lead normal life in a conservative rural society that she was part of. An unmarried girl like Shantabai would, in all likelihood, understand such allegations in a way that in times to come people's perceptions about her character and their gazes at her would have different meanings, and it was this perception which would make her so much depressed and frustrated as to make her feel that there was no other alternative to find solace than to put an end to life. Therefore, the said allegations, it can be said, were in the nature of instigation to commit suicide and as such I find that the prosecution has succeeded in establishing the charge that both the accused abetted commission of suicide by Shantabai. This has been rightly considered by learned Additional Sessions Judge in order to reach a conclusion that both the accused abetted commission of suicide. There is no reason for me to disagree with him. Accordingly, I find that the prosecution has succeeded in establishing the fact that deceased Shantabai committed suicide and it was abetted by appellant No. 2

together with appellant No. 1 and, therefore, conviction of both the appellants/accused recorded by Additional Sessions Judge is sustainable in law.

9. As regards the quantum of sentence, I find that even though maximum punishment of ten years has been prescribed for an offence punishable under Section 306 IPC, learned Additional Sessions Judge has taken a moderately lenient view by balancing individual interests of both the appellants against the interests of the society. Therefore, sentence of two years together with fine of Rs.100/- accompanied by default sentence appears to be neither harsh nor mild in the fact situation of this case. Thus, I find that no interference with the impugned judgment and order is called for.

10. In the result, I am of the view that there are no sufficient grounds for making any interference in the impugned judgment and order and as such this appeal deserves to be dismissed.

The appeal stands dismissed.

The trial Court to take steps in accordance with law for execution of the sentence.