
(2015) 01 BOM CK 0181
In the Bombay High Court
Case No : Criminal Appeal No. 470 of 2000

Pundalik Vishwanath Kale

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

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

Citation : (2015) ALLMR(Cri) 852 : (2015) 3 BomCR(Cri) 566

Hon'ble Judges : T.V. Nalawade, J.

Bench : Single Bench

Advocate : V.N. Damle, for the Appellant; M.A. Deshpande, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

T.V. Nalawade, J.—The appeal is filed against judgment and order of Sessions Case No. 191/1997 which was pending in the Court of Additional Sessions Judge, Jalgaon. The Trial Court has convicted and sentenced the appellant for offence punishable under section 498-A of Indian Penal Code ("I.P.C for short). He is, however, acquitted of the offence punishable under section 306 of I.P.C. Both the sides are heard. This Court has perused the original record. Deceased Pramila was daughter of complainant Ramchandra, who is resident of Hartala, Tahsil Edalabad. She was given in marriage to appellant about 15 to 16 years prior to the date of incident. She has left behind one son and one daughter from this marriage.

2. Appellant was working as a driver and deceased was doing labour work to earn the livelihood. For about 5 to 6 years after the marriage, there was no problem. After that, the deceased started disclosing that the husband was not doing any work, he was addicted to liquor and she was not happy.

3. About 5 to 6 months prior to the date of incident, deceased requested her father, complainant, to make construction of house on their plot and so, the

complainant went to village Pimprisekam, place of appellant. He stayed there and he made the construction. According to him, during his stay, he witnessed that appellant was drinking liquor every day. On one occasion, he had seen that appellant was giving beating to the deceased. He had settled that quarrel on that occasion. During this stay, the deceased disclosed that the husband was not doing work and he was demanding money from her for liquor and he used to give beating to her. She disclosed that on occasions, he was expressing suspicion about her character. The complainant somehow convinced the daughter, the deceased and returned to his place.

4. On 19.10.1997, complainant received news that dead body of his daughter was found in a well situated in Pimprisekam. After funeral of the dead body, he gave report to police on 20.10.1997 and crime came to be registered for aforesaid offences. P.M. was conducted but the dead body was in decomposed condition. No opinion regarding cause of death was given by doctor. Panchanama of spot was prepared and after completion of investigation, chargesheet came to be filed.

5. Charge was framed for aforesaid offences and plea was recorded. Appellant took the defence of total denial and he pleaded not guilty. Before Trial Court, the complainant and his wife came to be examined for proving illtreatment to deceased. Other witnesses were examined to prove the material collected during investigation like P.M. report etc. The Trial Court has acquitted the appellant of the offence punishable under section 306 of I.P.C. by holding that suicide is not proved. On the basis of evidence of complainant and his wife, conviction is given to the appellant for the offence punishable under section 498-A of I.P.C.

6. There was cohabitation of around 15 years between the deceased and the appellant and they have left behind two issues. Unfortunately, nothing is brought on the record about the age of the two issues and statements of these issues were not recorded by the police. Police did not make inquiry with anybody from the village of the appellant where the deceased cohabited with the appellant. Thus, there is only the evidence of two interested witnesses like parents of deceased and there is no evidence even of the other members of the family of the deceased like her issues.

7. The evidence of PW 1 and 2 shows that the deceased used to visit their house and the distance between these two villages is hardly 4 k.m. PW 1, the complainant has deposed that deceased had disclosed to him after about 10 years of the marriage that there was illtreatment to her. According to him, the deceased had disclosed that the husband was addicted to liquor, he was demanding money and when he was not given any money by the deceased, he used to express suspicion about her character and used to beat her. If the contents of the F.I.R. are compared with this evidence, it can be said that only about 4 to 5 months prior to the date of incident, PW 1 got the opportunity to stay in the house of appellant and then he had the opportunity to see the conduct of the appellant. Prior to that there was grievance that appellant was not

doing work and he was taking liquor. In the cross examination, he has admitted that accused used to go for work at Deepnagar and he was required to stay at Bhusawal, if he had gone there for work. This admission shows that there is no force in the allegation that accused was not doing any work. In the cross examination, PW1 has admitted that when the accused/appellant used to pick up quarrel under the influence of liquor, the deceased used to suspect that the accused had suspicion about her character. His evidence shows that he never asked the accused about the person about whom accused had suspicion that the said person had kept relations with the deceased. Thus, the allegation against the accused that he had suspicion about the character of deceased does not appear to have much force. PW1 has specifically admitted that the deceased never took the conduct of the accused of taking liquor seriously and she was also not objecting the conduct of remaining out of station for work. This evidence shows that both were working and so, it is not believable that the accused was demanding money from deceased and when he was not getting money, he was harassing her. From the nature of aforesaid evidence, it cannot be said that the conduct of the accused was intentional as required under section 498-A of I.P.C.

8. The evidence of mother of deceased, PW No. 2 shows that about 2-3 months prior to the date of incident, deceased had visited the house of parents and she had disclosed that accused was consuming liquor and Ganja. It is her case that prior to that occasion, the deceased had disclosed that accused was giving beating to her and accused was demanding money from her. Mother has not uttered a word about the so called suspicion on character of deceased if at all expressed by the accused. Her evidence shows that accused treated the deceased well for about 15 years. The mother has not stated in the evidence that accused was not doing any work. Thus, the evidence of PW 1 and 2 is not that consistent with each other.

9. On one hand, PW 1 says that he had occasion to see the conduct of accused about to 5 months prior to the date of incident and on that occasion, deceased had made some disclosures and on the other hand, the mother has deposed that last disclosure was made by the deceased about 2-3 months prior to the date of incident. Thus, there is nothing on record to show that as to what happened immediately before the death or whether there was such illtreatment due to which the deceased could have been driven to commit suicide or to cause grave injury [as defined in section 498-A, explanation (a)] The discussion made above also shows that the evidence is not sufficient to prove part (b) of explanation of section 498-A of I.P.C.

10. The learned APP placed reliance on the case reported as Mithailal Jagram Gupta Vs. State of Maharashtra, . In that case, the evidence showed that the accused husband had expressed suspicion about the character of deceased and he was expressing repeatedly such doubt. In view of the facts of that case, this Court held that the conduct of the husband amounted to cruelty as defined in section 498-A of I.P.C. The facts and circumstances of each and every case are

always different. The relevant material is discussed by this Court. It is already observed that there is no independent evidence. The issues of the deceased could have thrown some light on the incident, if at all, had taken place prior to the death of deceased. In view of these things, this Court holds that benefit of doubt needs to be given to the appellant. In the result, the appeal is allowed. The judgment and order of learned Additional Sessions Judge, convicting and sentencing the appellant for the offence punishable under section 498-A of I.P.C. is hereby set aside. Appellant stands acquitted of the offence punishable under section 498-A of I.P.C. also. Fine amount, if any, deposited by the appellant is to be returned to him.