
(2006) 02 BOM CK 0013
In the Bombay High Court
Case No : Criminal Appeal No. 337 of 1996

Ramesh

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-02-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 386
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2006) 2 DMC 328

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : None, for the Appellant; S.B. Ahirkar, A.P., for the Respondent

Final Decision : Dismissed

Judgement

R.C. Chavan, J.—By this appeal, the appellant challenges his conviction by the learned Additional Sessions Judge, Chandrapur, for offence punishable u/s 498-A of the Penal Code and sentence of rigorous imprisonment for three months and fine of Rs. 1,000 imposed upon him.

2. Facts, which led to prosecution of the appellant, are as under:

The appellant was married to Kusum in the year 1982. The parties resided initially at Belora and since about two years before the incident, shifted to Balaji Ward, Chandrapur, where Kusum's family was also residing. The accused stopped maintaining Kusum and used to beat her. On 5.4.1992, Kusum set herself on fire. She was admitted to General Hospital, Chandrapur, where she succumbed to her burn injuries. On the report, an offence was registered and investigation commenced. The police recorded statements of witnesses. Before her death, Kusum had also made a statement to the police in presence of Panchas that she had poured kerosene on her person and set herself on fire. She had stated that her husband had extinguished the fire and taken her to the hospital. On completion of investigation, the police filed the charge-sheet.

3. Upon commitment of the case to the Court of Sessions, the learned Sessions Judge charged the appellant of offences punishable u/s 498-A and 306 of the Penal Code. The accused pleaded not guilty and hence was put on trial. In its attempt to bring home the guilt of the accused, the prosecution examined in all nine witnesses before the learned Sessions Judge. It seems that thereafter arguments in the case were heard by the learned Additional Sessions Judge, to whom the case was made over and who pronounced the judgment convicting the appellant of offence punishable u/s 498-A and acquitting him of offence punishable u/s 306 of the Penal Code. Aggrieved thereby, this appeal has been filed.

4. The appellant, who was on bail, was represented by Adv. Mr. E.W. Nawab. However, Advocate Mr. Nawab did not appear in this case and, therefore, a notice was ordered to be issued to the appellant to make arrangement to have his matter heard. On 25.1.2006, Advocate Mr. Nawab filed a pursis stating therein that the appellant wanted to engage some other Advocate and, therefore, he expressed his inability to argue the appeal for want of instructions. A notice issued to the appellant was reported to have been duly served by the office note dated 30.1.2006. When the matter came up for hearing on 20.2.2006, none appeared for the appellant.

5. Today, in spite of repeated calls, the learned Counsel for the appellant was not available. Section 386 of the Code of Criminal Procedure enjoins the appellate Court to decide the appeal "after perusing such record and hearing the Appellant or his Pleader if he appears and the Public Prosecutor if he appears". Thus, Section 386 of the Code clearly prescribes that the Court must decide the appeal after perusing the record. Hearing of the parties is subject to the appearance of the Pleaders. In this case, the appellant had engaged a Pleader of his choice and since the Pleader was not available the appeal had to be heard in absence of the Pleader. In *Parsuram Patel v. State of Orissa*, (1994) 4 SCC 664, the Supreme Court held that the appeal cannot be dismissed on the ground of default of appearance and that the Court has to go through the record of the case even in absence of the appellants or their Counsel and decide the matter on merit. In view of this, with the help of learned Additional Public Prosecutor, I have gone through the entire record in order to examine whether the conviction of the appellant was justified.

6. PW 1 Madhao is victim's brother. He stated that his son-in-law Manohar came to Village Jena and informed him that Kusum was admitted in General Hospital, Chandrapur. He therefore, went to the General Hospital, where, on inquiry, Kusum told him that the accused always used to consume liquor and quarrel with her and also beat her and, therefore, because of the ill-treatment meted out to her, she burnt herself.

7. PW 2 Nandkishor, another brother of the victim, stated that the accused had stopped maintaining Kusum and used to beat and ill-treat her. He too claimed that he learned that Kusum had sustained bum injuries and, therefore, went to

the Hospital and his inquiries with Kusum also yielded the same replies. He admitted in cross-examination that it may be true that because the accused was not getting job for some time and, therefore, Kusum and her husband had to live without food. He also stated that Kusum had told him that the accused had tried to extinguish the fire and admitted her in the hospital.

8. PW 3 Shantabai, Kusum's sister, however, had another story to tell. She stated that Kusum told her that the accused used to harass her to bring money from the parents. Now this is not the story of Kusum's own brother PW 2 Nandkishor.

9. PW 5 Vanita, a neighbour, stated in her cross-examination by the APP that she had heard accused and Kusum quarrelling and also admitted in her statement to police that accused used to consume liquor and quarrel with Kusum. In cross-examination for the accused, she admitted that the quarrel in the house of the accused could not be heard from her house. It does not, however, follow that she would stay indoor only and not listen to anything, happening in the neighbouring house.

10. The evidence of PW 6 Chhabutai, another neighbour, is of the same type.

11..PW7 Vasant, another neighbour, also stated in cross-examination by the APP that he had stated to the police that the accused used to consume liquor and Kusum used to quarrel with him.

12. PW 9 PS1 Fusande stated that when he learnt that Kusum had been admitted in burnt condition in General Hospital, Chandrapur, he went to the hospital with Panchas and recorded statement of Kusum, which is at Exhibit 35. In this statement, Kusum had categorically stated that on the day of incident, she and her husband had a fight and on getting fed up with the harassment at the hands of her husband, she poured kerosene from the plastic can in the house on her person and set herself ablaze. She further stated that her husband extinguished the fire and took her to the hospital. She had also stated that the accused used to come under the influence of liquor and upon her questioning, he used to tell that it was his own earning and not her father's money. The cross-examination of this witness does not reveal that the statement was not correctly recorded.

13. PW 8 Dr. Gandhi stated that he performed post-mortem examination on the body of the victim on 8.4.1992 and found that the victim had died on account of 61% ante-mortem injuries.

14. In view of this evidence, it is clear that the victim had set herself on fire on being driven to commit suicide due to the ill-treatment meted out to her, though the angle of unlawful demands is not there. In fact, in the light of this evidence, the appellant ought to have been convicted for the offence punishable u/s 306 of the Penal Code. However, since there is no appeal by the State on this count, there is no need to set aside the acquittal of the appellant for the offence punishable u/s 306 of the Penal Code. Since the prosecution had proved that the

victim was driven to commit suicide on account of ill-treatment by the appellant no fault can be found with the conviction for offence punishable u/s 498-A, IPC recorded by the Trial Judge. The sentence imposed on the appellant namely rigorous imprisonment for three months and fine of Rs. 1,000, is lenient beyond imagination and calls for no reduction.

15. In view of this, the appeal is dismissed.