

(2017) 07 BOM CK 0111
In the Bombay High Court
Case No : 215 of 2002

Rangnath s/o. Ramchandra Chakale & Ors.

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 27-07-2017

Acts Referred:

Indian Penal Code, 1860, Section 34, Section 306, Section 498-A - Acts done by several persons in furtherance of common intention - Abetment of Suidde <a href=4162

Citation : (2017) 07 BOM CK 0111

Hon'ble Judges : Sangitrao S. Patil

Bench : SINGLE BENCH

Advocate : S.S.Chaudhari, R.P.Gaur

Judgement

1. Being aggrieved by the judgment and order dated 10.04.2002 passed in Sessions Case No.48 of 1999 by the learned 2nd Additional Sessions Judge, Jalna, whereby the deceased appellant no.1 (Original accused No.1) and the present appellant nos.2 and 3 (Original accused Nos.2 and 3) have been convicted for the offence punishable under Section 498A read with Section 34 of the Indian Penal Code ("I.P.C.", for short), and in addition to that appellant no.3 has been convicted for the offence punishable under Sections 306 of the I.P.C., the present appeal has been preferred.

2. During pendency of the appeal, appellant no.1 Rangnath expired. Hence, the appeal stood abated against him. He was original accused no.1. The appeal proceeded against original accused nos.2 and 3 who have been shown as appellant nos.1 and 2 after the demise of appellant no.1. For the sake of convenience, the deceased appellant and present appellants are hereinafter referred to by their original nomenclatures, by which they were referred to during the trial.

3. Admittedly, accused no.3 got married to the deceased Satyabhama 7 to 8

years prior to the date of the incident. Accused no.1 is the father, while accused no.2 is the mother of accused no.3. The deceased Satyabhama gave birth to a daughter namely Soni, who was aged about 5 years at the time of the incident. The deceased Satyabhama was pregnant of about 8 1/2 months. The maternal home of the deceased Satyabhama was at village Pargaon, Tq. Bhoom, Dist.Osmanabad, while her matrimonial home was at village Mahakala, Tq. Ambad, Dist. Jalna. The distance between these two places is about 90 kms.

4. The case of the prosecution, in short, is that the accused persons treated the deceased Satyabhama properly for a period of two years after the marriage. Thereafter, they started illtreating her with a view to compel her to bring money from her maternal home for the purpose of construction of a house. The demand of money of the accused to some extent was fulfilled by the brother and parents of the deceased Satyabhama. The deceased Satyabhama was beaten by the accused persons prior to about 1 1/2 years of the incident. The deceased Satyabhama had lodged a report in Police Station, Shahgad, in respect of the incident of beating. Thereafter, she resided at her maternal home for about 6 to 7 months, however, due to intervention of some of the villagers and relatives, there had been a settlement and she was sent back to her matrimonial home for cohabitation with accused no.3. On 15.10.1998 at about 3.30 a.m., the deceased Satyabhama poured kerosene on her person and set herself ablaze when she was residing with accused no.3. She sustained severe and extensive burns. She succumbed to those injuries before she was given any medical treatment. Accused no.1 reported the Police Patil of village Mahakala at about 10.00 a.m. on that day that Satyabhama committed suicide by pouring kerosene on her person and setting herself ablaze at about 3.30 a.m. The Police Patil, in turn, sent a report to the Police outpost, Shahgad, under Police Station, Gondi.

5. On the basis of the report received from the Police Patil, A.D. No.53 of 1998 came to be registered. Spot panchnama was prepared. Inquest on the body of the deceased Satyabhama also was prepared. Her dead body was referred to Rural Hospital, Ambad for postmortem. Accordingly, the Medical Officer conducted post mortem and found 98% burns on the body of the deceased Satyabhama. According to him the probable cause of death was Cardiorespiratory failure due to the shock due to thermal burns. A fullterm male baby was found in the uterus of the deceased Satyabhama. The Medical Officer preserved the viscera of the deceased Satyabhama. It was sent for chemical analysis. The report of the chemical analyst disclosed no poison.

6. The informant namely, Abhimanyu Namdeo Gawde (PW 1), the brother of the deceased Satyabhama, lodged a report in Police Station, Gondi, on 16.10.1998 at 12.20 p.m. in respect of the unnatural death of the deceased Satyabhama, raising suspicion about foul play behind her death, on the allegations that the accused persons were subjecting her to cruelty to fulfill their demand for dowry. On the basis of that F.I.R., Crime No.107 of 1998 came to be registered against the accused for the offences punishable under Section 306 and 498A read with

Section 34 of the I.P.C. The investigation followed. Statements of the witnesses were recorded. The accused persons were found absconding after the funeral of the deceased Satyabhama. They were found at village Ketur, District Solapur on 02.12.1998. They were brought to Police Station, Gondi and came to be arrested on 03.12.1998. After completion of the investigation, the accused came to be chargesheeted for the abovementioned offences.

7. The learned trial Judge framed charges against the accused vide Exh.14 for the abovemention offences and explained the contents thereof to them in vernacular. The accused pleaded not guilty and claimed to be tried. Their defence is that of total denial. According to them, the deceased Satyabhama sustained burn injuries accidentally due to shortcircuit.

8. The prosecution examined eight witnesses to establish guilt of the accused for the above mentioned offences. After scrutinising the evidence on record, the learned trial Judge held accused nos.1 and 2 guilty for the offence punishable under Section 498A read with Section 34 of the I.P.C. and sentenced them to suffer imprisonment for the period, which they had already undergone and to pay fine of Rs.500/each, in default, to suffer rigorous imprisonment for 25 days each. Accused nos.1 and 2 deposited the fine amount. The learned trial Judge further convicted accused no.3 for the offences punishable under Sections 498A and 306 of the I.P.C. and sentenced him to suffer rigorous imprisonment for six months and to pay fine of Rs.500/in respect of the offence under Section 498A of the I.P.C. and rigorous imprisonment for seven years and to a pay fine of Rs.100/ in respect of the offence under Section 306 of the I.P.C. Accused no.3 also deposited fine amount in the trial Court. Being aggrieved by the said conviction and sentences, accused nos.1 to 3 preferred this appeal.

9. The learned Counsel for the accused submits that a false F.I.R. was lodged by the brother of the deceased Satyabhama merely on suspicion. Their has been delay of more than one day in lodging the F.I.R., which has not been explained. He submits that the prosecution has examined interested witnesses and the evidence of those witness suffers from material omissions. No independent witness has been examined. Since the incident has taken place after 7 to 8 years of marriage, the presumption under Section 113A of the Indian Evidence Act also was not available to the prosecution. The prosecution should have produced independent and dependable witnesses to establish the guilt of the accused persons. The learned trial Judge has convicted the accused merely on the basis of surmises and conjectures. He, therefore, submits that the appeal may be allowed and the accused may be acquitted.

10. On the other hand, the learned A.P.P. submits that there is positive evidence on record to show that the deceased Satyabhama was being illtreated by the accused persons. She had lodged a report against accused no.3 in Police outpost, Shahgad in respect of the incident that took place on 17.01.1997 when accused no.3 and his sister had beaten her her. She submits that in such incidents, it is not possible to get witnesses from the neighbours of the accused persons. It is

only the near relatives of the deceased/victim who know about the treatment meted out to the victim, come forward to depose before the Court. Consequently, the evidence of the near relatives of the deceased Satyabhama cannot be discarded on the ground that they are interested witnesses. The learned A.P.P. submits that the deceased Satyabhama was having a daughter aged about five years. She was further carrying of about 8½ months. She would not have committed suicide at such an advanced stage of pregnancy unless the illtreatment meted out to her had become unbearable. According to the learned A.P.P., the medical evidence clearly shows that the deceased Satyabhama sustained burns due to flames of kerosene. The injuries sustained by her do not at all indicate that they were caused due to electrocution. The defence set up by the accused persons, thus, is false. The deceased Satyabhama was in the custody of accused no.3. She was residing with him in his house at the time of the incident. Therefore, it was incumbent on the part of accused no.3 to explain the circumstances under which the deceased Satyabhama sustained burns, because the said facts were within his special knowledge. He did not discharge that burden at all. His subsequent conduct of not taking any steps to extinguish fire, and extend medical treatment to the deceased Satyabhama and further getting absconded reflects on his guilty consciousness. The learned A.P.P., therefore, submits that the learned trial Judge has rightly appreciated the evidence on record and has rightly convicted the accused persons.

11. Dr.Ghothawal (PW 6) (Exh.32) who conducted post mortem on the body of the deceased Satyabhama on 15.10.1998 at about 3.30 p.m., deposes that the deceased Satyabhama was brought dead to the hospital with the history of burns. He found rigormortis developed over her body. Her eyes were closed, pupils were normal, mouth was partially open, tongue was protruding slightly out of mouth. The position of limbs were flexed at elbows, knee joints and hip joints. Uterus and some parts of the intestine were protruding out of abdomen. There were 98% of burns on her body. The burns were antemortem. Brain, lungs, liver, spleen, pancreas, kidneys and stomach were congested. Black coloured sooting were present in her trachea and larynx. Her uterus contained a fullterm dead male with ambilical cord and placenta. The baby weighed 2.2 kgs. and was having length of 45 c.m. The cord was 40 c.m. and placenta weighed 200 gms. According to this witness, the deceased Satyabhama died due to Cardiorespiratory failure due to shock due to thermal burns. He further opined that due to charring, the burns could be said to have been caused due to flames.

12. In the case of Arvind Singh Vs. State of Bihar, 2001 (6) SCC 407, wherein reference has been made to the classification of the burn injuries based on the Taylor's Principles and Practice of Medical Jurisprudence, as under : "6. Burn injuries are normally classified into three degrees. The first being reddening and blistering of the skin only; second being charring and destruction of the full thickness of the skin; third being charring of the tissues beneath the skin, e.g. fat, muscle and bone."

In paragraph 7 of the judgment, it is observed as under :"

If the body is very severely burnt then all the skin surface may be destroyed, even sometimes making it rather difficult for identification of the body. A body that is badly burnt assumes the appearance known as "pugilistic attitude" and this is due to heat stiffening and contraction of the muscles, causing the arms to become flexed at the elbows and the hands clenched, the head slightly extended and the knees bent."

13. At page 272 of the Taylor's Principles and Practice of Medical Jurisprudence, Thirteenth edition, signs of electrocution have been given, as under : The point where the electric current enters the body is characterised by the presence of the electric mark, or "Joule burn". Although having some features of a small burn, it is easily distinguished from the electric burn which is seen in accidents with high tension currents.

A typical mark consists of an area of skin, varying in size according to the size of the source with which contact was made, which appears dry and yellowbrown in colour. It may be in the form of a shallow depression, like an ulcer, or slightly raised, so that such a mark has been mistaken for a wart. The shape may also mirror the shape of the contact. The margins are often slightly raised, and in the skin beyond these margins there is usually a narrow reddened border of vital reaction, similar to that seen around a burn caused by heat. Sometimes the skin in the centre of the mark is blackened, at other times it contains some small holes, as though from collapsed blisters. Hair in the area may be charred.

In most cases of electrocution there is a remarkable paucity of evidence to suggest this inside the body. There may be scattered petechial haemorrhages. In one case seen by the author there were haemorrhages on the surface of the interventricular septum of the heart, and congestion of the lungs.

The current is thought to flow along blood vessels, as constituting the routes of least resistance, and damage in the form of disruption of the vessel walls has been described. When contact is directly with the brain, as by a mishap during operation, disruption with gas bubble formation in the brain tissue has been reported."

14. In the present case, the external as well as internal injuries noted by Dr.Ghothawal (PW 6) do not at all resemble with the characteristics of the injuries caused by electrocution. On the contrary, the said injuries sufficiently indicate that they were caused by certain inflammable substance.

15. Sambhaji (PW 4)(Exh.29) who had the occasion to see the dead body of the deceased Satyabhama on 15.10.1998 at about 5.00 a.m. to 6.00 a.m. specifically states that the dead body of the deceased Satyabhama was covered with bedsheet and it was smelling of kerosene. This evidence has not been challenged in his crossexamination. A.D. report (Exh.40) which was prepared by P.H.C. Lokhande (PW 8) on the basis of occurrence report (Art.A) given by the

Police Patil of village Mahakala contains that the deceased Satyabhama had committed suicide by pouring kerosene on her person and setting herself ablaze. All these circumstances clearly indicate that the deceased Satyabhama committed suicide by pouring kerosene on her person and setting herself on ablaze. Only because an electric wire was found burnt in the house of accused no.3, in the absence of any injuries on the person of the deceased Satyabhama indicating that she sustained burns due to electrocution, it cannot be held that she sustained injuries due to short circuit.

16. P.H.C. Munjal (PW 5)(Exh.30) has produced and proved the report (Exh.31) lodged by the deceased Satyabhama on 18.11.1997 against her sisterinlaw Radhabai and accused no.3 (i.e. her husband). In that report, she specifically mentioned that Radhabai was residing with her parents (i.e. accused nos.1 and 2), while she (i.e. Satyabhamabai) was residing with accused no.3 separate from them. It has come in the crossexamination of PHC Lokhande (PW8) that there was a separate room for accused No.3. The spot panchnama (Exh.24) also shows that the incident took place in a small room and to the west of that room, there were two rooms of accused no.1. It is, thus, clear that accused no.3 and the deceased Satyabhama were residing separate from accused nos.1 and 2 since much before the occurrence of that incident.

17. It has come in the evidence of Abhimanyu (PW 1), the brother and Kusumbai (PW 2), mother of the deceased Satyabhama, that the accused persons were illtreating the deceased Satyabhama with a view to make her to bring cash amount from her maternal home. They have stated that certain amount was paid to accused no.3 as per his demand from time to time. There may be some discrepancy in the amount actually paid to accused no.3, however, there is a positive evidence coming from these witnesses about the illtreatment meted out to the deceased Satyabhama. Both of them state that the accused were illtreating the deceased Satyabhama. Milind (PW 3), neighbor of Abhimanyu (PW 1) also state that whenever the deceased Satyabhama used to visit her maternal home, she used to tell about the illtreatment given to her at her matrimonial house.

18. The report (Exh.31) lodged by the deceased Satyabhama herself against accused no.3 throws light on the illtreatment extended to her by accused no.3. The said report is in respect of the incident dated 17.01.1997. It seems that on account of a trifle incident, accused no.3 beat her with fists and kicks. Abhimanyu (PW 1) specifically states that after that incident, the deceased Satyabhama stayed at his house i.e. at her maternal home, for about 10 to 11 months. Kusumbai (PW 2) and Milind (PW 3) also state about the stay of the deceased Satyabhama at her maternal home for about 10 to 11 months. There may be some discrepancy in the exact period of her stay, because in the F.I.R. (Exh.31), the said period has been mentioned as 6 to 7 months, however, even if it is accepted that she stayed there for the period of 6 to 7 months, it was sufficiently long a period for a married woman to reside separate from her

husband. Had accused no.3 been treating the deceased Satyabhama properly, she would not have stayed at her matrimonial home for such a long period. It has come in the evidence of these three witnesses that due to mediation and intervention of the relatives, the deceased Satyabhama was sent back to her matrimonial house with the hope that she would be treated properly.

19. The evidence of these witnesses shows that she resumed cohabitation with accused no.3 prior to about one year of the date of the incident of burning. She was carrying of 8 1/2 months at the time of the incident. Had there been good treatment to the deceased Satyabhama, she would not have thought of finishing of life at such an advanced stage of pregnancy. In the natural course, her lovely daughter aged about 5 years and child in the womb of 8 1/2 months would have made her difficult to take the extreme decision to finish herself. It is only because of unbearable torture either mentally or physically, she was driven to commit suicide.

20. As stated above, accused no.3 and the deceased Satyabhama were residing separate in a room away from accused nos.1 and 2. It is not the defence of accused No.3 that he was not present in his room in the night of the incident. He admits that the deceased Satyabhama sustained burns, but does not state anything about cause of her burns. Accused no.3, being the inmate of that room, had special knowledge about the circumstances under which the deceased Satyabhama committed suicide. As per Section 106 of the Indian Evidence Act, though accused no.3 was not under any obligation to disprove the case of the prosecution, but when the prosecution established that the death of the deceased Satyabhama occurred in a separate and closed room of accused no.3 wherein he was present, it becomes his bounden duty to explain about the circumstances under which the deceased Satyabhama committed suicide. No explanation has been given by accused no.3 in this regard. This silence on the part of accused no.3 would reflect of his guilty mind.

21. It is a common knowledge that in respect of the offences which are committed within the four walls of the matrimonial house, it is difficult to get independent witness. Therefore, considering the facts and circumstances of the case inference is required to be drawn. Considering the the past conduct of the appellant of illtreating the deceased Satyabhama, which has been disclosed from the F.I.R. (Exh.31) lodged by the deceased Satyabhama herself and from the evidence of Abhimanyu (PW 1), Kusumbai (PW 2) and Milind (PW 3), the only inference that can be drawn is that accused no.3 created such a situation that the deceased Satyabhama was compelled to commit suicide.

22. The subsequent conduct of accused no.3 also is very material. He did not make any efforts to extinguish the fire. He did not take the deceased Satyabhama to any hospital for treatment immediately after the incident. He did not seek help from the neighbours to save life of the deceased Satyabhama. On the contrary, the evidence on record shows that he got absconded after the incident. It has come in the evidence of Abhimanyu (PW 1) that he received

information from his relatives about the presence of accused no.3 at village Ketur, Tq. Karmala, Dist. Solapur. He wrote a letter to the Superintendent of Police, Jalna on 16.11.1998 and communicated that information. Thereafter, the police arrested accused no.3 and brought him to Police Station, Gondli.

23. A.P.I. Patil (PW 7) (Exh.38) also states that he searched for the accused from 04.11.1998 to 02.12.1998, but they were absconding. He had deputed a Head Constable for search of the accused, but they could not be traced out. He sent P.H.C. Lokhande (PW 8) to Karmala for arresting the accused persons. Accordingly, he went there, arrested them and produced them before him on 03.12.1998. P.H.C. Lokhande (PW 8) also states that as per the directions of A.S.I. Patil (PW 7), he went to Ketur, Tq.Karmala, Dist. Solapur and arrested the accused there in the farmhouse of the daughter of accused no.1 and produced them before P.S.I. Patil (PW 7) on 03.12.1998.

24. Accused no.3 states that he was afraid of Abhimanyu (PW 1) because he used to come along with 12 persons to assault him and therefore, he had left the village. However, this stand of accused no.3 cannot be accepted. Had accused no.3 and other accused persons been in their village only, they would have been immediately arrested by the police. Accused no.3 could have surrendered himself before the police at his own. In that event, Abhimanyu (PW 1) could not have got any opportunity to assault him. It was open for accused no.3 to lodge a report against Abhimanyu (PW 1) in respect of any threats or assault made on him. Nothing of that sort was done by him. Thus, the absconding of accused no.3 after the incident, in the above circumstances, clearly establishes that he was guilty conscious about his misdeeds.

25. The evidence discussed above clearly shows that accused no.3, who was residing separate from his parents in a separate room, subjected the deceased Satyabhama to cruelty. He created such circumstances, which compelled her to finish her life by committing suicide. The deceased Satyabhama was left with no other option except to commit the suicide because of the illtreatment meted out to her by accused no.3. Such conduct amounts to instigation on the part of accused no.3 to the deceased Satyabhama to commit suicide. As such, accused no.3 abetted the deceased Satyabhama to commit suicide.

26. The contention of the learned Counsel for the accused that there is delay in lodging the F.I.R. and therefore, doubt is created about the case of prosecution is without any substance. One can understand the mental condition of the brother and mother of the deceased Satyabhama after seeing her dead in burnt condition. The postmortem of the deceased Satyabhama was conducted on 15.10.1998 by 5.00 p.m. After completing the necessary formalities, the dead body was given for cremation. Thereafter, some time must have been spent for funeral of the deceased Satyabhama. Thus, on the next day, Abhimanyu (PW 1) seems to have lodged the F.I.R. The F.I.R. cannot be said to be an outcome of afterthought or deliberation. The delay in lodging the F.I.R., in the circumstances, would not be fatal to the prosecution.

27. As stated above, the deceased Satyabhama and accused no.3 were residing separate from accused nos.1 and 2. There was no reason for accused nos.1 and 2 to illtreat the deceased Satyabhama. Accused no.1 admittedly has given fire to the pyre of the deceased Satyabhama at the time of her funeral. The deceased Satyabhama had not lodged any report against accused nos.1 and 2 at any point of time alleging that they illtreated her on any ground. There is no positive evidence on record to establish that accused nos.1 and 2 illtreated the deceased Satyabhama or abetted her to commit suicide. In the circumstances, the findings of the learned trial Judge holding accused nos.1 and 2 guilty for the offence of subjecting the deceased Satyabhama to cruelty, cannot be said to be supported by any evidence and would not sustainable.

28. The prosecution has established beyond doubt that accused no.3 subjected the deceased Satyabhama to cruelty and further abetted her to commit suicide. I subscribe to the findings of the learned trial Judge holding accused no.3 guilty of the offences punishable under Sections 498A and 306 of the I.P.C., for the reasons stated above. The learned trial Judge has sentenced accused no.3 to suffer rigorous imprisonment for seven years for the offence punishable under Section 306 of the I.P.C. It has come in the evidence of Abhimanyu (PW 1) that the daughter of the deceased Satyabhama namely, Soni is residing with accused no.3 since after the death of the deceased Satyabhama. The incident took place in the year 1998 i.e. before about 19 years, accused no.3 is not previous convict. There is nothing on record to show that accused no.3 committed any criminal act during the last 19 years. In the circumstances, I think fit to take lenient view and reduce the sentence of imprisonment from seven years to five years. The sentence imposed on accused no.3 in respect of the offence punishable under Section 498A of the I.P.C. needs no inference.

29. In the result, I pass the following order: (i) The appeal is partly allowed.

(ii) Appellant no.1 i.e. accused no.2 Parvatabai, is acquitted of the offence punishable under Section 498A of the I.P.C.

(iii) Her bail bonds stands cancelled. She is set at liberty.

(iv) The fine amount paid by appellant no.1 (accused no.2) of Rs.500/, be refunded to her.

(v) The conviction of appellant no.2 (accused no.3 - Kailas s/o. Rangnath Chakale) for the offences punishable under Sections 306 and 498A of the Indian Penal Code is confirmed.

(vi) The impugned order sentencing appellant no.2 (accused no.3 Kailas) for the offence punishable under Section 306 of the I.P.C. is modified and he is sentenced to suffer rigorous imprisonment for five years, however, the sentence of fine is maintained as it is.

(vii) The order of sentence passed against appellant no.2 (accused no.3 Kailas) for the offence punishable under Section 498A of the I.P.C. is maintained as it is.

(viii) The substantive sentences of imprisonment passed against appellant no.2 (accused no.3 Kailas) shall run concurrently.

(ix) Appellant no.2 (accused no.3 - Kailas) shall be given set of from 03.12.1998 to 05.01.1999 and from 10.04.2002 to the date of his release on bail in pursuance of the bail order dated 26.11.2002.

(x) Appellant no.2 (accused no.3 - Kailas) shall surrender to his bail bonds before the trial Court for suffering the remaining sentence of imprisonment on or before 03.08.2017.

(xi) In case appellant no.2 - Kailas fails to surrender as stated above, the trial Court shall issue coercive process to secure his presence.

(xii) The appeal stands abated as against original appellant no.1 (accused no.1 - Rangnath).