
(2011) 05 BOM CK 0060

In the Bombay High Court

Case No : Criminal Appeal No. 131 of 1997 with Criminal Bail Application No. 464 of 2011 in Criminal Appeal No. 131 of 1997

Ratan Laxman Jagzap

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 306, 34, 498A

Citation : (2011) 3 RCR(Criminal) 97 : (2011) 3 RCR(Criminal) 97

Hon'ble Judges : A.R. Joshi, J

Bench : Single Bench

Advocate : Z.M. Avhad and C.T. Chandratre, for the Appellant; P.P. Bhosale, Assistant Public Prosecutor for State, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Joshi, J.—Heard rival submissions at length on this appeal preferred by original accused No. 1 challenging the judgment and order dated 31.1.1997 passed by Additional Sessions Judge, Nashik in Sessions Case No. 172 of 1996.

2. Originally four accused, including the present Appellant accused No. 1, were charged for the offence punishable under Sections 498A and 306 of the Indian Penal Code read with Section 34 of the I.P.C.

3. By the impugned judgment and order, original Accused Nos. 2,3 and 4 were acquitted of all the charges. Present Appellant Accused No. 1 was also acquitted of the offence punishable u/s 306 read with Section 34 of the I.P.C. However, he is convicted only for the offence punishable u/s 498A of I.P.C. and was sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs. 500/ in default of fine to undergo imprisonment for one month.

4. Being aggrieved by the said judgment and order, the Appellant Accused No. 1 preferred the present appeal. During the pendency of the present appeal, he was released on bail. However, when the matter was taken for final hearing before

this Bench, he did not remain present, so also his Advocate was not present. Hence, sometime in January, 2011, initially bailable warrant was issued against the Appellant and subsequently nonbailable warrant was issued in February, 2011 and thereafter present Appellant was taken in custody and presently he is in jail. As such he had preferred Criminal Application No. 464 of 2011 for bail. However, it was thought fit under the circumstances of the case, considering the pendency of the appeal since the year 1997, to decide the appeal itself on merits instead of deciding the application for bail. Hence, the present order.

5. Certain factual position, as emerged out from the material available before the learned Sessions Court, is required to be narrated in order to 3 judgment appeal-131-97 have the proper perspective of the matter and in order to appreciate the arguments advanced on behalf of the Appellant accused No. 1. Such position is as under:

(i) All the four accused were charged for the offence punishable u/s 498A and 306 of I.P.C. read with Section 34 of I.P.C. for treating the deceased Chandrakala wife of the Appellant with cruelty and subjected her to such harassment of such a nature and to such an extent and was likely to drive her to commit suicide.

(ii) In spite of the charge for offence punishable under Sections 498A and 306 read with Section 34 of I.P.C., charge u/s 306 of I.P.C. was not established against all the accused.

(iii) Charge of 498A of I.P.C. was also not established against accused Nos. 2 to 4 who are the relatives of accused No. 1. Only charge established against the Appellant accused is punishable u/s 498A of I.P.C.

(iv) Total eight prosecution witnesses were examined during the trial and out of them material witnesses are PW No. 1, father of the deceased PW No. 6, mother of the deceased and one Rajmal - PW No. 4, the husband of one Smt. Ujawala, mistress of the present Appellant accused No. 1. P.W. No. 2 is the Medical Officer whose evidence is on the aspect of performing post mortem report of 11th November, 1995 on the dead body of the victim Smt Chandrakala wife of present Appellant.

(v) P.W. No. 7 is brother in law of Accused No. 1. However, he did not support the case of the prosecution and turned hostile. P.W. No. 3 is one Smt Kalpana, who is a tenant of the premises at Dhule who deposed about the joint stay of the Appellant along with his mistress Ujawala staying in a house along with brother of Ujawala and one son each of the Appellant and said Smt Ujawala. P.w. No. 5 is maternal uncle of deceased Chandrakala who deposed as to - at one occasion the Appellant demanding Rs. 500/- from him for repair of the motor jeep purchased by the Appellant. The last prosecution witness No. 8 is the Investigating Officer.

6. This Court has gone through the substantive evidence of above prosecution witnesses, and mainly the evidence of P.W. Nos. 1 and 6. According to them, their daughter Chandrakala used to tell them regarding the ill-treatment meted

out to her by present Appellant - her husband.

7. Prior to discussing the evidence of said prosecution witnesses as to applicability or otherwise of Section 498A of the I.P.C., it must be said that suicidal death of Chandrakala is not a disputable question and from the evidence of medical witness P.W. No. 2 this fact has been amply proved. Now, the only question is, whether there was a cruelty practiced to Chandrakala. On this aspect, what is contemplated by Section 498A of I.P.C. is required to be construed - Section 498A reads:

S. 498A. Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation. For the purposes of this section, "cruelty" means

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security is on account of failure by her or any person related to her to meet such demand.

8. There are two modes of cruelty mentioned in the Section. Apparently, the present case was considered by the trial Court as establishment of a mental cruelty on the wife i.e. deceased Chandrakala due to the actions on the part of the present Appellant - accused No. 1 and this is more so in view of he having extra marital relations with one Smt Ujawala wife of P.W. No. 4 - Rajmal. The trial Court has discussed this aspect in detail and which is also the case of the prosecution, inasmuch as the Appellant - accused No. 1 developed a love affair with one Ujawala, a married woman who was the wife of P.W. No. 4 Rajmal. Said love affair was started on account of the business transactions between P.W. No. 4 Rajmal and the present Appellant. Rajmal P.W. No. 4 was using the transport services of the present Appellant for the purpose of transporting the goods manufactured in the factory of Rajmal and for that purpose initially the Appellant had hired one tempo and subsequently purchased his own jeep. In such business relation the Appellant came in contact with Ujawala, wife of Rajmal, and as such subsequently Ujawala left her matrimonial house and went to Dhule and started residing along with the Appellant accused No. 1 in one house along with son of the Appellant and also the son of Ujawala from her marriage with Rajmal. This extra marital relation of the Appellant was known to the deceased Chandrakala and she tried to divert the mind of the Appellant when he used to visit his house. Deceased Chandrakala tried to stop her husband having illicit relations with Ujawala but in vain. This conduct of the Appellant accused is considered as mainly cruelty to his wife deceased Chandrakala and for this reason punishment was awarded against the Appellant for the offence punishable u/s 498A of I.P.C.

But, considering the material deficient of bringing home the charge for the offence punishable u/s 306 of the I.P.C., the Trial Court acquitted Appellant Accused No. 1 for the said charge.

9. On carefully examining the substantive evidence of P.W. No. 4 - husband of Smt Ujawala, it transpires that the deceased Chandrakala had been to the house of said witness for making enquiry regarding her husband - the Appellant having extra marital relations with the wife of P.W. No. 4. Further the evidence of P.W. No. 4 reveals that his wife Ujawala had left the matrimonial house and initially went to her parents at Pune and subsequently left Pune and instead coming back to matrimonial home went at some other place and subsequently found at Dhule where she was staying with present Appellant along with her son from her marriage with P.W. No. 4. Said stay of the Appellant with Ujawala at Dhule is fortified by the substantive evidence of P.W. No. 3 Kalpana, who was neighbour of the accused Appellant, residing at Dhule. Substantive evidence of said P.W. No. 3 reveals that once Smt Ujawala had told her in casual talk that the Appellant was her husband. Said P.W. No. 3 Kalpana had identified the Appellant during her substantive evidence of the trial Court. Nothing was extracted from her cross-examination as to doubt her evidence as to accused No. 1 and Smt Ujawala staying as husband and wife at Dhule.

10. Considering the substantive evidence of these witnesses, Rajmal and Kalpana, trial Court came to the conclusion regarding the truth in the complaint of Chandrakala, made in November, 1995 prior to the incident of she committing suicide, such complaint was made to her parents that the Appellant was living with his mistress in Dhule and he intends to marry with her.

11. Apart from the above, trial Court has also discussed the another circumstance as to substantive evidence of Rajmal that Chandrakala had been to his place inquiring regarding her husband. Trial Court has also placed reliance on the factual position as to the evidence of Kamalbai that accused No. 1 returned back to his house only a couple of days prior to the occurrence of the incident which took place on 11th November, 1995 when she consumed insecticide and committed suicide. In the opinion of this Court, the trial Court has rightly appreciated the evidence of prosecution witnesses and mainly that of Rajmal P.W. No. 4, Kalpanabai P.W. No. 3 and also of the parents of deceased Chandrakala, inasmuch as the proof of the offence u/s 498A is concerned regarding mental cruelty due to illicit relations of the Appellant with another woman and this fact was known to the victim. However, the trial Court did not take into consideration the mental cruelty as sufficient for Smt Chandrakala to end her life by consuming poison mentioning that Chandrakala became over sentimental after knowing that her husband had kept a mistress and out of desperation she had taken extreme steps of committing suicide. In the opinion of this Court, in the absence of any appeal against the acquittal of the Appellant accused No. 1 for the offence punishable u/s 306 of the I.P.C. what is construed is whether the conviction for the offence punishable u/s 498A of I.P.C. is sustainable or not.

12. In view of the above discussion and the merit of the substantive evidence of the witnesses mentioned above, in the opinion of this Court, there is nothing to interfere with the impugned judgment and order regarding conviction of the Appellant for the offence punishable u/s 498A of I.P.C. more so, considering the quantum of punishment inflicted i.e. for six months and fine of Rs. 500/. In the result, there is no substance in the present criminal appeal. Hence, same is disposed of with the following order.

ORDER

(i) Criminal Appeal No. 131 of 1997 is dismissed.

ii) In view of disposal of the main appeal, Criminal Application No. 464 of 2011 does not survive and same is disposed of accordingly.