
(2010) 06 BOM CK 0118
In the Bombay High Court
Case No : Criminal Appeal No. 302 of 2010

Saidabee Mohd. Yasin

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

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

Citation : (2011) 1 DMC 749

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

Bench : Single Bench

Advocate : A.J. Thakkar, for the Appellant; S.S. Doifode, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A.H. Joshi, J.—The Appellant herein was charged tried, and has been convicted for offences punishable under Sections 498A and 306 of Indian Penal Code, and sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs. 100, in default, further Rigorous Imprisonment for fifteen days for the former offence, and Rigorous Imprisonment for five years and a fine of Rs. 200, in default, further Rigorous Imprisonment for one month for the latter offence.

2. Heard learned Advocate/Mr. A. J. Thakkar for the Appellant and learned APP Mr. S.S. Doifode for the Respondent.

3. The prosecution relies on nine witnesses.

4. Fact cause and location of death are not in dispute.

5. Crux of the matter is proof of ingredients of Explanation (a) to Section 498A and Section 306 of Indian Penal Code.

On this point, prosecution has examined following witnesses:

(1) PW-1 Abdul Jalil Ab. Salam.: Brother of deceased.

(2) PW-4 Habibkha Rahemankha: Brother of deceased.

(3) PW-5 Shoharatkhan Karimkhan: Niece of deceased.

(4) PW-7 Ab. Aziz Ab. Rashid: Brother of deceased.

(5) PW-9 Sk. Mannu : Neighbour of the

Sk. Karim : house of deceased/accused.

6. These witnesses have deposed before the Court to prove the ill-treatment given by the accused to the deceased Mumtazbi and the circumstances in which, according to them, the deceased was driven to commit suicide.

7. Perusal of evidence discloses that substantial version of these witnesses is almost a replica of one another. The appreciation thereof would be possible upon perusal of relevant portion of testimony of each of these witnesses. The relevant portions of testimony of each witness are quoted as follows:

(a) PW-1 Abdul Jalil Abdul Salam-Brother of deceased has stated that:

2. After marriage my sister Mumtazbi was residing in Mehboobnagar along with her husband, sons and with accused. Married life of my sister past properly for 5 to 6 years but thereafter accused Sahidabi started ill-treating her. Accused used to abuse and beat my sister and sent her to our house. We used to convince to my sister and sent her to her matrimonial house.

3. My sister had come to my house two months prior to her death and had told me. that her mother-in-law ill-treated her....

(Quoted from page Nos. 48 and 49 of the Appeal paper-book. Underlining is done to highlight important and relevant portions).

(b) PW-4 Habibkha Rahemankha -- Brother of deceased has stated as follows:

1. ...We asked her as to how she got burn whereupon she disclosed that on Saturday she was searching for rented house but she could not get and therefore on Sunday she came to her house and get lighted the fire place to cook the food for her children.

She also disclosed to us that her mother-in-law came and poured water in the said fire place and abused and beat her. She therefore poured kerosene on her own person in being fed up and got burn. She also disclosed to us that as her mother-in-law used to abuse her she wanted to search for rented house. On the same day night she died in the hospital.

(Quoted from page No. 64 of the Appeal paper-book. Sub-paragraphing is done for convenience of reading. Underlining is done to highlight important and relevant portions).

(c) PW-5 Shoharatkhan Karimkhan Niece of deceased as stated as follows:

2. ...When I asked her about incident she told me that her mother-in-law beat her and her children and drove them out of the house saying that they should not stay in her house and should search for rented house. She also told me that on Saturday she searched for rented premises but she could not get. She also told me that on the day of incident also she searched for rented house but she could not get and as her children were hungry she came to her house at about 4 p.m. to 5 p.m. to cook food for them. She also told me that when she lit fire place to cook food her mother-in-law came therefore and put water in fire place, abused and beat her with slap. She also told me that she was fade up with the daily torture of her mother-in-law and it was unbearable and therefore she poured kerosene on her own person and set herself ablaze. She also told me that two months prior to the date of incident also her mother-in-law driven her out of house and therefore she had gone to her parents house at Balapur....

Quoted from page Nos. 71 and 72 of the Appeal paper-book. Underlining is done to highlight important and relevant portions).

(d) PW-7 Abdul Aziz Abdul Rashid-Brother of deceased has stated that:

2. ...When I asked Mumtajbi in the hospital about incident she told me that her children were hungry she lit fire place to cook food to them and at that time her mother-in-law poured water in fire place. Mumtajbi also told me that her mother-in-law does not allow her to reside in her house and on that ground the quarrel take place and due to the harassments by her mother-in-law, she poured kerosene on her own person and got burn. Mumtajbi died in the hospital at 3 a.m.

(Quoted from page No. 83 of the Appeal paper-book. Sub-paragraphing is done for convenience of reading. Underlining is done to highlight important and relevant portions).

(e) PW-9 Sk. Mannu Sk. Karim-Neighbour of the house of deceased/ accused has stated that:

2 There used to be some quarrels between accused Sahidabi and deceased Mumtajbi. I used to convince both of them. Accused Sahidabi used to abuse us also and therefore, we stopping with her. Due to quarrel Mumtajbi had gone to her brother's home at Balapur After some days husband of Mumtajbi brought her to his house. Accused Sahidabi did not allow Mumtajbi to her house for 2-3 days and, therefore, Mumtajbi along with her children had started searching rented house....

(Quoted from page Nos. 96 and 97 of the Appeal paper-book. Underlining is done to highlight important and relevant portion).

8. To substantiate his contention, learned Advocate, for the Appellant has placed reliance on following judgments:

(1) Kishori Lal v. State of M.P. II (2007) DMC 52 (SC): 2007 ALL MR (Cri) 2147 (S.C.),

- (2) Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, ,
- (3) Ramesh Kumar Vs. State of Chhattisgarh, ,
- (4) Shankar son of Vishivanath Kolhe and Anr. v. State of Mah., 2006 ALL MR (Cri) 790,
- (5) Rajaram Lala Ahire and Others Vs. State of Maharashtra, ,
- (6) State of Maharashtra Vs. Vijay Pandurang Pawar, ,
- (7) Pannalal Sadulmal Kothari and Others Vs. State of Maharashtra, , and
- (8) Manish Kumar Sharma Vs. State of Rajasthan, .

9. The question," that arises before this Court, is namely:

Whether behaviour of the accused with the deceased Mumtajbi and whether said treatment given by accused to Mumtajbi is a cruelty within the meaning of said term appearing in Explanation (a) to Section 498A of Indian Penal Code, and whether facts proved by the prosecution constitute instigation to abet or instigate Mumtajbi to commit suicide?

10. By applying the parameters as emerging from the reported judgments relied upon by the learned Advocate for the Appellant, and upon accepting each and every word contained in the testimonies of prosecution witnesses, all that is proved, can be summarized as follows:

- (a) Deceased Mumtajbi had a happy married life from the date of her marriage till few months prior to the date of incident.
- (b) Accused drove the deceased Mumtajbi from her house, and wanted that Mumtajbi and her husband should have a separate residence.
- (c) On this issue, the accused kept on ill-treating Mumtajbi.
- (d) At last, when after a few months, Mumtajbi came back to the house of accused, accused drove her out.
- (e) Mumtajbi came back, as she could not find alternate accommodation and started cooking, however, the accused extinguished the cooking fire.
- (f) As the said ill-treatment became intolerable, Mumtajbi got herself immolated.

11. As noted herein before, even upon accepting that every word uttered by the prosecution witnesses is the gospel truth, even then it is not proved by the prosecution that which of the words used or which treatment given by accused to Mumtajbi constitutes conduct which is of such a nature that it is likely to drive Mumtajbi to commit suicide.

12. Evidence also does not disclose as to which of the acts of the accused amount to instigation or abetment for Mumtajbi to commit suicide.

13. In the result, without discussing the law relied upon by the learned Advocate for the Appellant any further, it suffices on facts to conclude that the prosecution has failed to prove the charge.

14. The learned Sessions Judge, who ordered conviction and sentence, has recorded a finding without adverting to the fact that the evidence on record does not conform to the ingredients of Explanation (a) to Section 498A and Section 306 of Indian Penal Code.

15. In the result, appeal succeeds.

16. The judgment and order of conviction and sentence is set aside.

17. Appellant be set at liberty unless required in any other case.