

(2015) 06 BOM CK 0297

In the Bombay High Court

Case No : Criminal Appeal No. 312 of 2000

Sambhaji Chandrabhan Nalawade

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 17-06-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 304-B, 306, 34, 498-A

Citation : (2015) ALLMR(Cri) 3645

Hon'ble Judges : V.M. Deshpande, J.

Bench : Single Bench

Advocate : S.S. Thombare, Advocate, for the Appellant; V.H. Dighe, A.P.P., for the Respondent

Final Decision : Allowed

Judgement

V.M. Deshpande, J.—Appellant Sambhaji, husband of the deceased Indubai, is before this court in view of his conviction, passed by the learned IVth Additional Sessions Judge, Aurangabad, in Sessions Case No. 284 of 1996, in which he convicted the appellant for the offence punishable under Section 498-A of the Indian Penal Code and directed him to suffer rigorous imprisonment for one year and to pay fine of Rs. 500/-, in default further to suffer rigorous imprisonment for three months.

The appellant is also convicted for the offence punishable under Section 306 of the Indian Penal Code and for that he is sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 1000/-, in default to suffer rigorous imprisonment for one year.

The appellant is also convicted for the offence punishable under Section 304-B of the Indian Penal Code and on that count he was directed to suffer rigorous imprisonment for seven years and to pay fine of Rs. 2000/-, in default further to suffer rigorous imprisonment for two years.

The prosecution case is as under:-

Bhaginath Supad Malode (PW 3) lodged a report (Exh.23) with police station Khultabad. The said first information report was registered as Crime No. 226 of 1994, for the offences punishable under Sections 498-A , 306 , 304-B r/w 34 of the Indian Penal Code. The first information report was lodged against five accused persons including the present appellant.

As per the first information report, marriage of Indubai was solemnized with appellant Sambhaji on 15.5.1993. It is alleged that appellant used to demand money from the sister of the first informant and on that count he used to beat her and used to drop her at her parental house. This he has done on 3-4 occasions. At one time he demanded cupboard and for that his father gave Rs. 1,500/- to him. As per the allegation in the first information report, every time appellant used to demand Rs. 1,000/- to Rs. 1,200/- and that used to be satisfied.

Appellant came in the month of Pitra Paksha. That time he demanded Rs. 3,000/- for driving license stating that he wanted money prior to Dasara. Upon that, the father of the first informant informed him that the amount will be given upto Dipawali. Therefore, without taking any meal he left the house.

The first information report further alleges that on the next day, the first informant took his sister to Savangi. That time in his presence the appellant used abusive language. He was pacified. It is alleged in the first information report that the appellant asked the first informant that amount should be paid to him till Dasara. It is further alleged that on 14.10.1994 he had been to Bazar Savangi. That time also the amount was demanded by him. On 16.10.1994 they received message about the death of his sister.

With the above allegations the first information report was lodged.

2. Vasant Kulkarni (PW 2) was attached to Khultabad police station as A.S.I. Kailas gave a report regarding death of Indubai. Accordingly, accidental death was registered vide A.D. No. 47 of 1994 (Exh. 19).

Narayan s/o Baliram Gaisamudre (PW 6) received the papers of A.D. No. 47 of 1994. He made inquiry in that proceedings. Spot panchanama (Exh. 12) was drawn. Inquest was conducted vide inquest panchanama (Exh. 14). He also attached the clothes of the deceased vide seizure panchanama (Exh. 15).

On 18.10.1994 PW 3 Bhaginath lodged a complaint. The complaint was endorsed by PW 6 Narayan. After registration of the crime, P.S.I. Narayan (PW 6) recorded statements of parents, brother and maternal uncle of the deceased. Accused persons were arrested by him. After completion of other usual investigation, charge sheet was filed in the court of law.

3. Learned VIth Judicial Magistrate, First Class, Aurangabad, in whose court charge sheet was filed, found that the offences were exclusively triable by court of Sessions, and therefore, on 13.9.1996, he passed committal order. Thereafter, the case was registered as Sessions Case No. 284 of 1996.

Learned IVth Additional Sessions Judge, Aurangabad framed charge against five accused persons including the appellant for the offences punishable under Sections 498-A r/w 34 , 306 r/w 34 and 304-B r/w 34 of the Indian Penal Code.

All the accused denied the charge and claimed for their trial.

4. In order to bring home the guilt of the accused persons, the prosecution examined following witnesses.

PW 1 Punjaji Nalawade, panch who proved spot panchanama (Exh. 12) and inquest panchanama (Exh. 14).

PW2 Vawant Kulkarni, who registered accidental death proceedings on the basis of the intimation given by Kailas.

PW 3 Bhaginath Supad Malode, brother of deceased Indubai, who lodged the first information report.

PW 4 Supad Sheku Malode, father of the deceased.

PW5 Dr. Jagpal Nevtikar, who has conducted autopsy over the dead body and proved postmortem notes (Exh. 17).

PW6 P.S.I. Narayan Gaisamudre, investigating officer.

5. Learned Additional Sessions Judge, Aurangabad, after full dressed trial, acquitted original accused Nos. 2 to 5 for all the offences for which they were charged. After their acquittal, the State has not filed any appeal against the said order of acquittal.

Accused No. 1/appellant was convicted and was sentenced, as observed in the opening paragraph of this judgment.

6. Both the learned counsel for the appellant and the learned Additional Public Prosecutor took me through the record of Sessions Case in detail. Both of them submitted their arguments in order to substantiate their respective prayers.

7. In order to sustain the conviction, there must be available sufficient evidence on record to show that:-

(a) There was a demand of money from the appellant;

(b) On account of the demand for money the deceased was subjected to cruelty, both mentally as well as physically;

(c) The illtreatment and harassment was of such nature that it drove the deceased to commit suicide.

In the present case, the prosecution has not alleged that death of Indubai was homicidal one. According to the prosecution, she committed suicide.

A death can be accidental, suicidal or homicidal one.

As observed, it is not the case of the prosecution that death of Indubai was homicidal. Postmortem report is at Exh. 17. As per the postmortem report, the doctor has opined that Indubai died due to cardio respiratory arrest due to organo phosphorous poisoning. Exh.26 is the Chemical Analyser's report in respect of viscera. The said report also confirms that poison indosulphan was detected in the viscera.

Further it is not even the suggestion of the appellant either during the trial or before this court that accidentally the poisonous substance entered in the body of Indubai. Therefore, there cannot be any doubt that Indubai committed suicide.

8. The next question will be whether Indubai was driven to the point of "no return" by the appellant and/or the harassment was of such a nature that caused Indubai to commit suicide.

9. One of the recent authoritative pronouncement of Apex Court reported in the case of Sher Singh Vs. State of Haryana , the Apex Court has observed that in order to prove that dowry death has occurred, the prosecution has to prove as follows:-

"(i) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured.

(ii) within seven years of her marriage.

(iii) and that she was subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) in connection with any demand for dowry, and

(v) that the cruelty or harassment meted out to her continued to have a casual connection or a live link with the demand of dowry."

10. In the present case, in so far as demand and harassment is concerned, we have the evidence of only two witnesses, those are PW 3 Bhaginath Malode and PW 4 Supad Malode.

These two witnesses are brother and father of deceased Indubai and as such they are her close relatives. Merely because they are close relatives and/or interested witnesses, their evidence need not be discarded. While appreciating their evidence, the court must be on guard. Their evidence must be trustworthy and same should inspire confidence.

From the evidence of these two witnesses, it is crystal clear that their evidence is completely silent on the point that at any time Indubai has disclosed them that she was subjected to cruelty, both mental and physical on account of demand of money. Their evidence is also completely silent that Indubai at any point of time has disclosed to them that appellant has made demand to her that she should bring money from her parents.

11. The first information report is not a substantive piece of evidence. It can be

used for corroboration and for contradiction. The allegation made by the first informant in the first information report that, every time the appellant used to demand Rs. 1,000/- to Rs. 1,200/- and that demand used to be satisfied by the first informant, is conspicuously absent in the substantive evidence of Bhaginath (PW 3).

Further according to PW 3 Bhaginath, a demand of Rs. 1,500/- was made to purchase cupboard. Even according to this prosecution witness, the demand was made directly to his father. Thus, the demand was not made to Indubai. According to Bhaginath (PW 3) his father PW 4 Supad had paid the said amount, however, the evidence of Supad (PW 4) is somewhat different. His evidence does not disclose that the amount of Rs. 1,500/- for cupboard was made to him directly. Thus, the evidence of Bhaginath that demand of Rs. 1,500/- made to his father directly is not supported by evidence of his father PW 4 Supad Malode.

Further as per the evidence of Supad (PW 4), the amount was paid by him to his wife and she paid the said amount to her daughter and she gave the said amount to the present appellant. Thus, there is variance in the evidence of these two prosecution witnesses in respect of payment to the appellant. Further the prosecution has not examined wife of Supad. Therefore, the payment of Rs. 1,500/- to appellant is not at all proved.

12. According to the prosecution, the second demand was for Rs. 3,000/- for driving license. If prosecution case is to be believed, when PW3 Bhaginath had been to the place of the appellant for dropping his sister, that time appellant has abused his sister in his presence.

Supad (PW 4) claims that when Bhaginath returned to the house after dropping Indubai, he disclosed to him that he should pay the amount, else the appellant would kill his daughter.

Thus, from this evidence, it is crystal clear that both these prosecution witnesses are at variance on the material aspect. Further, they are ready to state anything. Their evidence does not inspire confidence.

13. Since there is no substantive evidence on record to show that Indubai had disclosed either of these prosecution witnesses about illtreatment, the prosecution case must fail on that count that Indubai was subjected to cruelty on account of demand of money. Further, it is brought on record that Bhaginath and Supad were financially poor than the accused and the accused were aware about their financial condition. Further, the incident has occurred on 16.10.1994; whereas the first information report was lodged on 18.10.1994. The delay is also not properly explained by the prosecution.

14. Learned trial court has not considered the aspect that there is no evidence available on record to show that Indubai had informed about her illtreatment to the prosecution witnesses. Further, in paragraph 22 of the impugned judgment, the learned Judge has observed as under:

"If defence version cannot be accepted, the prosecution version appears to be more probable and true."

The burden firstly rests on the shoulder of the prosecution. The prosecution has to discharge its burden and prove its case beyond reasonable doubt. Infirmities and lacunae in the defence version cannot render into conviction.

Cumulative effect of the afore said discussion clearly shows that the prosecution has not proved the guilt of the appellant beyond reasonable doubt. Therefore, the benefit has to be extended in favour of the appellant. That leads me to pass following order.

(i) Criminal Appeal is allowed.

(ii) The judgment and order, passed by the learned IVth Additional Sessions Judge, Aurangabad, on 15.7.2000, Sessions case No. 284 of 1996, convicting the appellant original accused No. 1 Sambhaji Chandrabhan Nalawade for the offences punishable under Section 498-A , 306 and 304-B of the Indian Penal Code, is set aside.

(iii) The bail bonds of the appellant stand cancelled.

(iv) The fine amount, if any paid by the appellant, be refunded to him.