

(2016) 03 BOM CK 0183
In the Bombay High Court
Case No : Criminal Appeal No. 352 of 1996

Sanjay Balaso Huzare

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 31-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156
Evidence Act, 1872 — Section 106, Section 3, Section 45, Section 61
Penal Code, 1860 (IPC) — Section 306, Section 498A

Citation : (2017) 1 AIRBomRCri 775 : (2017) ALLMRCri 2341

Hon'ble Judges : Smt. Sadhana S. Jadhav, J.

Bench : Single Bench

Advocate : Mr. Sachin Chavan i/b. Mr. Sameer Tambekar, Advocate, for the Appellants; Ms. A.A. Mane, APP, for the State

Final Decision : Disposed Off

Judgement

Smt. Sadhana S. Jadhav, J.—The appellants herein are convicted for the offence punishable under Sections 306 and 498A read with Section 34 of Indian Penal Code. for the offence under Section 498A, each of the accused is sentenced to R.I. for one year and fine of Rs.250/- in default S.I. for two months and for the offence punishable under Section 306 read with Section 34 of IPC, the accused are sentenced to undergo R.I. for two years and fine of Rs.250/- in default S.I. For two months.

2. Such of the facts necessary for the decision of this appeal are as follows :-

(a) Accused No.1 had got married to Kamal five years prior to the incident.

(b) On 11.4.1993, Pandurang Ganpati Powar lodged a report at the police station alleging therein that on 16.5.1991, Kamal got married to Sanjay son of Balaso Huzare, a resident of Village Kumbhoj. That he had presented one tola gold ring, watch, clothes and household utensils to Sanjay at the time of marriage. That Kamal was treated well for first four months. However, thereafter, her in-laws

and husband had ill-treated her on account of demand of safe, gold chain and watch. At the time of visiting Kamal had informed her parents about the said demand by the in-laws. After they had persuaded her to return to her matrimonial house and that due to financial difficulties, he could not fulfil the demand. He had received a letter from his daughter dated 28.1.1993, wherein she had disclosed ill-treatment meted out to her on account of demand. She had threatened in the said letter that she does not wish to live any more. They had apprehended danger to her life and, therefore, he had rushed to her matrimonial house and had persuaded the accused persons. They had brought their daughter to her maternal house. She stayed in her maternal house for about 1? month and thereafter her father-in-law had been to fetch her. After 15 days, he had gifted a Sari for Kamal and went to her husband Sanjay. On 9.4.1993, he had been to the house of his daughter and at that time, he had again requested her in-laws to take care of her. On 10.4.1993, two persons from village Kumbhoj informed him that Kamal had expired. He rushed to the house of his daughter along with his wife and other relatives. He saw the dead body of his daughter. Upon enquiry, he learnt that she committed suicide by hanging herself at about 1 to 1.30 p.m. The police prepared inquest panchnama and handed over the dead body for funeral. On the basis of which Crime No.42 of 1993 was registered against the accused for the offence punishable under Sections 498A and 304B of the Indian Penal Code. After completion of investigation, charge sheet was filed on 24.6.1993. The case was committed to the Court of Sessions and registered as Sessions Case No.126 of 1993.

3. PW-1 Pandurang Ganpati Powar happens to be the complainant i.e. unfortunate father of deceased Kamal. He has deposed before the Court that 3 years after the marriage of Kamal he had received a letter from his daughter in which she complained about the illegal demand made by the accused. She had specifically written that since her parents were unable to give her the gold chain, wrist watch, etc. she was harassed. Kamal was of the opinion that her father had deceived her by settling the said marriage. The letter dated 27.1.1993 is at Exhibit 23. He has deposed before the Court that his daughter was called by name Gunita and the accused had named her as Kamal. Since PW-1 was illiterate, the letter was read over to him by Bजारंग Chougale. He had been to Village Kumbhoj and brought his daughter to the maternal house. He had also ventilated his grievance against the accused. After 1? month the accused No.2 i.e. father-in-law had been to their house to fetch Kamal. He had informed accused No.2 that he would send Kamal after a fortnight and thereafter he had been to the house of Kamal along with his relatives and had extended gifts to his son-in-law i.e. accused No.1.

4. PW-1 had been to her house 15 days thereafter and had enquired about her well-being. She had informed him that she was not happy with her husband and her in-laws as they were ill-treating her. He had requested her in-laws not to ill-treat his daughter. He has deposed before the Court that on the 3rd day of Kamal's death, he had received a letter which had a postal stamp dated

13.4.1993. He had received the information about the death of his daughter. He has deposed in consonance with the first information report which is marked at Exhibit 25. It is also admitted before the Court that the accused are relatives of PW-1.

5. The learned counsel for the appellants submits that there are inherent omissions and contradictions in the substantive evidence of PW- 1.

6. Post-mortem was conducted and the dead body was cremated at Kumbhoj by the accused. PW-1 had not attended the funeral. They had returned to their village. After discussion with the relatives, they had decided to lodge the complaint. He has admitted that he had not given the notebooks of Kamal to the police. That he had given the letter to the police on the day on which he lodged the report. He had not drawn the insurance policy in the name of his daughter.

7. PW-2 ? Bajarang Chougale is the friend of PW-1. He has deposed before the Court that her marriage was settled and a list was prepared which would show the exchange of articles between both the families. The list is at Exhibit 21. Immediately after settlement of the list, marriage was performed in front of the house of PW-1. PW-1 had gifted golden articles to his daughter and his son-in-law. On one occasion, when Kamal had been to her maternal house, he had enquired with her about welfare and at that time she had categorically stated that she was not happy in her matrimonial house as she was being ill-treated. That he has further proved that he had read out the letter written by Kamal to her father as her father was an ill-iterate.

8. PW-3 Sambha Powar is the brother of deceased Kamal. Before the Court he has reiterated the allegations and contentions of PW-1. He has deposed before the Court that he had informed the police that he can identify the handwriting of his sister and that the letters are in her handwriting. After her death, they had received the second letter. The learned counsel submits that there are inherent omissions in the deposition of PW-3.

9. PW-4 Balwant Patil was working as Primary teacher in Kanya Vidya Mandir at Village Savarde. He was acquainted with PW-1 and his daughter Kamal as she was studying in Kanya Vidya Mandir from 1st to 7th Standard. PW-4 was teaching the subjects Marathi and Social Studies. He can identify her handwriting. He was confronted with the letters at Exhibits 23 and 24 and he has admitted them to be written by the deceased Kamal.

In the cross-examination, he has stated that there were 263 students in that school. He has admitted that he has not taken any special training in graphology. It is admitted that there is variance in the handwriting in both the letters. That he had not produced any notebook before the police.

10. PW-5 Nandkumar Chavan was attached to Hatkanangale Police Station as API. He has deposed before the Court that initially accidental death was registered under Section 174 of Cr.P.C. On 10.4.1993 vide A.D. No.28/1993. On

11.4.1993, the father of the deceased had lodged a report at the police station. That inquest panchnama and spot panchnama had been conducted in the A.D. Enquiry and that charge-sheet was filed on 24.6.1993. He has admitted in the cross-examination that he had not enquired as to whether the statements of the witnesses was recorded in the A.D. Enquiry. He has also admitted that he had not conducted the panchnama at the time of recovery of the said letters at the instance of the complainant. He has further admitted that he had not sent the letters to the handwriting expert. That it had transpired in the investigation that on 9.4.1993, Pandurang Powar had been to the matrimonial house of deceased Kamal and that on the day of incident, her elder sister Kamal was in her company. That she had been to the agricultural field to call the accused persons and when she returned she saw the dead body of Kamal.

11. It is a matter of record that A.D. No.28 of 1993 was registered on the basis of the information given by accused No.2 on 10.4.1993. The accused No.2 had informed the police that on 9.4.1993, Kamal's father had been to their house to see her. That on 9.4.1993, at about 12 noon his cousin Rajakka had been to the agricultural land along with his daughter Sunita. He continued to work in the agricultural field along with his wife. At 2 p.m., Deepak Nikam informed him that Kamal has expired. They rushed to the house only to see that dead body of Kamal was lying on the cot. He then learnt that his daughter-in-law had committed suicide.

12. Upon perusal of the evidence adduced by the prosecution, it can be said that this is a case of circumstantial evidence. The prosecution has not examined Rajakka or any other witness to substantiate as to how the dead body of Kamal was lying on the cot when it was first seen by accused No.2. It is the case of the prosecution that she had committed suicide by hanging. The learned Sessions Court has acquitted the accused of the charge under Section 304B of the Indian Penal Code. It appears that the post-mortem notes are at Exhibit 19. The opinion of the medical officer is as follows :-

"Probable cause of death : Asphyxia due to hanging"

It is a matter of record that at the stage of admission, no notice of enhancement was issued nor the prosecution has challenged the acquittal under Section 304B of IPC. There are letters on record which would show that the deceased had lost hope in life due to the ill-treatment meted out to her. However, there was no panchnama recorded at the time of seizure of the said letters. The said letters were not sent to the handwriting expert to ascertain as to whether the deceased was the scribe of the said letters. This Court has seen the postal stamps on the said letters and it appears that they had been sent from village Kumbhoj. However, for want of evidence to establish the authorship of the letters, there is no substantive evidence to establish that the deceased was the author of the said letters. The investigation was carried out in a casual manner. In fact, there was documentary evidence to show that a young girl had died in her matrimonial home after informing her parents (by letters) that she felt cheated. That due to

harassment and ill-treatment, she had lost hope to live. However, the said letters were not proved in accordance with law since the I.O. had not investigated the case seriously.

13. The Court has to exercise constraints and cannot travel beyond the papers of investigation or the evidence adduced by the prosecution. The Court record a moral conviction. There is no evidence on record to indicate that the accused-appellant had aided, abetted or facilitated the commission of suicide.

14. As far as Section 498A of Indian Penal Code is concerned, there is ample evidence to show that the accused have committed an offence punishable under Section 498A of IPC. Section 498A of IPC contemplates as follows :-

"498-A. Husband or relative of husband of a woman subjecting her to cruelty ? 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 purpose of this section "cruelty" means -

"(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 or is on account of failure by her or any person related to her to meet such demand."

There is no doubt that PW-1 visited the house of Kamal on 9.4.1993 and at that time she had disclosed that she was not happy in her matrimonial house and, therefore, it is apparent that the wilful act and conduct of the accused is in proximity to the cause of her death. Moreover, father of Kamal received the letter two days after her funeral. It can be safely inferred that the letter was written just a day prior to her commission of suicide. The letters by itself depict reprehensible conduct of the accused persons. That since she had died in her matrimonial house, it is incumbent upon the accused No.1 to offer an explanation under Section 106 of Indian Evidence Act.

15. Upon appreciation of evidence, it can be safely said that the accused-appellants deserve to be acquitted of the offence punishable under Section 306 of IPC. However, their conviction for the offence punishable under Section 498A of Indian Penal Code needs to be maintained.

16. Accused No.1 was arrested on 11.4.1993 and was enlarged on bail by an order dated 11.11.1993. The appellants are convicted by a judgment and order dated 15.5.1996 and sentenced to R.I. for one year for the offence punishable under Section 498A of IPC. Hence, the following order :-

ORDER

(i) The appeal is partly allowed.

(ii) The appellants are acquitted of the offence punishable under Section 306 of IPC read with Section 34 of IPC. However, their conviction for the offence

punishable under Section 498A of IPC is maintained.

(iii) The accused-appellants are sentenced to the period already undergone. However, the sentence of fine is enhanced to Rs.500/- each. The amount to be deposited before the Sessions Court within eight weeks from today. The accused shall deposit collectively an amount of Rs.1500/- in the Sessions Court.

(iv) Amount of Rs.250/- deposited towards fine be deducted from the quantum of fine.

(v) Their bail bonds stand cancelled.

Appeal stands disposed of.