
(2017) 08 BOM CK 0078
In the Bombay High Court
Case No : 64 of 2008

Santosh Rohidas Sule

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 29-08-2017

Acts Referred:

Indian Penal Code, 1860, Section 34, Section 498A, Section 306, Section 304B - Acts done by several persons in furtherance of common intention - Husb

Citation : (2017) 08 BOM CK 0078

Hon'ble Judges : Sangitrao S. Patil

Bench : SINGLE BENCH

Advocate : Joydeep Chatterji, B.A. Shinde

Final Decision : Allowed

Judgement

1. Heard the learned counsel for the appellant and the learned A.P.P. for the State/Prosecution.
2. The appellant has challenged the judgment and order dated 7th February, 2008, passed in Sessions Case No. 1 of 2007 by the learned 1st Adhoc Additional Sessions Judge, Beed, whereby he has been convicted for the offence punishable under Section 498A of the Indian Penal Code ("IPC", for short) and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.1000/.
3. The deceased Asha and the appellant got married on 22nd May, 2005. The original accused No. 2 is the brother of the appellant, while original accused No.3 is the wife of original accused No.2. It is alleged that the appellant and accused Nos.2 and 3 used to demand Rs.50,000/from the parents of the deceased Asha through her for purchasing a tempo and in order to fulfill their demand for money, used to subject her to cruelty. She used to inform about that cruelty to her parents and brother whenever she used to visit her maternal home. Ultimately, on 10th August, 2006, the deceased Asha committed suicide by

jumping into a well, being fed up with the harassment meted out to her at her matrimonial home.

4. The brother of the deceased Asha namely Bhausahab Ransing lodged report against the appellant and original accused Nos.2 and 3 in Police Station, Ashti on 11th August, 2006, on the basis of which Crime No. 92 of 2006 came to be registered against the appellant and accused Nos.2 and 3 for the offences punishable under Sections 498A and 306 read with Section 34 of the IPC. The investigation followed. After completion of the investigation, the appellant and accused Nos.2 and 3 came to be chargesheeted for the above mentioned offences.

5. The learned Trial Judge framed charges against the appellant and accused Nos.2 and 3 for the offences punishable under Sections 498A, 306 and 304B read with Section 34 of the IPC vide Exh18. They pleaded not guilty and claimed to be tried. The prosecution examined four witnesses to establish guilt of the appellant and accused nos.2 and 3 for the said offences.

6. After evaluating the evidence of the prosecution, the learned Trial Judge held that the death of Asha was not suicidal but accidental one. He acquitted the appellant and accused Nos.2 and 3 of the offences punishable under Sections 306 and 304B of the IPC. He further acquitted accused Nos.2 and 3 of the offence punishable under Section 498A of the IPC also. However, he convicted the appellant only for the offence punishable under Section 498A of the IPC and sentenced him as stated above.

7. So far as acquittal of accused Nos.2 and 3 of all the offences and acquittal of the appellant of the offences punishable under Sections 306 and 304B of the IPC is concerned, the State/Prosecution has not filed any appeal to challenge the same. As such, that part of the impugned judgment has attained finality. The only question that is posed for consideration in this appeal is whether the prosecution established that the appellant subjected the deceased Asha to cruelty.

8. The learned counsel for the appellant submits that the evidence on record is very vague and general. Bhausahab (PW1), the informant and Rakhmabai (PW2), who have been examined at Exh33 and Exh34, respectively, are the brother and mother respectively of the deceased Asha. They are the only witnesses produced by the prosecution to establish guilt of the appellant for the offence punishable under Section 498A of the IPC. Asaram (PW3) (Exh38/ C) is the Police Patil, who had given Accidental Death report to the Police Station and PI Kannade (PW4) (Exh47), is the Investigating Officer. They are the formal witnesses. He submits that neither Bhausahab (PW1), nor Rakhmabai (PW2) state that the appellant ever subjected the deceased Asha to cruelty in their presence. Both of these witnesses state that whenever the deceased Asha used to visit their house, she used to tell about the alleged harassment meted out to her by the appellant. He submits that their evidence is hearsay evidence and is not admissible to establish guilt of the appellant for the offence punishable under Section 498A of the IPC.

He submits that the learned Trial Judge acquitted accused Nos.2 and 3 of the said offence, but wrongly convicted the appellant on the basis of the same evidence which was vague, general and omnibus. He, therefore, prays that the appellant may be acquitted.

9. On the other hand, the learned A.P.P. submits that the illtreatment given to the married woman at her matrimonial house generally cannot be witnessed by her maternal relations, who reside far away from her matrimonial house. He submits that the deceased Asha used to narrate about the illtreatment given to her by the appellant to Bhausahab (PW1) and Rakhmabai (PW2). Their evidence is sufficient to establish guilt of the appellant for the above mentioned offence. He supports the impugned judgment and prays that the appeal may be dismissed.

10. There is nothing in the evidence of Bhausahab (PW1) or Rakhmabai (PW2) to show that they actually witnessed the appellant asking the deceased Asha to bring Rs.50,000/from her maternal home. Moreover, there is nothing in their evidence to show that they ever witnessed the appellant illtreating the deceased Asha in any manner. Even there is nothing in their evidence to show that they ever noticed any injury on the person of the deceased Asha, indicating that she was manhandled at her matrimonial home. They have stated before the Court whatever was allegedly narrated by the deceased Asha to them whenever she used to visit their house.

11. Here, a reference may be made to the judgment in the case of Bhairon Singh V. State of Madhya Pradesh AIR 2009 S.C. 2603 and particularly paragraph Nos.11, 16 and 17 thereof, which read as under:

" 11. The moot question is: whether the statements attributed to the deceased could be used as evidence for entering upon a finding that the accused subjected Ranjana Rani @ Raj Kumari to cruelty as contemplated under Section 498A, IPC. In our considered view, the evidence of PW4 and PW5 about what the deceased Ranjana Rani @ Raj Kumari had told them against the accused about the torture and harassment is inadmissible under Section 32 (1) of the Evidence Act and such evidence cannot be looked into for any purpose. Except Section 32 (1) of the Indian Evidence Act, there is no other provision under which the statement of a dead person can be looked into in evidence. The statement of a dead person is admissible in law if the statement is as to the cause of death or as to any of the circumstance of the transactions which resulted in her death, in a case in which the cause of death comes into question. What has been deposed by PW4 and PW5 has no connection with any circumstance of transaction which resulted in her death. The death of Smt. Ranjana Rani @ Raj Kumari was neither homicidal nor suicidal; it was accidental. Since for an offence under Section 498A simpliciter, the question of death is not and cannot be an issue for consideration, we are afraid the evidence of PW4 and PW5 is hardly an evidence in law to establish such offence. In that situation Section 32 (1) of the Evidence Act does not get attracted.

16. The rule embodied in Section 6 is usually known as the rule of res gestae. What it means is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. To form particular statement as part of the same transaction utterances must be simultaneous with the incident or substantially contemporaneous that is made either during or immediately before or after its occurrence. Section 6 of the Evidence Act, in the facts and circumstances of the case, insofar as admissibility of a statement of PW4 and PW5 about what the deceased had told them against the accused of the treatment meted out to her is concerned, is not at all attracted.

17. We hold, as it must be, that there is not an iota of evidence which can be admitted in law to be used against the appellant for the offence punishable under Section 498A, IPC."

12. In view of the above legal position explained by the Hon"ble the Supreme Court of India, the evidence of Bhausahab (PW1) and Rakhmabai (PW2) in respect of the alleged cruelty to which the deceased Asha was subjected, being hearsay, would not be admissible in evidence vide Section 32 (1) of the Indian Evidence Act because the said evidence does not pertain to the cause of death or the circumstances of the transaction which resulted into her death. As such, there is no evidence against the appellant, which is admissible according to law, to connect the appellant with the offence punishable under Section 498A of the IPC.

13. The memorandum of the postmortem examination (Exh27) also does not show any external injury in Column No.17 thereof to indicate that the deceased Asha was subjected to any bodily injury prior to her accidental death.

14. As stated above, there is absolutely no evidence to establish guilt of the appellant for the offence punishable under Section 498A of the IPC. The learned Trial Judge wrongly relied on the inadmissible evidence and wrongly convicted the appellant for the said offence. The impugned judgment and order, therefore, are not sustainable. In the result, I pass the following order: O R D E R

(i) The Criminal Appeal is allowed.

(ii) The impugned judgment and order, convicting and sentencing the appellant for the offence punishable under Section 498A of the Indian Penal Code, are quashed and set aside.

(iii) The appellant is acquitted of the offence punishable under Section 498A of the Indian Penal Code.

(iv) The bail bonds of the appellant are cancelled. He is set at liberty.

(v) The amount of Rs.1000/, deposited by the appellant towards fine, be refunded to him.

(vi) The appeal is disposed of accordingly.