
(1999) 11 BOM CK 0017
In the Bombay High Court
Case No : Criminal Appeal No. 409 of 1992

Shankar Mangalal Lokhande

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 17-11-1999

Acts Referred:

Evidence Act, 1872 — Section 32, 45, 59
Penal Code, 1860 (IPC) — Section 107, 306, 498

Citation : (2000) 5 BomCR 554 : (2000) BomCR(Cri) 554 : (2000) 2 BOMLR 302 : (2001) 1 DMC 30 : (2000) 3 MhLj 524 : (2000) 4 RCR(Criminal) 229

Hon'ble Judges : S.S. Parkar, J

Bench : Single Bench

Advocate : D.S. Sawant, for the Appellant; S.R. Shinde, Assistant Public Prosecutor, for the Respondent

Judgement

S.S. Parkar, J.—The appellant convicted for offences under sections 306 and 498-A of I.P.C. and sentenced to RI for two years on each count and to pay a fine of Rs. 500/- for each offence and in default to suffer RI for six months on both the counts has preferred this appeal challenging the order of conviction and sentence recorded against him by the learned Additional Sessions Judge, Greater Bombay on 31st July 1992 in Sessions Case No. 878 of 1986.

2. The prosecution case, briefly stated, is as follows:

Deceased Pramila was married to the appellant about 12 years prior to the incident which took place on the day of 21st September 1986 in the matrimonial home. During their wedlock deceased gave birth to three children, two sons and one daughter out of whom the younger son is no more. There used to be frequent quarrels between the two on account of the appellant being addicted to alcohol and was frequently assaulting the deceased with fists and kicks. It was also the allegation that the appellant was starving his deceased wife and he used to demand money from her. On 21st September 1986 at about 2 p.m. in the afternoon the appellant demanded a sum of Rs. 10/- from the deceased which

she could not pay. The appellant, therefore, assaulted her with fists and kicks. The deceased, fed up with her life of torture and suffering to which she was put to by the appellant, decided to end her life and, therefore, closed the door, poured kerosene on her body and set herself ablaze. She then immediately came out of her house shouting. The neighbours rushed to her rescue, extinguished her fire and removed her to Rajawadi Hospital for medical treatment. When she was admitted to the hospital she gave history of suicidal burns. The doctors who attended her found she was having 65% burns and, therefore, Ghatkopar Police Station was informed on telephone. P.S.I. Shivaji Patil P.W. 7 rushed to the hospital, consulted the doctor and after the doctor certified the deceased to be in a fit condition to give statement, recorded her statement which is at Exhibit 17. The said statement is treated as F.I.R. P.S.I. also sent Constable to call an Executive Magistrate who also immediately came to the hospital and recorded her statement at Exhibit 6. In both the statements the deceased has narrated about the frequent physical torture to which she was subjected to by her husband as also how she set herself on fire because of the fist and kick blows given to her by the appellant-husband. There were burn injuries on the face, neck, chest, upper abdomen, thighs, back and waist of the deceased. She ultimately died on 24th September 1986. The appellant husband was arrested on 23rd September 1986.

3. After the investigation the charge-sheet was filed for offences under sections 498-A and 306 of I.P.C. and the case was committed to the Sessions Court. The Ld. Addl. Sessions Judge, Greater Bombay framed charges for offences punishable under sections 498-A and 306 of I.P.C. to which the appellant pleaded not guilty. At the time of trial the plea of the appellant was of total denial and false implication. He denied having treated his deceased wife with cruelty and that he was addicted to drinks or that he used to make demand for money from her. He also denied the incident dated 21st September 1986. According to him the wife must have committed suicide on account of their poverty.

4. At the time of trial prosecution led the evidence of eleven witnesses. P.W. 1 is Gangadhar Mane, the Special Executive Magistrate who recorded the statement of the deceased on 21st September 1986 at Rajawadi Hospital which is at Exhibit 6. P.W. 2 is Ramchandra Throat who is the neighbour of the appellant and had turned hostile. P.W. 3 is Laxman Kanapure who was a neighbour and panch to the spot Panchanama (Ex. 9) who also turned hostile. P.W. 4 is Shyam Mungala, a neighbour residing in the adjoining room of the accused and is a tailor by profession but at the time of trial he also turned hostile. P.W. 5 is Dr. Bipil Lal, CMO attached to Rajawadi Hospital who had examined the deceased on her admission to the hospital and produced the original medico-legal register maintained by the said hospital. P.W. 6 is Dr. Subhash Khanolkar who performed the post-mortem examination on the dead body of the deceased, P.W. 7 is Shivaji Patil, P.S.I. who recorded the first dying declaration of the deceased (Ex. 17). P.W. 8 is Hemant Pathak is the Registrar Surgeon attached to Rajawadi Hospital, Ghatkopar who had examined the deceased on her admission in the hospital.

P.W. 9 is Dr. Haresh Shah, the doctor who had examined the deceased in the burns ward of the hospital and had also made endorsement of fitness to give statement. Exhibit 17 recorded by the P.S.I. P.W. 7. P.W. 10 is Shantabai, mother of the deceased who came after she learnt about her daughter being admitted to the hospital. P.W. 11 is Bhauganpati, Inspector of Police attached to Ghatkopar Police Station who investigated the crime registered under C.R. No. 692/86 in respect of the said incident.

5. After considering the entire evidence on record the learned trial Judge, relying on the dying declaration (Exh. 17) recorded by the P.S.I. P.W. 7, deposition of the mother of the deceased, Shantabai P.W. 10, recorded the conviction and sentence against the appellant as stated above. The said order of conviction and sentence is impugned in this appeal.

6. Mr. Sawant, learned Advocate appearing on behalf of the appellant, after taking me through the evidence on record, contended that the conviction of the appellant u/s 306 of I.P.C. is not proper. According to him even if it is assumed that the deceased was subjected to cruelty by the appellant, the offence of abetment u/s 306 of I.P.C. cannot be made out unless and until there is evidence on record to show that the appellant had in any way instigated the deceased to commit suicide. He next argued that no offence is also made u/s 498-A as there is no independent evidence of cruelty and mere reliance on dying declaration would not be sufficient to base conviction for offence u/s 498-A of I.P.C.

7. So far as the first contention of Mr. Sawant is concerned, I find substance. The abetment is not defined u/s 306 of I.P.C. and, therefore one has to take the aid of section 107 of I.P.C. In order to prove the charge of abetment the accused must have instigated a person to do a thing, in this case, to commit suicide or intentionally aided the deceased to commit suicide. If we go by the dying declaration of the deceased, it is clear that she was fed up due to the harassment and the physical violence resorted to by the appellant against her. According to her the appellant was in the habit of drinking alcohol and beating her mercilessly with fists and kicks. This was continuing throughout her married life and on the date of the incident she felt that this harassment of her would not end unless she ended her life and accordingly she resorted to commission of suicide. In her two written dying declarations and the oral dying declaration made to her mother, she does not state how the appellant had instigated or intentionally aided her in committing suicide. The two terms "instigates", and "intentionally aids", used in section 107 of I.P.C. would necessarily require mens rea on the part of the accused in order to hold him guilty for the offence of abetment of suicide u/s 306 of I.P.C. Neither the learned A.P.P. has been able to show me any evidence on record in that behalf nor I could find one from the record of the case. As is clear from the dying declarations made by the deceased, she took this step of commission of suicide as she was fed up of her life due to the frequent physical assaults by her husband. Neither by any words or his action or conduct the appellant is alleged to have instigated, aided or abetted the deceased for

commission of suicide. The trial Judge simply seems to have inferred the abetment of suicide on the basis of the evidence on record about the frequent physical assaults made by the appellant on the person of the deceased. In my view that is not sufficient to make good the charge for offence of the abetment of suicide u/s 306 of I.P.C.

8. In this connection Mr. Sawant relied on the decision of the Division Bench of the Gujarat High Court in the case of State of Gujarat Vs. Sunilkumar Kanaiyalal Jani, . That was a case where the State had gone in appeal against the order of acquittal by the trial Court on a charge u/s 306 of I.P.C. In that case frequent quarrels were taking place between the husband and wife and the wife being fed up with life committed suicide. The Gujarat High Court took the view that harassment or cruelty to the wife was not sufficient to lay the charge of abetment u/s 306 of I.P.C. unless there was intentional or actual abetment by the accused to commit suicide. In the aforesaid circumstances, in my opinion, the conviction u/s 306 of I.P.C. and the sentence recorded by the trial Court against the appellant is liable to be quashed and set aside.

9. The next contention of Mr. Sawant is that there is no independent evidence with regard to the cruelty to the wife. According to him the neighbours would have been the best witnesses to give evidence about the cruelty to which the deceased was alleged to have been subjected to. P.W. 2 and P.W. 4 who were examined for the said purpose by the prosecution had turned hostile. They had resiled from their earlier statements about having heard the quarrel and beating of the wife by the appellant with fists and kicks. They also did not support their earlier statement that the wife had told them that she was assaulted on that day and about her frequent harassment by the husband due to which she had tried to commit suicide. Even P.W. 3 who had acted as panch but was from amongst the neighbours also did not support the prosecution as regards the spot panchanama. It is these neighbours who had extinguished the fire from the person of the deceased and rushed her to the Rajawadi hospital for treatment. It is common experience that after the death of the victim and after lapse of time at the time of trial, the neighbours either are won over or do not choose to support the cause of the dead person and give testimony against their living neighbour. But, in my view, there is sufficient evidence on record in the form of dying declaration made by the wife (Exh. 17) to P.S.I. P.W. 7 and the testimony of her mother, P.W. 10 Shantabai which cannot be doubted with regard to the frequent physical assaults by fists and kicks given by the appellant to the deceased wife. In her dying declaration (Exh. 17) the deceased had stated as follows:

".....My husband is always in a drunken state. On account thereof quarrels used to take place between us very often. Similarly, since our marriage, my husband used to harass me, hurl abuses at me and beat me. Many times, since our marriage, he has beaten me with hands and kicks and punches and has picked up quarrels with me and has kept me without food. As he works on a temporary

basis, he does not have monies with him, therefore, he always used to ask for monies from me and when I refuse to give the monies, he used to beat me up.

On this day, the date 21-9-86, when myself and my husband were at home in the afternoon, at about 2.00 p.m. my husband viz. Shankar asked for Rs. 10/- from me for his pocket-expenses. Thereupon, I told him that I did not have the monies, so from where shall I give the monies to him. On account thereof quarrel took place between us and as usual he beat me up with the kicks and punches. On account thereof, I got really fed up with the quarrels and the harassment and started thinking that for how long I should bear such beatings and then poured kerosene on my person from a small metal tin in the house, pushed my husband out of the house (door) and immediately lighted a match-stick and touched the same to my sari. When my sari caught fire, I came out shouting."

10. In the first paragraph it is mentioned that the appellant used to often harass, abuse and beat her on small pretext. He used to even kick her and punch her. In the second paragraph there is mention about the appellant beating her with kicks and punches on the day of the incident. The said statement, though made to the Police Officer, cannot be discarded as there is reliable evidence given by the P.S.I. Patil, P.W. 7. There is also dying declaration made to the Special Executive Magistrate at Exhibit 6 which has not been relied on by the trial Judge himself as it is more or less identical with the statement at Exhibit 17 and is not endorsed by fitness certificate of the doctor. So far as the dying declaration made to P.S.I. at Exhibit 17 is concerned, it is supported by the evidence of P.W. 9 Dr. Haresh Shah who has made endorsement about the fitness of the deceased to give statement. He has also mentioned about the history of suicidal burns given by the deceased to the doctors which is entered into the medical papers of the hospital produced on record at Exhibit 26. That history was given by the patient herself before the Police Officer had come on the scene. There is also the evidence of Shantabai, P.W. 10, the mother of the deceased who has stated in para 2 of her deposition as follows:

"The deceased used to visit Dhule to meet me. When she used to meet me she used to complain to me that the accused used to beat her in a drunken state.

" In para 4 of her deposition she has stated as follows:

".....The deceased disclosed to me that she was assaulted by the accused. She also told me that the accused was demanding money from her. She also disclosed to me that when she refused to pay money to the accused, she was assaulted by him. She also stated to me that by pouring kerosene on her body she tried to commit suicide. Pramila was able to speak with me....."

11. In my view the statement made in the dying declaration by the deceased and the evidence of the mother of the deceased P.W. 10 Shantabai is sufficient to prove the charge of cruelty to the deceased by the appellant. The cruelty to which the deceased was subjected to at the hands of the appellant ultimately

drove her to commit suicide and, therefore, an offence u/s 498-A Explanation (a) is squarely made out against the accused.

12. It is important to note that the deceased wife though fed up of her life due to torture to which she was put to by the appellant, did not falsely implicate her husband appellant for having set her on fire. She honestly admitted that she herself tried to commit suicide because she was fed up of her life due to the harassment and physical violence to which she was subjected to by her husband. Her mother has also deposed that she used to be told by her daughter whenever the deceased went to her house about the assaults by her husband. Her mother has also deposed about the incident dated 21-9-86 narrated to her by the deceased which led her to take extreme step of burning herself and committing suicide. In my view there is sufficient evidence against the appellant to confirm his conviction u/s 498-A of I.P.C.

13. Mr. Sawant lastly contended that the sentence should be reduced in view of the fact that u/s 498-A the maximum sentence is three years and that the appellant has to look after the children. So far as the children are concerned, they by this time undoubtedly must be major and, therefore, do not require care of the appellant. The incident is of September 1986 and the appellant is said to have undergone only a week's imprisonment initially between 23rd September, 1986 and 1st October, 1986. In my opinion, in view of the lapse of time, it would be in the fitness of things to reduce the sentence u/s 498-A to one year's imprisonment, retaining the sentence of fine and default sentence.

14. In the result the appeal is partly allowed. The order of conviction and sentence recorded by the Sessions Court u/s 306 of I.P.C. in Sessions Case No. 878 of 1986 is quashed and set aside. The conviction of the appellant u/s 498-A of I.P.C. is confirmed but the substantive sentence is reduced from R.I. for two years to R.I. for one year retaining the sentence of fine of Rs. 500/- and the default sentence of six months. The appellant shall surrender to his bail forthwith.

15. Appeal partly allowed.