
(2011) 02 BOM CK 0039
In the Bombay High Court
Case No : Criminal Appeal No. 90 of 1999

Sheshrao Suryawanshi

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:

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

Citation : (2011) 02 BOM CK 0039

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

Bench : Single Bench

Advocate : M.D. Shinde, for the Appellant; V.G. Shelke, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This appeal is preferred by the Appellant/original accused No. 1 against the judgment and order of conviction dated 01.02.1999 passed by the learned Additional Sessions Judge, Osmanabad in Sessions Case No. 89/1997 thereby convicting the Appellant for the offence punishable u/s 498A of I.P.C.

2. Brief facts of the prosecution case are as under:

P.W. No. 1 Kondiba Pandurang Dengale lodged F.I.R. to Osmanabad City Police Station contending that, deceased Savita was his daughter. Her marriage was performed with accused No. 1 on 15.08.1995. Prior to the marriage of his daughter, accused No. 1 was married with a girl Meena. She had a son from accused No. 1. Meena and her minor son died due to drowning in the well and accused No. 1 was prosecuted u/s 306 and 498A of the Indian Penal Code. Subsequently, after death of Meena, accused No. 1 performed marriage to Savita. Savita was cohabiting at the house of accused. Accused No. 2 is father of accused No. 1 and accused No. 3 is mother of accused No. 1. When Savita was cohabiting at the house of accused, she was ill-treated by all the accused. They were demanding Rs. 50,000/- to be brought from her parents house. The

financial position of Kondiba was very poor and therefore, he was unable to pay Rs. 50,000/- demanded by the accused and on that count Savita was ill-treated by all the accused. She was beaten by all the accused, she was abused and she was starved. Mode of her ill-treatment was of unbearable nature and therefore, Savita was not ready for cohabitation at the house of accused. Savita came to house of the complainant for delivery and after that, she again went to the house of accused. Thereafter one relative of the complainant namely Rameshwar wrote a letter to the complainant regarding ill-treatment of Savita. Therefore, he went to the house of accused on 30.11.1996 and he brought Savita to his house. After some days i. e. on 09.12.1996 accused No. 1 came to the house of complainant in order to take Savita for cohabitation. At that time, there was a quarrel between accused No. 1 and Savita and her mother. At the same time Savita was refusing to go for cohabitation and as she was ill-treated of unbearable nature, her mother was also not ready to send her for cohabitation. But on very day accused No. 1 took Savita for cohabitation. While taking her, there was a quarrel and he abused to the wife of complainant as well as Savita. On the very day, he threatened that if the parents of Savita will not pay the amount of Rs. 50,000/- they should see what he is going to do within one month and subsequently Savita was taken by him to his own house.

3. On 16.01.1997 complainant received information that his daughter Savita and her minor daughter Radha died due to drowning in the well and she has been brought to Osmanabad Civil Hospital. Therefore, he went to the Civil Hospital along with his wife and other relatives. He saw dead body of his daughter Savita and her minor daughter Radha. He received information that Savita and her minor daughter Radha died due to drowning in the well. Then dead body of Savita and Radha was sent for autopsy and postmortem was performed.

4. On the complaint of the complainant police registered the offence bearing Cr. No. 15/1997 for the offence punishable u/s 498A, 306 of the Indian Penal Code. After completion of investigation, the investigating officer submitted charge sheet against the accused. All the accused are charge sheeted by Osmanabad City Police Station in the Court of Chief Judicial Magistrate, Osmanabad as they ill-treated wife of accused No. 1 namely Savita and she committed suicide by jumping into the well along with her minor daughter Radha and commission of suicide was abetted by all the accused. Charge sheet was sent u/s 498A and Section 306 r/w Section 34 of the Indian Penal Code. As the offence is exclusively triable by Court of Sessions, learned Magistrate committed case to learned Sessions Court on 30.06.1997.

5. The Trial Court framed the charge against all the accused at Exhibit 8. Charge was read over and explained to them in Marathi. All the accused pleaded not guilty denying the charges and claimed to be tried.

6. The learned Additional Sessions Judge, Osmanabad after framing necessary points and recording evidence and after hearing the parties has acquitted the accused Nos. 2 and 3 i.e. father and mother of accused No. 1. However, the

learned Judge has convicted the Appellant-accused No. 1 for the offence punishable u/s 498A of I.P.C. and sentenced him to suffer R.I. for one year and to pay fine of Rs. 2000/- i/d R.I. for three months. Hence, by way of this appeal, the accused No. 1 has challenged his conviction and sentence.

7. P.W.1 Kondiba Pandurang Dengale, who is complainant has stated in his deposition before the court that deceased Savita was his daughter. Her marriage was performed with accused No. 1 Sheshrao on 15.8.1995. Prior to marriage of his daughter with accused No. 1, his marriage was already performed with a girl viz. Meena. Meena had a son from accused No. 1. Meena and her minor son died due to drowning in the well. Accused No. 1 was prospected for illtreatment and abatement of suicide in respect of his first wife Meena.

8. After marriage, his daughter Savita went to house of accused for cohabitation. Accused No. 2 is father of accused No. 1 and accused No. 3 is mother of accused No. 1. All accused are residing jointly. His daughter came to the house of complainant and told him that accused have ill-treated her. Accused had demanded Rs. 50,000/- to his daughter to be brought from her parents house. She was starved by the accused. The native place of the accused is village Sanja. Distance between the said village and his village is 25 to 30 kilometers. His one relative viz. Rameshwar resides in village Sanja. He wrote a letter to him. In the said letter he informed and called them that Savita has been ill-treated severally by the accused. He received the said letter on 25.11.1996. This witness has identified the said letter written by Rameshwar to his uncle viz. Harishcnadra Nagnath Dengale. Accordingly, after reading the contents of the said letter, he went to the house of accused on 30.11.1996 and he brought his daughter Savita to his house. Savita resided at his house for a period of eight days. During that period, Savita told the complainant that accused persons are ill-treating her. On 9.12.1996, accused No. 1 came to his house at Jawalgaon. His wife was not ready to send Savita for cohabitation, as she was severally ill-treated by the accused persons. There was quarrel in between accused No. 1 on one hand and complainant and his wife on the other hand. His daughter Savita was afraid of cohabitation as she was ill-treated by accused of unbearable nature. Accused No. 1 took Savita alongwith him. While going out of his house, accused No. 1 told him that he will see what happens within a span of 1 to 11/2 months. Thereafter, he took Savita to his house. On 16.1.1997, he received information that his daughter Savita and her minor child Radha died. Accordingly complainant went to civil hospital Osmanabad in order to see his daughter Savita. He saw her dead body and minor daughter Radha in the hospital. He stated that his daughter Savita knew the swimming. He stated that his daughter Savita committed suicide. He lodged F.I.R. in Osmanabad police station. All suggestions given in the cross examinations are specifically denied by this witness.

He reiterated in the cross examination that there was demand of Rs. 50,000/- by the accused No. 1 husband and on that account he used to give illtreatment to deceased Savita.

9. P.W.2 Prabhawati Kondiba Dengle, mother of deceased Savita stated in her deposition before the court that accused No. 1 was ill-treating her daughter Savita and beating her. She further stated that the accused was not giving proper food to deceased Savita and were demanding Rs. 50,000/- to be brought from parents house. Whenever Savita used to come to the house of this witness, she was telling about the illtreatment. She has also stated about the letter written by Rameshwar intimating about severe illtreatment given by accused to Savita. Her evidence in cross examination is not shattered in any way and it is consistent with the version of P.W.1 complainant.

10. P.W.3 Rukmini Nivrutti Desale, who was working as teacher in pre primary school at Jawalgaon, stated in her evidence that she is serving as teacher in Montessori school at Jawalgaon. The house of the complainant Kondiba is adjoining to her school. Deceased Savita is daughter of complainant. On 9.12.1996, there was quarrel at the house of the complainant. She saw that the quarrel was going on between accused No. 1 and the mother of deceased Savita i.e. P.W.3. Accused No. 1 was taking Savita for cohabitation. Accused No. 1 was also quarreling with Savita. Mother of Savita told accused No. 1 to treat Savita in good manner. Kamal and Suman other ladies were also present there. Accused No. 1 told that they will see what will happen within a month. Evidence of this witness has not shattered in any manner in the cross examination. It is pertinent to note that this witness is independent witness. (Emphasis supplied).

11. The prosecution has also brought on record the other evidence so as to corroborate the version of these witnesses. The letter written by Rameshwar is at Exh.27. The writer of the said letter was not examined on behalf of the prosecution. However, the said letter and contents thereof were referred on behalf of the accused in his cross examination. The said letter was exhibited by the Sessions Court and the same was read in the evidence. The Sessions court has concluded on going through the contents of the said letter there is reference in the said letter that Savita had been to Rameshwar and there are quarrels after quarrels at the house of accused. She was weeping at the house of Rameshwar and narrated about the illtreatment to Rameshwar. Therefore, Rameshwar informed the complainant about the said illtreatment. Immediately after receipt of said letter complainant had been to the house of accused on 30.11.1996. Thus, on going through the recitals of the said letter at Exh.27, it also supports and corroborates the version of prosecution case that Savita was ill treated by the accused. Apart from the letter at Exh.27, the evidence of P.W.1 to 3 is also sufficient to hold that Savita was ill treated by the accused and the said illtreatment was of severe and unbearable in nature.

12. As stated herein above, there is consistent evidence of the prosecution witnesses 1 to 3 which speaks in detail about the illtreatment given by the accused No. 1 Sheshrao Sitaram Suryawanshi. There was also demand of Rs. 50,000/-. It is also not in dispute that the accused No. 1 got married second time with Savita. He was earlier married and he had also faced the prosecution. It has

also come on record that though opportunity was given to the accused to place on record the certified copy of the judgment of the previous case, however, the same was not produced on record. Therefore, nothing was placed on record showing whether the accused was acquitted or convicted in the earlier offence. Suffice it to say that this was the second marriage of the accused No. 1 and he should have been more careful in his behaviour and should have avoided illtreatment and severe beating to the deceased Savita. The prosecution has brought on record clinching evidence in the nature of P.W.1 to P.W.3 and also letter at Exh.27 written by Rameshwar, uncle of the complainant. P.W.3 is independent witness, who was teacher at the relevant time and her school was situated nearby to the house of the complainant.

13. Therefore, taking into consideration the entire evidence on record, in my opinion, the judgment and order passed by the learned Sessions Court is in consonance with the evidence brought on record by the prosecution. No illegality can be found in the instant case since the Sessions court has convicted the accused No. 1 only for the offences punishable u/s 498A and sentence is given only for one year R.I. and fine of Rs. 2000/-.

14. The case in hand squarely covered by Section 498A exception 2 of I.P.C. and therefore, appeal stands dismissed. Bail bonds stand cancelled. The Superintendent of Police, Osmanabad is directed to see that the accused surrenders to undergo the remaining period of sentence as ordered by the learned Additional Sessions Judge, Osmanabad in Sessions Case No. 89 of 1997 on 1.2.1999 forthwith and send the compliance report to this Court within two weeks from the date of receipt of this judgment. The record and proceedings be sent back to the concerned court forthwith.