

(2014) 06 BOM CK 0206
In the Bombay High Court
Case No : Criminal Appeal No. 410 of 1994

Shivaji Keraba Metkari and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 17-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 428 — Penal Code, 1860 (IPC) -
Section 109, 304-B, 306, 34, 498A

Citation : (2015) ALLMR(Cri) 1847

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

Bench : Single Bench

Advocate : Ranjeet H. Patil, Advocate, for the Appellant; S.S. Pednekar, APP, for the Respondent

Final Decision : Partly Allowed

Judgement

Sadhana S. Jadhav, J.?The appellants herein are convicted for the offence punishable under Section 498A read with Section 34 of Indian Penal Code and sentenced to suffer R.I. for one month and to pay fine of Rs. 300/- each, in default to suffer S.I. for three months in Sessions Case No. 23/1993 by the Addl. Sessions Judge, Sangli vide judgment and order dated 21.4.1994. Hence, this appeal. Such of the facts necessary for the decision of this appeal are as follows:-

Shivaji Metkaro, appellant No. 1 was married to Parubai 7-8 years prior to the date of incident. The couple was blessed with two daughters. On 6.11.1992, the dead bodies of Parubai and her two daughters were found in the well situated in the field known as Khadi. The well belonged to Nana Dadu at Village Gharniki. A.D. No. 33/1992 was registered under Section 174 of Cr.P.C. The bodies were sent for postmortem. The post-mortem notes indicate that the bodies were eaten by aquatic animals. The opinion regarding the probable cause of death was "death due to asphyxia due to drowning". Sonabai Patil, mother of the deceased, was also called. She was present at the time of funeral. On 9.11.1992, Sonabai lodged a report at the police station alleging therein that after 1-1/2 years of

marriage Parubai had begotten a daughter, who was named Shobha and after 3 years, she had begotten second daughter. Parubai occasionally visited her matrimonial house. When Parubai had come for her delivery, she had informed her mother that the husband harassed her and was beating her as he was demanding 2 tolas of gold. She had further informed that she will return to matrimonial home only if she would come with 2 tolas of gold with her. The husband of Parubai had taken away the granddaughter Shobha. Parubai was reluctant to send Shobha and therefore there was a quarrel between the couple. Prior to Diwali festival, Parubai had again informed her mother that her husband and mother-in-law had harassed her on account of demand of two tolas of gold. Sonabai had noticed that daughter Parubai had an injury in her hand. She had therefore taken her to Dr. Patole. She has further reiterated that Parubai was harassed at the hands of the family members of her matrimonial family.

On 6.11.1992, at about 5 p.m. she was informed that Parubai had committed suicide by jumping into the well and hence she had been to the house of Parubai. She had seen the dead bodies. She had noticed that the skin was nibbled by aquatic animals. He had concluded by saying that Parubai had committed suicide due to harassment meted out to her at the hands of the present appellants. On the basis of her report, offence was registered against the accused persons. Investigation was completed and charge sheet was filed. The case was committed to the Court of Sessions and was registered as Sessions Case No. 23 of 1993. Charge was framed against the accused for the offence punishable under Section 304-B, 306 and 498A of Indian Penal Code. The prosecution examined six witnesses to bring home the guilt of the accused.

2. P.W. - 2 is the mother of the deceased. She has deposed before the Court in consonance with her first information report. She has proved the contents of the first information report. She had narrated several instances when Parubai had disclosed to her about the cruelty and ill-treatment meted out to her at the hands of the appellants. On the date of the incident, she was informed by Baburao Yele about the death of Parubai. She had seen the dead body of Parubai with her two daughters near the well. She has admitted that after four days after the incident, she had lodged report at the police station. She has admitted in the cross-examination that there was no female child in the house of the accused at the relevant time except the two daughters of Parubai. Shobha and Rupali were loved by the family members.

3. It is also admitted in the cross-examination that she had offered gifts, gold and other articles at the time of marriage voluntarily and she had no complaints about it. Parubai died 7 years after her marriage. She also admitted that the husband of Parubai i.e. accused No. 1 was working as a shepherd. He had to remain out of the house continuously for a period of six years in a year. His life was not stationary/stable. After marriage, Parubai also accompanied her husband from village to village. She also admitted that she was present at the time of inquest panchnama. It is also admitted that she had not complained to the police

officer at the time of panchnama. P.W. - 2 had called her sons two days after the cremation. She had discussions with her sons and cousins. Thereafter, they had decided to inform the police that there was an ill-treatment and cruelty to her on account of demand of gold. Her sons used to visit her once in two years. She had not disclosed to her sons regarding the demand of gold by the accused, 5.

The first information report is at Exhibit 15 and P.W. - 2 has proved the first information report.

4. P.W. - 3 Housabai Patil is the sister-in-law of P.W. - 2. She had reiterated the allegations made by P.W. - 2. There are inherent omissions and contradictions in her substantive evidence.

5. P.W. - 4 Vithoba Metakari has been declared hostile.

6. P.W. - 5 Tatoba Patil resides in the village of P.W. - 2. His evidence is hearsay evidence. He has admitted that after they received the message of death of Parubai, he had accompanied P.W. - 2. He has opined that in all probabilities, Parubai died on account of ill-treatment and cruelty. The material part of his examination-in-chief is recorded as an omission in the cross-examination.

7. P.W. - 6 is Shivaji Rupnar is the Investigating Officer. On 6.11.1992, he had registered accidental death in respect of the death of Parubai and her daughter. The initial investigation was done in A.D. No. 33 of 1992 which was registered under Section 174 of Cr.P.C. He has proved the omissions and contradictions of the witnesses.

8. A perusal of the evidence adduced by the prosecution, it is apparent on the face of the record that on 6.11.1992, a message was given to P.W. - 2 that Parubai has committed suicide along with her daughters. P.W. - 2 and several prosecution witnesses had come to the village. By that time the police were present. All the witnesses were present at the stage of initial investigation. None of the witnesses had even expressed their suspicion that she had committed suicide due to the ill-treatment and cruelty meted out to her at the hands of the accused. 3 days after cremation of the dead body of Parubai, P.W. - 2 lodged first information report. She has admitted in the cross-examination that her sons had come to see her 2 days after the cremation of the dead body and that there was discussion amongst them about lodging of the police report. Hence it is clear that after due deliberations, the investigation was set in motion. The admission of P.W. - 2 that the accused No. 1 had to go away from the house for a continuous period of six months is sufficient to indicate that in all probabilities, the deceased was not just annoyed but frustrated with the life style. The fact of demand of gold is an after-thought since the mother of the deceased had not disclosed about it to her sons. The inherent omissions in the substantive evidence of the witnesses which is elicited by way of cross-examination is sufficient to discard the testimony of P.W. - 2. The accused were facing charge under Section 304-B and Section 306 read with Section 109 of IPC and they have been acquitted of the same. The fact that they are acquitted for the charge of dowry death/

demand of dowry, it cannot be held that there was ill-treatment only on account of demand of gold. However, it cannot be denied that the deceased would have taken such an extreme step unless there was ill-treatment on some other count which was not known to P.W. - 2. In any case, the appellants cannot be held responsible for the death of the minors, but only for the death of Parubai. The appellants, therefore, need to be convicted for the offence punishable under Section 498A of the Indian Penal Code. The appellants have been sentenced to suffer R.I. for one month and fine of Rs. 300/- each by the Sessions Judge since they were charged with the offence punishable under Sections 304-B and 306 read with Section 34 of IPC. They were in jail during the period of investigation. The Sessions Court has granted them the benefit under Section 428 of Cr.P.C. hence, the conviction recorded by the learned Addl. Sessions Judge does not call for any interference. However, the appellants are sentenced to the period already undergone. The amount of fine is maintained.

ORDER

- (i) The appeal is partly allowed.
 - (ii) The conviction of the appellants for the offence punishable under Section 498A of Indian Penal Code is upheld.
 - (iii) The appellants are sentenced to the period already undergone.
 - (iv) Fine amount is maintained.
 - (v) Bail founds stands cancelled.
- Appeal stands disposed of.