
(2016) 05 BOM CK 0082
In the Bombay High Court
Case No : Criminal Appeal No. 733 of 1996

Shivaram Manohar Kalange	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 04-05-2016

Acts Referred:

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

Citation : (2017) 1 AIRBomRCri 926

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

Bench : Single Bench

Advocate : Ms. Bhagyashri Gawas, Appointed Advocate, for the Appellant; Mr. S.S. Pednekar, APP, for the State

Final Decision : Disposed Off

Judgement

Smt. Sadhana S. Jadhav, J.—The appellant herein stands convicted for the offence punishable under Section 306 of the Indian Penal Code and is sentenced to suffer R.I. for five years and to pay fine of Rs.1,000/-, in default R.I. for one year, he is also convicted for the offence punishable under Section 498A of IPC and is sentenced to suffer R.I. for one year and fine of Rs.500/-, in default to suffer R.I. for six months by the Addl. Sessions Judge, Satara in Sessions case No.110 of 1993 vide judgment and order dated 28.11.1996. Hence, this appeal.

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

(i) The appellant was married to Sitabai in the year 1988. The couple was blessed with two children. At the time of settlement of marriage, it was agreed between the parties that an amount of Rs.10,000/- will be paid to the appellant towards dowry. Due to economic stringency, the father of the bride could not pay whole amount of Rs.10,000/- and, therefore, Rs.2,000/- was paid towards dowry on the assurance that the balance would be paid at the earliest.

(ii) It is the case of the prosecution that after six months of the marriage, Sitabai was being harassed and ill-treated by her husband under the influence of alcohol.

He insisted upon her to fulfil the demand of the balance of the dowry amount. She had accordingly conveyed the message to her parents. It is further the case of the prosecution that on 17.2.1993, father of Sitabai had visited her. After his departure, Sitabai committed suicide by drowning. She had jumped into the well along with her two children at Village Warane. The dead bodies were found floating in the well owned by one Bajrang Dnyanu. The Police Patil of the village reported to the Satara Taluka Police Station on 18.2.1993. The case was registered as A.D. No.10 of 1993. On 18.2.1993, Inquest panchnama was conducted on the dead bodies in A.D. No.10 of 1993. under Section 174 of Cr.P.C. The inquest panchnama is at Exhibit 8.

(iii) On 19.2.1993, Sarjerao Jadhav had lodged a report at Satara Taluka Police Station alleging therein that his daughter Sitabai was being harassed, ill-treated and meted out with cruelty on account of non-fulfilment of the balance amount of Rs.8,000/- towards dowry. According to him, on 17.2.1993, he had visited the house of Sitabai along with his younger daughter Sunita. At that time, Sitabai was in the agricultural land. She had informed him that for the past three weeks, she is being abused and assaulted by her husband on account of dowry. The father had requested her to accompany him. Sitabai had refused on the ground that she would be assaulted after her return. Therefore, she refused to accompany her father. On 18.2.1993, at about 10 a.m., brother-in-law of Sitabai had informed him that Sitabai had committed suicide along with her two daughters. On the basis of his report, the crime was initially registered at 0 number for the offence punishable under Sections 498A, 306 and 304-B of IPC. The matter was transferred to Borgaon Police Station for proper investigation and it was registered as Crime No.18 of 1993. The accused was arrested on 19.2.1993. After completion of investigation, charge-sheet was filed on 6.4.1993. The case was committed to the Court of Sessions and registered as Sessions Case No.110 of 1993. The prosecution examined six witnesses to bring home the guilt of the accused.

3. Upon perusal of the substantive evidence adduced by the prosecution, it appears that PW-1 Sarjerao Jadhav is the complainant. PW-1 has deposed before the Court in consonance with the first information report lodged by him. It is submitted before the Court that Sitabai used to visit her maternal house 4 ? 5 times in a year. She had gone to her maternal house for delivery and at the time of second delivery, she had stayed with her parents for about six months. At that time, she had complained about the illtreatment and cruelty meted out to her at the hands of her husband. It is also admitted that after the second delivery, being fed up with cruelty, Sitabai had demonstrated her reluctance to return to her matrimonial house. However, PW-1 had reached to her matrimonial house and had also convinced the accused that he would put in his best efforts to pay the remainder amount at the earliest. He has also specifically stated on oath that on 17.2.1993, when he met his daughter, she had informed him that she was being harassed for 3 weeks. That the dead body of Sitabai was brought to Satara for autopsy and, therefore, he had reported the matter to Satara Police Station.

The first information report is marked at Exhibit 15.

4. PW-1 has admitted in the cross-examination that the accused was serving at Bombay and was visiting his village once in a four months or so. That Sitabai used to manage the agricultural land. He has denied the suggestion that on 17.2.1993, he had demanded the same amount from his daughter and there was a quarrel between them on that count and hence she had committed suicide.

5. It is pertinent to note that the witness has not been shattered in the cross-examination as far as cruelty and ill-treatment is concerned. However, it needs to be noted that the accused was serving at Bombay and used to pay a quarterly visit to his native village.

6. PW-2 Tukaram Jadhav is the maternal uncle of Sitabai. He has deposed in consonance with PW-1.

7. PW-3 Shivaji Jadhav is the real brother of deceased Sitabai. He has also deposed in consonance with PW-1. Certain omissions are elicited in the cross-examination. However, since they are not material omissions, they do not deserve any discussions.

8. PW-4 Madhukar Kadam was working as a PSI at the Satara Taluka Police Station. PW-4 has deposed before the Court that on 18.2.1993, PW-1 Sarjerao had lodged a report at the police station which was recorded as per his narration and the same is marked at Exhibit 15. PW-4 has deposed before the Court that the offence had taken place within the jurisdiction of Borgaon Police Station and, therefore, he had registered the same at 0 number. The cross-examination is declined by the deponent.

9. PW-5 Bapu Jadhav is the Police Head Constable of Borgaon Police Station. On the basis of the communication by Satara Police Station, PW-5 had registered Crime No.18 of 1993. The cross-examination is declined.

10. PW-6 Gopal Thube who was officiating as Police Sub-Inspector, was attached to Borgaon Police Station. He is the investigation Officer of Crime No.18/1993. He has deposed before the Court that in spite of steps taken by him in the course of investigation, the cross-examination is declined.

11. It appears from the records that spot panchnama at Exhibit 12 and the post-mortem report are admitted by the defence. It is an admitted position that Sitabai had committed suicide along with her daughters and the cause of death is Asphyxia due to drowning. Therefore, the suicide is admitted.

12. The learned APP submits that in fact the accused ought not to have been acquitted under Section 304B of the Indian Penal Code. Since there is cogent evidence that on 17.2.1993, deceased Sitabai had disclosed to her father that she was being harassed and ill-treated on account of demand of dowry and hence it is dowry death. However, this submission cannot hold ground after 20 years of admission of the appeal. The prosecution has not filed any appeal

against acquittal for the offence punishable under Section 304-B of the Indian Penal Code.

13. The learned counsel for the appellant submits that till 18.2.1993, there was no complaint against the accused. Much emphasis is laid upon the admission of PW-1 that the accused was residing at Mumbai and, therefore, it cannot be said that there was continuous harassment and ill-treatment.

14. Upon perusal of evidence, it appears that the prosecution has not brought on record any evidence to indicate that on 16th or 17th February, 1993, the accused was in Village Warane and therefore it cannot be said that there was abetment or instigation to commit suicide. It also cannot be said that the accused-appellant had facilitated the commission of suicide and, therefore, the conviction under Section 306 of IPC would not be sustainable.

15. The learned APP submits that in fact the appellant should be held liable for the death of Sitabai. It is a unique case where the prosecution has not brought on record any inquest panchnama or post-mortem notes as far as the death of two children are concerned. Therefore, all that is before this Court is the evidence of Sitabai having committed suicide by jumping into the well along with her two children. The lacunas in the course of investigation are writ large on the face of record. However, in an appeal, this Court cannot go beyond the record and therefore, the same cannot be considered. Therefore, the submission of the Prosecutor that the accused-appellant should be held responsible for the death of two children cannot be considered. The appellant cannot be held responsible for the death of two children as it was Sitabai who had jumped into the well along with two children. This Court cannot be oblivious of the fact that deceased had not led a peaceful marriage. She had apprehension that after her demise, her children would not be looked after properly and to save them from a disastrous future, she had committed suicide along with her two children. In the absence of any evidence on record, to even remotely indicate that soon before her death, the accused had meted her with such cruelty that she had no other alternative but to commit suicide. It cannot be said that the appellant could be convicted for the offence punishable under Section 306 of IPC.

It also cannot be said that the deceased had no other alternative for the simple reason that her father PW-1 had offered her to accompany him to her maternal house. It is not the case of the prosecution that because of poverty in her maternal house, she had refused to go, but on the other hand, it appears that she would be forced to cohabit with her husband some time later on and at that stage she would be again harassed and therefore she had declined to go along with PW-1.

PW-1, PW-2 and PW-3 also have not deposed before the Court that on the date of incident, PW-1 had met her husband or even questioned him about the treatment meted out to the deceased. It is in view of the above discussion that the accused-appellant stands acquitted of the offence punishable under Section

306 of IPC.

16. This Court also cannot be oblivious of the fact that after six months of marriage, deceased Sitabai had complained to her parents about the ill-treatment meted out to her on account of demand of dowry. In all probabilities, the ill-treatment was to such an extent that it was even difficult for her to give a second thought of continuing the marital relations along with the appellant. Hence, the conviction recorded by the learned Addl. Sessions Judge, Satara for the offence punishable under Section 498A of the Indian Penal Code deserves to be maintained. The sentence awarded for the offence punishable under Section 498A of IPC is one year. The accused-appellant was in custody from 19.2.1993 to 13.4.1993. After recording of conviction, he was in custody from 20.11.1996 to 22.12.1996. Hence, he has undergone the substantive sentence of two months and 25 days i.e. about 3 months and therefore, this Court is of the opinion that he deserves to be sentenced for the period already undergone. The sentence of fine for the offence punishable under Section 498A of the Indian Penal Code needs to be maintained.

ORDER

(i) Appeal is partly allowed.

(ii) The conviction of the appellant for the offence punishable under Section 306 of the Indian Penal Code recorded by Additional Sessions Judge, Satara, vide Judgment and Order dated 28.11.1996 is hereby quashed and set aside.

(iii) The conviction of the appellant for offence punishable under Section 498A of the Indian Penal Code is maintained. Sentence of fine is also maintained.

(iv) It appears from the record that appellant has undergone substantive sentence of two months and 25 days approximately. Appellant is sentenced to the period already undergone.

(v) Amount of fine for the offence punishable under Section 306 of the Indian Penal Code be refunded.

(vi) Bail bonds of the appellant stand cancelled.

(vii) Legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Ms. Bhagyashri Gawas is quantified at Rs.3,000/-.

7. Appeal stands disposed of.