

(2016) 06 BOM CK 0095
In the Bombay High Court
Case No : Criminal Appeal No. 2 of 2002

Shri Vijayshekhar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-06-2016

Acts Referred:

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

Citation : (2016) 2 AIRBomRCri 728 : (2017) ALLMRCri 603 : (2016) 3 BomCR(Cri) 353 : (2016) 4 MhLJCrI 614

Hon'ble Judges : V.M. Deshpande, J.

Bench : Single Bench

Advocate : Mr. A.Y. Sharma, Advocate (appointed), for the Appellant; Mrs. Mayuri H. Deshmukh, Addl. Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V.M. Deshpande, J. (Oral) - By this appeal, the appellant is challenging his conviction at the hands of learned 2nd Ad hoc Additional Sessions Judge, Bhandara in Sessions Trial No.1 of 2000.

2. By the said judgment the appellant is convicted for the offence punishable under Section 306 of the Indian Penal Code and on that count the learned Judge of the Court below directed that the appellant should suffer rigorous imprisonment for three years and to pay a fine of Rs.3000/- and in default to suffer rigorous imprisonment for six months.

The appellant is also convicted for the offence punishable under Section 498-A of the Indian Penal Code and on that count sentence awarded to him is rigorous imprisonment for two years and fine of Rs.5000/- and in default of payment of fine to suffer rigorous imprisonment for six months.

3. The charge was framed against the appellant and his other four family members under Section 498-A of the Indian Penal Code and under Section 306 for abetting the wife of the appellant Gitabai to commit suicide. The learned

Judge of the Court below acquitted the original accused nos.2 to 5, the family members of the appellant, from both the charges.

4. The prosecution case in nutshell is stated herein under:-

Prosecution witness PW 8 Panjabrao was attached to Gongle Railway Police Station as A.S.I. in the year 1999. On 26/7/1999 he was on station diary duty. At 6.30 p.m., on the said day, he received a message from Assistant Station Master, Gongle Railway Station about the death of a woman and a child. Accordingly, he registered an accidental death vide Exh.35 under Section 174 of the Code of Criminal Procedure. On the next day, he along with police party went to the Railway Station. He conducted inquest on the dead bodies and also drawn the spot panchanama in the presence of panchas. Exh.23 is inquest panchanama whereas Exh.24 is the spot panchanama. He then sent dead bodies to K.T.S. Hospital, Gondia for Post Mortem.

5. On 31st of July, 1999 Daulatram Bisen (PW1) along with his wife Ramavali (PW 2) came to the police station and lodged the oral report (Exh.18). He registered the offence vide Crime No.25 of 1999. The printed FIR is at Exh.19. He also recorded statement of Daulatram Bisen (PW 1) and Ambris John (PW 3), an Engine Driver and other witnesses.

6. Exh.18 is the oral report lodged by Daulatram Bisen it is dated 31st of July, 1999. The said report states that about four years prior to the date of incident his daughter Gitabai was married with the appellant. She was blessed with one son Mukul. It is reported that the other accused persons were father-in-law, mother-in-law, brother-in-law and sister-in-law of deceased Gitabai. According to the First Information Report, Latabai (original accused no.4) used to beat and ill treat Gitabai since last two and half years. It is also stated in the First Information Report that all the accused persons used to demand Rs.40,000/- from her for construction of fish tank and to purchase a Hero Honda motorcycle. According to the First Information Report, an amount of Rs.12000/- was paid to the accused persons in small instalments. It is further stated that in the month of May, 1999 appellant reached Gitabai to the house of the first informant, that time deceased Gitabai asked first informant that remaining amount should be paid else her life will be in danger. It is further stated in the First Information Report that in June, 1999 the appellant came to village Garra, the home place of the first informant, that time the first informant told him that he would give him money after Diwali festival. According to the First Information Report since the amount was not paid, Gitabai was mentally and physically harassed and therefore she committed suicide.

7. After registration of the offence by A.S.I. Panjabrao Kanhake (PW 8), the further investigation was handed over to Arvind (PW 5). Said prosecution witness recorded statement of the witnesses and after completion of usual investigation charge sheet was filed in the Court of Law.

8. In order to substantiate the charge against all the accused persons, in all eight

witnesses were examined by the prosecution and also relied upon various documents duly proved during the course of the trial. The learned Judge of the Court below acquitted accused Nos.2 to 4 from all the charges, however, convicted the appellant as observed in the opening paragraph of the judgment. It is to be noted that the State has not filed any appeal against acquittal of those accused persons who were acquitted by the Court below.

9. I have heard Shri A.Y. Sharma, the learned counsel appointed through Legal Aid and Mrs. Mayuri Deshmukh, the learned Additional Public Prosecutor for the State. With their able assistance, I have gone through the notes of the evidence and record and proceedings.

10. It is the submission of Mr. Sharma, the learned counsel for the appellant, that the prosecution has failed to prove that there was any ill-treatment to the deceased on account of any demand. He submitted that evidence of the prosecution witnesses on the point of demand is general in nature and on the basis of very same evidence the learned Judge of the Court below has acquitted remaining accused. He further submitted that there is no cogent evidence available on record to show that Gitabai committed suicide. On the contrary, it is his submission that from the evidence as available on record the possibility of the accident cannot be completely ruled out. He, therefore, submitted that benefit of doubt should be extended in favour of the appellant.

Per contra, learned Additional Public Prosecutor submitted that in view of the evidence of PW 1 Daulatram, PW 2 Ramvali and PW 4 Tilakchand, the prosecution has established that there was ill treatment to Gitabai resulting into the act on her part to finish her life. She therefore submitted that the appeal be dismissed.

11. Dr. Dilip Paunikar (PW 6) was Medical Officer at K.T.S. Hospital, Gondia. He conducted Post Mortem on the dead body and noticed following injuries.

(i) There was total amputation of left leg.

(ii) Crushed injury right ankle.

(iii) Lacerated wound above left thigh 1"x ?" lateral to left eye 1" x 1". Lacerated wound above lip ?" x ?".

(iv) Lacerated wound forehead left side 1" x ?".

Lacerated wound right side forehead 1" x ?".

Lacerated wound at centre 2" x ?".

Lacerated wound verticle at centre size 2? " x bone deep.

(v) Contusion right shoulder 2" x 2".

On the same side contusion right shoulder 3" x 3".

Contusion right lumber region 3" x 2".

Contusion right back lumber region 3" x 3".

(vi) Contusion left infra scapular region 3" x 2".

(vii) There were multiple contusions on left side chest of size 2" x ?" and 1"x ?" it infra memory region. They were 10 in number.

He proved the Post Mortem report (Exh.29). From the evidence of Dr.Paunekar, the Autopsy Surgeon, and in view of the injuries mentioned herein above, it is clear that Gitabai died unnatural death.

12. According to the prosecution, due to the ill treatment on account of demand to deceased Gitabai, she committed suicide by jumping in front of the running railway. On the contrary, it is the submission of the learned counsel for the appellant that the possibility of the accident is not completely ruled out.

In that view of the matter, firstly, it will have to be seen as to whether the prosecution is successful in proving the charge under Section 498-A of the Indian Penal Code against the appellant. Section 498-A of the Indian Penal Code reads as under :-

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.- For the purpose of this section, "cruelty" means -

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

In that view of the matter, it is obligatory on the part of the prosecution to prove that the deceased was subjected to cruelty to such an extent that deceased was required to take extreme step.

13. To substantiate the charge against the appellant under Section 498-A of the Indian Penal Code, evidence of three witnesses is available. They are (i) PW 1 Daulatram, father of the deceased, (ii) PW 2 Ramvali, mother of the deceased and (iii) PW 4 Tilakchand, the maternal uncle of the deceased.

14. The evidence of PW 4, the maternal uncle of the deceased, shows that for a period of one and half year Gitabai was treated nicely, however, thereafter the appellant has asked PW 1 Daulatram to pay Rs.40,000/- for purchasing Hero

Honda and for constructing fish tank. Thus, Tilakchand is very specific in his evidence that it is only the appellant who has demanded Rs.40,000/-. In this context, if the First Information Report (Exh.18) and the evidence of PW 1 Daulatram, from whom the amount was demanded as per the evidence of Tilakchand, are to be believed, the FIR and evidence of PW 1 Daulatram is completely silent that an amount of Rs.40,000/- was demanded by the appellant alone. On the contrary, as per the recitals in the First Information Report and the evidence of PW 1 Daulatram all the accused persons asked Gitabai to bring Rs.40,000/- for purchasing motorcycle and for construction of fish tank. Therefore, there is a variance in between evidence of these two witnesses.

15. Secondly, it is the evidence of Tilakchand (PW 4) that on 27th of February, 1999 the appellant came along with Gitabai to his village for attending 13th day function and on 28th of February, 1999 Gitabai went to the house of his grand-father and informed him about the ill treatment and demand of dowry worth Rs.40,000/-. It is the further evidence of Tilakchand that his grand-father called him, one Gajendra Tembhare and Nipatram Tembhare and told them about the demand of dowry made by the appellant. It is the further claim of Tilakchand from witness box that thereafter he called appellant and PW 1 Daulatram and at that time he has asked Daulatram as to whether he can pay Rs.40,000/- to the appellant to which Daulatram shown his inability.

The evidence of Tilakchand in that behalf cannot be accepted. Even according to the evidence of Tilakchand, the demand was not made in his presence. Further, Gajendra Tembhare and Nipatram Tembhare in whose presence it was disclosed to Tilakchand by his grand-father about the demand of appellant are also not examined.

Further, Daulatram is completely silent from the witness box and also the First Information Report does not contain this aspect. Thus, there is no corroboration on this vital issue from Daulatram or his wife PW 2 Ramvali. It is to be noted that the statement of Tilakchand is recorded belatedly. This clearly shows that PW 4 Tilakchand is an got-up witness and necessarily his evidence is required to be kept aside to reach to the conclusion in respect of the offence punishable under Section 498-A of the Indian Penal Code.

16. Evidence of father and mother of deceased if perused shows that it is most general in nature. Their evidence would show that every time it is the appellant who has taken back the deceased when she visited her parental house. It is not the case of the parents of Gitabai that at any point of time Gitabai resisted and/or shown reluctance to go to the matrimonial house. According to the evidence of mother Ramvali, during the last stay of Gita at her parental house was for about one month.

Thereafter appellant came and took her back. What is important to note that the evidence of Ramvali is completely silent that during this period it was disclosed to her that appellant is demanding the amount and on that count she is receiving

ill treatment from the appellant and his other family members.

It is stated by the first informant that in June, 1999 appellant came to his house at Garra for taking Gitabai along with him. The First Information Report is silent that, that time there was any demand from the appellant. Though PW 1 Daulatram has claimed that he has paid Rs.12000/- to the appellant, his evidence is sans of any detail. Therefore, such bald statement cannot be accepted.

17. Looking to the nature of the evidence in respect of the cruelty, this Court is of the view that the relevant prosecution witnesses are most general in nature. Those were made against the other accused persons also and the said evidence was not accepted viz-a-viz those accused persons. Therefore, I am of the considered view that the prosecution has utterly failed to prove the charge under Section 498-A of the Indian Penal Code even against the appellant and therefore, he is required to be acquitted from the said charge.

18. There is nothing available on record that Gita was suffering from any other ailment so as to commit suicide. If she was not subjected to any cruelty whatsoever in nature, there was no reason to this young lady to commit suicide.

19. PW 3 is Ambris John. He is an Engine Driver. Before declaring him hostile he stated before the Court that when his train was reaching to Gongle Railway Station, one woman along with a child was trying to cross the railway line but she could not cross. In the cross-examination at the hands of APP, he stated that the woman jumped in front of the running train. Again in the cross-examination at the hands of the learned counsel for the accused persons it is stated by him that the woman met with an accident while she was crossing the railway line. The nature of his evidence only shows that he is unable to point out as to whether she jumped or was trying to cross railway line.

20. PW 1 Daulatram Bisen has admitted in his cross-examination that railway track is behind the house of the accused and adjacent to the field of accused. The contemporaneous document (Exh.24), the spot panchanama, recites that the field of appellant Vijayshekhar Bopche is visible towards West of the railway line. Thus, it is clear that the place is just near to the agricultural field of the appellant.

21. PW 3 Ambris John was required to intimate to the Railway Station Authorities. PW 3 has stated in his evidence that in Exh.22, the Memo, he did not specifically mention that a woman along with her child jumped in front of the running train. If really Gita had made a jump in front of the running train then the said aspect would not have been missed in the Memo (Exh.22) which was given immediately after the occurrence. In that view of the matter and looking to the fact that the prosecution has not proved the charge under Section 498-A of the Indian Penal Code, it is crystal clear that there is a possibility of accident. Further, there is no clear evidence that deceased jumped before train. The upshot of the aforesaid discussion leads me to pass following order.

ORDER

1. Criminal Appeal No.2 of 2002 is allowed.
2. Judgment and order of conviction convicting the appellant for the offence punishable under Sections 306 and 498- A of the Indian Penal Code is hereby set aside. The appellant is acquitted of the said offences.
3. Bail bonds shall stand cancelled.
4. Shri A.Y. Sharma, learned counsel appointed for the appellant by the legal Aid Committee shall be entitled for remuneration of Rs.5000/- (Rupees Five thousand only).