
(2015) 12 BOM CK 0051
In the Bombay High Court
Case No : Criminal Appeal No. 14 of 2003

Shrikrishna Marotrao Thawkar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 03-12-2015

Acts Referred:

Evidence Act, 1872 — Section 113-A
Penal Code, 1860 (IPC) — Section 306, 498-A

Citation : (2016) ALLMR(Cri) 552 : (2016) 1 BomCR(Cri) 567

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

Bench : Single Bench

Advocate : Abdul Subhan and Firdos Mirza, Counsels, for the Appellant; A.S. Fulzele, Addl. Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V.M. Deshpande, J.—By the present appeal, the correctness and legality of the judgment and order of conviction passed by learned Ad hoc Additional Sessions Judge, Yavatmal, in Sessions Trial No. 162 of 1998 on 24.12.2002 is under challenge before this Court.

"(a) By the impugned judgment and order of conviction, the appellant stands convicted for the offences punishable under Sections 498-A and 306 of the Indian Penal Code.

(b) On account of his conviction under Section 498-A of the Indian Penal Code, the appellant is sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 1,000/-, and in default, to suffer rigorous imprisonment for fifteen days.

(c) On account of his conviction under Section 306 of the Indian Penal Code, learned Judge of the Court below has sentenced the appellant that he should suffer rigorous imprisonment for five years and to pay a fine of Rs. 1,000/-, and in default, it is directed that he shall further suffer rigorous imprisonment for

fifteen days."

Factual Matrix :

2. The prosecution case, as it is unfolded during the course of the trial, is narrated hereinunder :

"a) The appellant was married to Chanda who was daughter of PW1 Ukandrao Namdeorao Ishwarkar. The marriage took place on 13.12.1993. The marriage was performed at village Tembhi, District Yavatmal. Undisputedly, both of families of Chanda and the appellant were residents of village Tembhi.

b) After the marriage, couple left for Surat, a city of Gujarat State. According to the prosecution case, there the appellant was working in a diamond factory. Couple stayed there for about four to five years. Thereafter, they shifted themselves to village Tembhi and were residing in their own house. The appellant also owned an agricultural field property at the said village and mother-in-law of Chanda Jaiwantabai Thawkar was also residing at village Tembhi.

c) The prosecution case further proceeds that after couple return to village Tembhi, the appellant took the habit of drinking and under the influence of liquor he used to commit atrocities on his wife Chanda. According to the prosecution, through Chanda there used to be a demand of money by the appellant from her parents and the said demand used to be fulfilled.

d) The prosecution further states that on 21.8.1998 Chanda committed suicide by drinking endrine. She died on 21.8.1998.

e) On 23.8.1998, prosecution witness No. 4 police head constable Ashok Wasudeorao Dudhane was discharging his duties as station diary incharge at Ner Police Station. At about 8:00 pm, on the said date, PW1 Ukandrao Namdeorao Ishwarkar reached to the said police station and lodged his oral complaint. As per the dictates of PW1 Ukandrao Namdeorao Ishwarkar, police head constable Ashok Wasudeorao Dudhane recorded his complaint. The said complaint is at Exh.12. As the oral report was disclosing a commission of cognizable offence, the offence was registered by police head constable Ashok Wasudeorao Dudhane vide Crime No. 137 of 1998 for the offences punishable under Sections 498-A and 306 of the Indian Penal Code. The printed FIR is at Exh.13. After registration of the offence, police head constable Ashok Wasudeorao Dudhane handed over the investigation of crime to Assistant Sub Inspector Gajanan Khode who carried the entire investigation. The charge-sheet came to be filed by Assistant Sub Inspector Gajanan Khode before the Court of law."

3. Since the offences for which charge-sheet came to be presented against the appellant were exclusively triable by the Sessions Court, learned magistrate in whose Court the charge-sheet was presented ordered committal of the case to the Court of Sessions.

Learned Ad hoc Additional Sessions Judge, Yavatmal, on whose file Sessions Trial

No. 162 of 1998 was proceeding, under Exh.6 on 12.11.2002 framed charge against the appellant for the offences punishable under Sections 498-A and 306 of the Indian Penal Code. The appellant abjured his guilt and claimed that he be tried. In order to bring home the guilt of the appellant, the prosecution has examined in all five witnesses and also relied upon various documents duly proved during the course of the trial.

After a full dressed trial, learned Judge of the Court below was of the view that the prosecution is successful in establishing the guilt of the appellant for which he was charged and, therefore, passed the order of conviction and sentence as mentioned by this Court in opening paragraph of this judgment.

Submissions

4. I have heard learned counsel for the appellant Shri Abdul Subhan with Shri Firdos Mirza and learned Additional Public Prosecutor for the respondent-State Shri A.S. Fulzele. Both learned counsel painstakingly took me through the record and proceedings of the Sessions Trial and also submitted their elaborate arguments in support of their respective prayers.

The gist of the submissions advanced by learned counsel for the appellant can be enumerated hereinbelow :

"(i) The foremost submission of learned counsel is that the prosecution has utterly failed to prove the nature of death. He submitted that there is no cogent evidence to reach to the conclusion that Chanda committed suicide. Therefore, in his submission the death of Chanda is not an unnatural death.

(ii) He further advanced his alternate submission that assuming that Chanda died suicidal death that by itself is not sufficient to record the finding of guilt for the offence punishable under Section 306 of the Indian Penal Code.

(iii) According to learned counsel, the evidence of the prosecution is too short to reach to the conclusion that Chanda was subjected to cruelty and ill-treatment, as suggested by the prosecution, and, therefore, she committed suicide.

(iv) His further argument is that the evidence of the prosecution witnesses, who are only father, brother, and cousin of deceased Chanda, cannot be accepted to reach to the conclusion as reached by learned Judge of the Court below to record the finding for the offence punishable under Section 498-A of the Indian Penal Code. He further submits that in spite of independent witnesses, who were being available, for the reasons best known to the prosecution, they were not examined.

(v) It is also the submission, which he borne out from the record, that no chemical analyzer's report is available to suggest that Chanda died due to poisoning, of course this particular submission was in furtherance of his first submission about the nature of death. He further submitted that the prosecution has not examined investigating officer Shri Gajanan Khode causing serious

prejudice to the defence."

Learned counsel has also relied upon some of the authorities of the Honourable Apex Court to buttress his point.

5. Per contra, learned Additional Public Prosecutor for the respondent-State Shri A.S. Fulzele strenuously urged before this Court that this is a fit case wherein this Court should be slow in interfering with the finding of guilt as recorded by learned Judge of the Court below, as according to him, there is consistent evidence in the prosecution case at hand that there was continuous demand of money from the appellant through deceased Chanda which was fulfilled by the father of deceased Chanda. He further submitted that after returning to village Tembhi from Surat, the appellant habituated to drinks and under the influence liquor he used to inflict atrocities on his wife, the deceased Chanda. He further submitted that merely because the prosecution witnesses are close relatives of the deceased that by itself is not sufficient to throw their evidence in the dustbin. He, therefore, submitted that appeal sans from any merit and deserves to be dismissed.

Evaluation of prosecution case :

6. In view of the submission of learned counsel in respect of the nature of death, firstly this Court is to address on the said issue.

Exh.26 is OPD police information book. The said document is dated 21.8.1998. The author of the said document is the Medical Officer, Rural Hospital, Ner. The said document reflects that deceased Chanda Shrikrishna Thawkar was admitted in the hospital for insecticidal poisoning.

From the evidence it is established that at Rural Hospital, Ner, the medical assistance was not provided to deceased Chanda and, therefore, she was shifted to Shri V.N. Government Medical College and Hospital, Yavatmal. Exh.28 is in respect of her admission in the said hospital. She was admitted there at 3:00 pm on 21.8.1998. The said document also shows that she was admitted in respect of consumption of poison. The MLC number of the patient was 2867.

Exh.27 is MLC information form. The author of the said document is Doctor (Shri) Jitendra P. Bhagat. The said document also reflects in respect of the history for her admission as "consumption of poison." It also shows that primary opinion about the death was expressed as "unknown poison". However, the final cause of death to be decided after postmortem report. Worth to note is, that all these documents are duly admitted by the appellant during the course of the trial and accordingly they were exhibited.

7. Prosecution witness No. 5 is Doctor Ravikant Raghoraoghoderao. He was working as medical officer on 22.8.1998 at Vasant Rao Naik Medical College, Yavatmal. On the said day, the dead body of Chanda was brought to him by the police constable for postmortem. The said autopsy surgeon has duly conducted the postmortem. The said Doctor in his evidence pointed out that he could not

notice any injury on the person of the deceased. However, he found that her lungs, liver, pancreas, suprarenals, spleen, and kidney were congested and though her stomach was found empty, smell of insecticide was present. He also noticed gastric mucosa was congested. He also mentioned the aforesaid in the postmortem notes which are duly proved by him. The same is at Exh.34 which shows that cause of death is due to poisoning. The report also shows that viscera was preserved. However, the chemical analyzer's report is not filed on record. Pursuing to the said thread, it is the submission of learned counsel for the appellant that whether really Chanda died due to poisoning or not is not clinchingly established.

Though the submission at the first blush appears to be attractive, closer scrutiny of the record the said submission is meritless and deserves to be rejected. The postmortem report opines the cause of death as "due to poisoning." The autopsy surgeon Dr. Ravikant Raghoraoghoderao is also very specific that the cause of death was "due to poisoning."

8. The Honourable Apex Court in the case of Bhupendra Vs. State of Madhya Pradesh, as pointed out by learned Additional Public Prosecutor, it is clear that when a viscera report is sought for, its absence is not necessarily fatal to prosecution case when an unnatural death takes place.

Worth to note here is, that in the contemporaneous documents, which are duly admitted by the defence, clearly show that the mother-in-law of deceased Chanda has intimated that Chanda has consumed endrine. When the evidence of Dr. Ravikant Raghoraoghoderao stands to the touchstone of the cross-examination which clearly shows that after opening of the body he noticed congestion on the vital parts, as observed in preceding paragraph, clearly shows that the death was an unnatural death. Further, Column No. 17 of postmortem report Exh.34 shows that there were no external injuries whatsoever in the nature on the dead body, in my view, that completely rules out the possibility of theory of accident as suggested by learned counsel for the appellant.

In view of the above, there is no hesitation in my mind to reach to the conclusion that Chanda died unnatural death and her death was in the nature of suicide.

9. The next important question that is to be addressed by this Court as to whether the appellant is responsible for suicide.

No doubt, true that the death of Chanda occurred within a span of seven years from her marriage. Therefore, learned Additional Public Prosecutor vehemently submits that the presumption, as available under Section 113-A of the Evidence Act, 1872 has to be pressed into service.

The cardinal principle in the criminal jurisprudence is that the prosecution is under an obligation and is obliged to prove its case against the accused beyond reasonable doubt. The said burden is firmly rests on the shoulder of the prosecution.

Section 113-A of the Evidence Act, 1872 does not dilute and or alter the basic requirement to prove the case beyond reasonable doubt. Section 498-A of the Indian Penal Code reads as under :

"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 willful 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."

10. In order to prove the cruelty, as envisaged in the aforesaid penal Section, the prosecution has relied upon the evidence of PW1 to PW3, they are father, brother, and cousin of deceased Chanda.

Learned counsel for the appellant submits they being close relatives, their evidence cannot be relied upon. The said submission of learned counsel is highly misplaced merely because the prosecution witnesses are close relatives or interested one, that by itself their evidence does not render worthless. Merely because they are close relatives, their evidence need not be viewed with tainted glasses. However, they being of such a nature witnesses, the Court has to look their evidence more closely and the Court should be careful while appreciating their evidence.

11. Undisputedly, after the marriage that took place in the year 1993 deceased Chanda proceeded with the appellant to reside at Surat where the appellant used to work in a diamond factory. What is important to note here is that neither the first information report nor the evidence of any of the close relatives shows or suggests that during her stay at Surat deceased Chanda was subjected to any type of cruelty. None of the prosecution witnesses claims that during this period they were having any information or word from deceased Chanda that she was ill-treated. Therefore, it cannot be safely reached to the conclusion that for the first four years of her marriage there was no ill-treatment at the hands of the appellant to deceased Chanda. Further even according to the prosecution case there was no demand when couple used to stay at Surat.

12. After spending four years at Surat, the couple has returned to village Tembhi. The evidence of the prosecution witnesses shows that the appellant is having an agricultural field at village Tembhi and in his absence his mother used to cultivate the said land.

13. Though the exact period of stay at village Tembhi is not established on record, on the basis of the available evidence it will not be any adventurous statement to state that deceased Chanda resided for a period of one year at village Tembhi after her return from Surat till her death.

14. The first information report is not a substantive piece of evidence. It can be used for corroboration or contradiction.

Though the first information report recites that ten days prior to the incident deceased Chanda came to first informant i.e. her father PW1 Ukandrao Namdeorao Ishwarkar and asked him to give Rs. 1,000/- for weeding operation otherwise her husband would beat her, this important aspect is not at all stated by PW1 Ukandrao Namdeorao Ishwarkar in his evidence.

15. According to PW2 Vilas Ukandrao Ishwarkar, at village Tembhi the appellant used to beat deceased Chanda under the influence of liquor. However, there is no corroboration to such evidence by father PW1 Ukandrao Namdeorao Ishwarkar. Statement was made by PW2 Vilas Ukandrao Ishwarkar, during his examination, that the appellant used to manufacture illicit liquor. There is no prosecution case that at any point of time the appellant was prosecuted for such an act. During his cross examination, on the said issue, he has admitted as under :

"It was not stated by me to the police at the time of recording of my statement that the accused was manufacturing illicit liquor. It is true that for the first time I am disclosing this fact in the Court."

The aforesaid admission, therefore, clearly shows that this prosecution witness has little regard to the truth. Further, the evidence of this witness PW2 Vilas Ukandrao Ishwarkar is totally contradicted with the evidence by his father PW1 Ukandrao Namdeorao Ishwarkar in respect of the factum that deceased Chanda was coming from the field by walking. The evidence of PW1 Ukandrao Namdeorao Ishwarkar in that behalf reveals that when he got intimation that his daughter deceased Chanda has consumed endrine from her mother-in-law, he started proceeding towards the field. That time he noticed that some persons were bringing her daughter Chanda. The number of persons who had accompanied at that time is also firmly established on record to the extent of 10 to 15 persons. PW2 Vilas Ukandrao Ishwarkar does not claim that any oral dyeing declaration was made to him or any oral dyeing declaration was made in his presence to his father by deceased Chanda.

PW1 Ukandrao Namdeorao Ishwarkar has claimed that when he reached to deceased Chanda when she was being brought by the villagers, she disclosed that she has consumed endrine and upon his enquiry she disclosed that because of the trouble she consumed endrine. It would be useful to reproduce that portion appearing in the evidence of PW1 Ukandrao Namdeorao Ishwarkar, which is reproduced as under :

"However, in the way near temple some people were bringing my daughter

Chanda. Then I enquired from her what had happened. She told that she consumed endrine. I also enquired why she consumed endrine, then she told that because of the trouble she consumed endrine. Then she was taken to Shirasgaon in the hospital."

16. From the record it is crystal clear that father PW1 Ukandrao Namdeorao Ishwarkar did not accompany deceased Chanda in the hospital. Thus, the aforesaid statement in respect of the reason for taking endrine was stated in the village itself.

The aforesaid evidence of father PW1 Ukandrao Namdeorao Ishwarkar on the closer view and its true perspective shows that at the time of the said statement by deceased Chanda to her father she did not mention that the trouble was from the appellant.

In this context, it would be very useful to mention here that during stay at Surat deceased Chanda delivered twice. However, none of her child could survive and died at Surat. Further, it is also not in dispute that after coming to village Tembhi she delivered one female child. However, the destiny was some otherwise and said female child also died.

Normally, in our Indian society, the first delivery of married women takes place at their parental house. PW1 Ukandrao Namdeorao Ishwarkar has stated that the first two deliveries of her daughter deceased Chanda were took place at Surat while her third delivery took place in the house of the appellant.

The evidence of PW1 Ukandrao Namdeorao Ishwarkar shows that lastly her daughter deceased Chanda came to his house in the month of June. The incident of suicidal has occurred in the month of August. Thus, there is a gap of about two months. It is not the claim of PW1 Ukandrao Namdeorao Ishwarkar or other two witnesses that in between June to August there was any demand from the appellant to his father-in-law through his deceased wife. As observed above, though there is a reference in the first information report, the same is not the version of PW1 Ukandrao Namdeorao Ishwarkar from the witness box.

The evidence of PW3 Pradeep Shravan Ishwarkar, who is cousin of deceased Chanda, shows that it is full of omission. Though PW3 Pradeep Shravan Ishwarkar claims that on the day of Pola, which was the day of the incident, also the appellant was asking deceased Chanda to bring Rs. 1,000/- from her father for Pola, apart from the fact that no other witness has corroborated the aforesaid evidence. PW3 Pradeep Shravan Ishwarkar himself has stated as under :

"It is true that Chanda had not demanded Rs. 1,000/- from her father in my presence for Pola being a day of Pola. The quarrel on that day also had not taken place in my presence."

Thus, the aforesaid clearly shows that this prosecution witness is not a reliable witness and his evidence cannot be pressed into service for securing the conviction of the appellant.

17. There is also an another angle in the present case. The same is about the delay of lodging the first information report. Merely because there is a delay, the prosecution case does not render worthless or cannot be thrown in the dustbin. The only point is that the prosecution must be able to explain the delay properly. If the delay is properly explained, it is not fateful to the prosecution case.

18. Immediate lodging of the first information report lends credence to the prosecution. In the present case, that deceased Chanda committed suicide on 21.8.1998. According to the prosecution witnesses, she was subjected to cruelty in spite of that the first information report is lodged on 23.8.1998. The entire prosecution case is completely silent as to why the report was not made immediately. It is not the claim of the first informant that after the incident he was mentally disturbed or he was to perform obsequies of his daughter and, therefore, he failed to reach to the police station immediately. Thus, delay of two days has remained unexplained that in my view, caused a serious doubt about the truthfulness of the prosecution case.

When PW1 Ukandrao Namdeorao Ishwarkar claims that disclosure was made to him by deceased Chanda in the presence of other villagers, in order to corroborate such evidence it was expected that prosecution to examine any of the persons who had accompanied deceased Chanda. Non-examination of available independent witnesses necessarily leads to draw adverse inference.

19. Merely because deceased Chanda has committed suicide, from the evidence as discussed above, one cannot reach to the definite conclusion that there was abetment on the part of appellant. There was no live link in proximity of time of alleged ill-treatment and act of commission of suicide. Therefore, the fact that she lost her two sons and one daughter assumes importance and the possibility of commission of the suicide due to the said aspect cannot be completely ruled out. When there is a doubt in the prosecution case, surely the appellant is entitled for the benefit of doubt.

Conclusion :

20. The aforesaid evaluation of the prosecution case leads me to reach to the conclusion that the prosecution has failed to prove its case against the appellant beyond reasonable doubt and the appellant is entitled for benefit of doubt. Accordingly, it is being extended. Resultantly, I pass the following order.

"i) Criminal appeal is allowed.

ii) Impugned judgment and order of conviction passed by learned Ad hoc Additional Sessions Judge, Yavatmal, in Sessions Trial No. 162 of 1998 on 24.12.2002 is hereby quashed and set aside.

iii) Appellant Shrikrishna Marotrao Thawkar is acquitted of the offences punishable under Sections 498-A and 306 of the Indian Penal Code.

iv) Bail-bonds of the appellant stand cancelled.

v) Fine amount, if any paid, be refunded to him."