

(2015) 07 MAD CK 0148

In the Madras High Court

Case No : Criminal Revision Case No. 578 of 2013

Sivashankar

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 304-B, 304-B, 306

Citation : (2016) 1 LW(Cri) 61 : (2015) 3 MLJ(Cri) 682

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : I. Abrar Mohammed Abdullah, for the Appellant; V. Arul, Government Advocate, Advocates for the Respondent

Judgement

B. Rajendran, J—The revision petitioner is the first accused in S.C. No. 51 of 2005 on the file of the learned Assistant Sessions Judge, Hosur, Krishnagiri District. The second accused is the mother and third accused is the brother of the first accused. The criminal prosecution came to be launched against the accused at the instance of the complaint given by PW1, father of the deceased Thanuja in Crime No. 294 of 2013 for the offence punishable under Section 304-B of IPC. On conclusion of trial, the trial Court convicted all the accused for the offence punishable under Section 304-B of IPC and sentenced them to undergo rigorous imprisonment for a period of seven years. Assailing the judgment of conviction, the accused have filed Criminal Appeal No. 19 of 2011. The first appellate Court, by judgment dated 03.04.2013, set aside the conviction and sentenced imposed on the accused 2 and 3. As far as the first accused/revision petitioner herein is concerned, the appellate Court modified the sentence imposed under Section 304-B of IPC in to 306 of IPC and sentenced him to rigorous imprisonment for a period of five years with fine of Rs. 5,000/- failing which to undergo simple imprisonment for a period of five months.

2. The case of the prosecution is that the marriage of the deceased Thanuja and A-1 was solemnised on 24.05.2002 as per Hindu rites and customs. After

marriage, the deceased lived in the matrimonial home along with the Accused 1 to 3. During the course of such matrimonial life, it is alleged that the deceased was subjected to harassment and ill-treatment by demanding dowry at the instance of A-1 to A-3. While so, on 27.04.2003, the birth day of the deceased was celebrated at the matrimonial home and it was attended by PW1 to 3. Thereafter, on the night of 27.04.2003, it was alleged by PW1, father of the deceased that his son-in-law, A-1 made a phone call to him at about 12 "O" clock, threatened and scolded PW1. Thereafter, on the next day, on 28.04.2003, at about 10.00 am, due to the dowry demand and ill treatment as A-1 scolded his father over phone and shouted at him in a very bad language, the deceased poured kerosene on her body and set herself ablaze. The deceased died on the spot. On hearing the death of the deceased, PW1 to 3 came to Hosur. PW1 lodged the complaint complaining that the death of the deceased is due to the harassment caused to her by A-1 to A-3. It was also complained that on the previous night, A-1 scolded him over phone which led to the deceased to take the extreme step.

3. During the course of trial, as many as 21 witnesses were examined and 12 material objects were marked on the side of the prosecution, among them PW1 is the father, PW2 is the mother and PW3 is the sister of the deceased. PW4 is the aunt of the deceased. PW6 is an independent witness. The trial Court, on appreciation of the oral and documentary evidence convicted all the accused and sentenced them to undergo rigorous imprisonment for a period of seven years for the offence under Section 304-B of IPC. On appeal, the appellate Court acquitted the accused 2 and 3 and modified the sentence imposed on the first accused from Section 304-B to 306 of IPC on the ground that there is no proof of demand of dowry made by the accused. The appellate Court found that even the Revenue Divisional Officer, in his report, has stated that there was no evidence available to hold that the deceased was subjected to harassment owing to demand of dowry. The appellate Court held that the deceased had taken the extreme step owing to the instigation of the first accused and therefore, the first accused is guilty of the offence of abetment.

4. The learned counsel appearing for the revision petitioner/A-1 would contend that there are many contradiction in the deposition of the prosecution witnesses. First of all, even as per the evidence of the prosecution witnesses, there was no demand made by the accused for dowry and this is also supported by the report of the Revenue Divisional Officer who conducted an inquiry in to the cause of the death of the deceased. As regards the contradiction in the evidence of the prosecution witnesses, PW1 in his deposition has stated that the revision petitioner/A-1 made a phone call to him at 12 "O" clock in the midnight, threatened and scolded him over phone as to whether he had given his daughter in marriage to him or Anantha Srinivasan, who has given gul Gund medicine to deceased, without his knowledge. Whereas, PW2 and 3 in their evidence stated that such call was made at about 10.45 p.m. on 28.04.2003. It is also stated that they have already spoken to the deceased over phone and only thereafter,

A-1 abused and threatened PW1 over phone. According to the PWs 1 and 2, this phone call had made the deceased to commit suicide next day. Secondly, PWs 1 and 3 in their evidence not only made different version with regard to the time of the phone call but they have also alleged that such phone call made by A-1 threatening and scolding his father had made her to take her life. However, there was no evidence to suggest whether the conversation between A-1 and PW1 was made known to the deceased at all. Therefore, according to the learned counsel for the revision petitioner, whether at all such phone call was made by A-1 itself is doubtful and it was not proved by the prosecution in a manner known to law. Further, there is also contradiction with regard to the time of arrival of the prosecution witnesses on hearing the death of the deceased. PW1 in his evidence says he has called the deceased over phone and only then he came to know about the death of the deceased at 10.00 am through A-1. Contra, PW3 says PW4 called at 8.30 am on 29.04.2013 and asked to come to her house immediately and only thereafter PWs 1 to 3 left for Hosur. This, according to the learned counsel for the petitioner, is a vital contradiction in the deposition of the prosecution witnesses, which was not taken note of by the Appellate Court. Notwithstanding the above contradiction, the first appellate Court failed to take note of the fact whether the ingredients of abetment have been made out in the case of the prosecution to attract Section 306 of IPC in view of the contradictory statement made by PW1 as regards the time of phone call on the previous day and the time of arriving Hosur on the next day.

5. The learned counsel for the revision petitioner also brought to the notice of this Court the deposition of PW1 to the effect that his daughter is generally sensitive and she could get emotional quickly. The learned counsel further brought to the notice of this Court the deposition of PW2 to the effect that the deceased was undergoing treatment for the problem relating to her uterus with Dr. Rekha, which is also corroborated by PW6, an independent witness, who stated that prior to her death, the deceased was in a depressed mood as she was unable to give birth to a child. Further, PW6 in her deposition has stated that both A-1 and the deceased were living happily.

6. In this context, the learned counsel for the revision petitioner relied on the decision reported in Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, AIR 2002 SC 1998 : (2002) CriLJ 2796 : (2002) 1 DMC 773 : (2002) 1 JT 248 Supp : (2002) 4 SCALE 270 : (2002) 5 SCC 371 : (2002) 3 SCR 668 : (2002) 1 UJ 769 : (2002) AIRSCW 2035 : (2002) 3 Supreme 650 as well as the decision in Assoo Vs. State of M.P., (2012) 1 DMC 79 to contend that each and every quarrel between the husband and wife which results in a suicide cannot be taken as an abetment by the husband and the standard of a reasonable and practical women as compared to a headstrong and oversensitive one, has to be applied. By placing reliance on the above decisions, the learned counsel for the petitioner would contend that when the courts below categorically found that there was no demand for dowry and consequential harassment meted out to the deceased, the question of abetment does not arise. The whole prosecution case rests on the

phone call allegedly made by the revision petitioner/A-1 and even that was not proved in a manner known to law. In any event, merely because the revision petitioner/A-1 made a phone call to the father of the deceased, that by itself would not have driven the deceased to take the extreme step. The learned counsel for the revision petitioner therefore prayed this Court to allow the Criminal Revision Case.

7. The learned Government Advocate (Crl.side) would contend that the first Appellate Court, having regard to the nature and scope of evidence made available, concluded that there was no evidence for demand of dowry and has rightly concluded that the first accused is guilty of abetment punishable under Section 306 of IPC. The first appellate Court also appreciated the evidence of PW1 to the effect that whether PW1 has given his daughter in marriage to him or to his relative. On the basis of this evidence, the first appellate Court concluded that the phone call made by the first accused late in the night by which the first accused had threatened and abused his father, had triggered the deceased to take the extreme step. According to the learned Government Advocate, the first accused is instrumental for the deceased to end her life and this was proved by the prosecution by oral and documentary evidence before the courts below. The learned Government Advocate therefore prayed for dismissal of the Criminal Revision Case by confirming the judgment passed by the First Appellate Court.

8. I heard the learned counsel for both sides and carefully examined the judgment passed by both the courts below. It is seen from the records that the marriage of the revision petitioner and PW1 was solemnised on 24.05.2002 and on 27.04.2003, the birthday of the deceased was celebrated in the matrimonial home. In the birthday celebration, the father, mother and sister of the deceased participated. On 28.04.2003, the deceased poured kerosene on her body, set herself ablaze and died of burn injuries. Immediately on the death of the deceased, an inquiry was conducted by the Revenue Divisional Officer, who, after such inquiry, concluded that there was no demand for dowry made by the revision petitioner or in-laws of the deceased. The report of the Revenue Divisional Officer also indicates that had there been an animosity and strain in the relationship between the family of the deceased and revision petitioner, PWs 1 to 3 would not have attended the birthday celebration of the deceased in the matrimonial home on the previous day. The first appellate Court also, on the basis of the report of the Revenue Divisional Officer and other material evidence made available, held that there was no demand for dowry on the part of the accused and it could not be the cause for the death of the deceased. Therefore, the first Appellate Court, while acquitting the accused 2 and 3, modified the sentence imposed on the revision petitioner/A-1 from 304-B of IPC in to one of 306 of IPC and sentenced him to undergo rigorous imprisonment of five years with fine. In such circumstances, it is necessary to examine as to whether the revision petitioner/A-1 is guilty of the offence punishable under Section 306 of IPC or not.

9. The entire case of the prosecution rests on the alleged phone call made by the revision petitioner/A-1 to PW1 one day prior to the death of the deceased. According to PW1, A-1 made a phone call to him at about 12 "O" clock in the midnight, scolded and abused him in bad language as to whether he had given his daughter in marriage to him or to his relative Ananda Srinivasan (PW9) inasmuch as PW1 had asked PW9 to buy and handover Gulkand medicine to the deceased. According to the revision petitioner/A-1, PW9 had handed over Gulkand medicine to the deceased without his knowledge and this had made the revision petitioner/ A-1 to make the phone call. As mentioned above, this phone call said to have been made by revision petitioner/A-1 is crucial for determination of the case as to whether it had triggered the deceased to take the extreme step. In fact, on appreciation of this piece of evidence, the first Appellate Court modified the sentence in to one of Section 306 of IPC and sentenced the revision petitioner/A-1. Therefore, it has become necessary to analyse the evidence relating to the phone call made by the revision petitioner/A-1 and whether it would have been a cause for the death of the deceased.

10. PW1 is the father of the deceased, who in his evidence has stated that (***) Whereas, PW2, in her deposition has deposed that (***) PW3 in her evidence also stated that (***) Thus, with regard to the timing of the phone call, there was a contradiction in the evidence adduced by PW1, PW2 and PW3. PW1 stated that he received the phone call at 12 "O" clock in the midnight, whereas, PWs 2 and 3 in unison have stated that such call was received at about 10.45 p.m.

11. The next important aspect for consideration is the evidence adduced by PWs 1 to 3 with regard to the time at which they reached Hosur on hearing the death of the deceased. PW3 in her deposition has stated that (***)

On the contrary, PW4 in her evidence deposed that (***) Whereas, PW3 in her evidence stated that on 29.04.2003, she received a phone call from her aunt between 7.30 to 8.45 am and informed that Thanjua is in danger and asked us to come to Hosur immediately. Therefore, PW3 along with PW1, 2 and other relatives reached Hosur at about 11.45 a.m. On the contrary, PW1 has stated that (***) These evidences adduced by the prosecution is inconsistent with regard to the time at which PWs 1 to 3 reached the occurrence spot. As mentioned above, there was no demand for dowry made by the accused persons or there was any harassment caused to the deceased. The prosecution wholly relies on the alleged phone call made by the revision petitioner to PW1, however, there is glaring inconsistencies with regard to the time at which such phone call was made. Therefore, it is highly doubtful whether the revision petitioner has made any such phone call and it was proved by the prosecution in any manner.

12. As regards the evidence of PW1, he admitted that her daughter is very sensitive and she could get emotional quickly. (***) PW2 also in her evidence deposed that (***) Therefore, it is clear that the deceased was very sensitive, as deposed by PW1 besides that she was taking treatment with Dr. Rekha for birth of a child. In this background, the evidence of an independent witness PW6

assumes importance. PW6 is a neighbour. According to PW6, the deceased was seen dejected as she could not give birth to a child. The deposition of PW6 in her cross-examination is to the effect that (***) This piece of evidence of PW6 suggests that the deceased was happy in her matrimonial home, but she often gets dejected due to the fact that she could not give birth to a child. Even in the chief-examination, PW6 only deposed that (***) The evidence of PW6, an independent witness, clearly indicates that the deceased was otherwise happy, but for the fact that she could not give birth to a child and she was also taking treatment for such purpose. The evidence of PW6 is natural and cogent and it leads to the irresistible conclusion that there was no harassment caused to the deceased at the hands of the accused and her death has happened in a spur of moment on her own due to dejection.

13. In this background, it is essential to analyse the decision of the Honourable Supreme Court in the case of *Assoo Vs. State of M.P.*, (2012) 1 DMC 79 relied on by the learned counsel for the petitioner wherein it was held by the Honourable Supreme Court in para No. 9 and 10, it was held as follows:-

"9. We are of the opinion that besides the evidence of PWs 1 and 2, which itself is extremely shaky, there is no other statement to show any misbehaviour or demands for dowry. There is also no indication as to when these demands has been made. It must be noted that every quarrel between a husband and wife which results in a suicide cannot be taken as an abetment by the husband and the standard of a reasonable and practical woman as compared to a headstrong and oversensitive one, has to be applied. Taking the evidence against the appellant, as it is, we find that no element of suicide is made out." In the present case, even as admitted by PW1, father of the deceased, her daughter used to get emotional quickly and she is very sensitive.

10. We have also perused the evidence of PW3 None Lal, a neighbour and one of the first to arrive at the spot. He gave a story which completely dislodges the statements of PWs 1 and 2. He deposed in his cross-examination that Shri Bai, a neighbour of the appellant, has made allegations against the deceased in the presence of Ghaffoor and Ishaq, that she was involved in illicit activities while her husband was away and that she would reveal all to her husband when he returned home and that immediately after these remarks the appellant had returned home on which the deceased had gone inside and set herself ablaze. We take it, therefore, as if the prosecution had accepted the statement of PW3 as true, as the witness had not been declared hostile."

14. In the present case, PW6, an independent witness has stated that the deceased was happy in her matrimonial life, but she used to get dejected often for not giving birth to a child. If the evidence of PW6 is read along with the evidence of PWs 1 to 3, it could be evident that the deceased had taken the extreme step in a spur of moment and it could not be attributed on the part of the accused.

15. Similarly, in the decision in Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, AIR 2002 SC 1998 : (2002) CriLJ 2796 : (2002) 1 DMC 773 : (2002) 1 JT 248 Supp : (2002) 4 SCALE 270 : (2002) 5 SCC 371 : (2002) 3 SCR 668 : (2002) 1 UJ 769 : (2002) AIRSCW 2035 : (2002) 3 Supreme 650 : AIR 2002 SC 1998 , the Honourable Supreme Court held in para Nos. 9 to 11 as follows:-

"9. In Swamy Prahaldas Vs. State of M.P. and another, the appellant was charged for an offence under Section 306 of IPC on the ground that the appellant during the quarrel is said to have remarked the deceased "to go and die". This Court was of the view that mere words uttered by the accused to the deceased "to go and die" were not even prima facie enough to instigate the deceased to commit suicide.

10. In Mahendra Singh Vs. State of M.P. the appellant was charged for an offence under Sec. 306 of IPC basically based upon the dying declaration of the deceased, which reads as under:-

"My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wanted to marry a second time. He has illicit connections with my sister-in-law. Because of those reasons and being harassed, I want to die by burning.

11. This Court, considering the definition of "abetment" under Section 107 of IPC found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the accused."

16. In the present case, there is evidence to suggest that the revision petitioner and the deceased led a happy marriage life. The whole case of the prosecution rests on a phone call said to have been made by the revision petitioner/A-1 to PW1, father of the deceased during which A-1 alleged to have abused, threatened and scolded the father of the deceased in bad language. According to the prosecution, this conversation between the revision petitioner and her father had made the deceased to take an extreme step to end her life. However, there are inconsistencies in the time of phone call as per the evidence of PW1 to 3. In any event, the phone call made by A-1 to PW1 by itself could not be a reason to convict the revision petitioner for the offence under Section 306 of IPC especially when PW6, an independent witness deposed that the deceased was dejected for not giving birth to a child, otherwise, she was happy in her matrimonial home. Therefore, it has to be held that the deceased could have committed suicide in a spur of moment without the inducement or abetment of the revision petitioner/A-1. In such circumstances, this Court is inclined to extend the benefit of doubt in favour of the revision petitioner/A-1 and consequently, the conviction and sentence imposed on him by the first appellate Court has to be set aside.

17. In the result, the Criminal Revision Case is allowed setting aside the conviction and sentence imposed on the revision petitioner/A-1 by the first appellate Court.