
(2015) 07 BOM CK 0351
In the Bombay High Court
Case No : Criminal Appeal No. 192 of 1994

State of Maharashtra

APPELLANT

Vs

Balasaheb Rangarao Patil

RESPONDENT

Date of Decision : 17-07-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, 304-B, 498A, 498-A

Citation : (2015) ALLMR(Cri) 3223

Hon'ble Judges : V.K. Tahilramani, J;Shalini Phansalkar Joshi, J

Bench : Division Bench

Advocate : A.S. Shitole, A.P.P., for the Appellant; Prashant Raul instructed by S.P. Kadam, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J—The appellant State of Maharashtra has preferred this appeal against the judgment and order dated 12.11.1993, passed by the Vth Additional Sessions Judge, Kolhapur, in Sessions Case No. 20 of 1990. By the said judgment and order, the learned Sessions Judge acquitted respondent original accused of the offences under Sections 498-A and 304-B of Indian Penal Code. Prosecution case briefly stated is as under:--

"Deceased Shobha was the sister of P.W. 1 Ravindra and P.W.5 Mohan. The marriage of Shobha with respondent took place on 23.3.1988. It was a love marriage. As it was a love marriage, Shobha's mother-in-law did not allow them to stay in her house. Therefore, Shobha and respondent were residing in a room situated in Tapovan. The landlord of their room asked them to vacate room, hence they started residing in Ganji Mai. Thereafter Shobha's mother-in-law i.e. the mother of respondent called Shobha and her husband to reside with her. Hence Shobha and respondent went to reside with her.

At the time of Dasara, demand of Saree and Rs. 3,000/- was made by the mother-in-law of Shobha. As the demand was not fulfilled, Shobha was taken to

the field and she was assaulted by respondent with sickle and stick. Therefore, Shobha came to the house of her brothers and narrated this fact to them. At that time, she had injuries on her person. Shobha was taken to the Doctor and treated. Shobha's brother then called the respondent and respondent's brother-in-law P.W. 4 Pasare and they persuaded the respondent. Thereafter Shobha was sent to her matrimonial home. Shobha was again assaulted with slipper as demand for Rs. 3,000/- for purchasing buffalo was not met. This was at the time of Deewali. Due to assault there were mark of slipper on the cheek of Shobha. P.W.4 Pasare was again contacted, he stated that he will persuade the accused persons, then Shobha was asked to go back to her matrimonial home.

On the next day i.e. on 26-11-1988 P.W. 1 Ravindra the brother of Shobha went to her matrimonial house. At that time Shobha's mother-in-law told him that Shobha had gone to their house on the earlier day and she had not returned since then. P.W.1 Ravindra then made enquiries with relatives, however, Shobha was not found. P.W. 1 Ravindra then lodged missing complaint Exh. 12 on 26.11.1988. In the missing complaint he stated that due to domestic issue, quarrel took place between Shobha and her husband, hence she had come to the house of Ravindra. Ravindra, then told Shobha that she should go to her husband's house. His sister Shobha then went to the house of her husband.

On 28.11.1988 the dead body of Shobha was found in the Rankala talav (tank). P.W. 1 Ravindra identified the dead body as that of his sister Shobha. The dead body was sent for postmortem. The cause of death was found to be asphyxia due to drowning. Thereafter funeral took place. After funeral took place, on the next day P.W.1 Ravindra lodged F.I.R. Thereafter investigation commenced. After completion of investigation, chargesheet came to be filed against respondent and his mother. In due course case was committed to the Sessions Court.

The mother of the respondent expired pending trial, hence the trial proceeded only in relation to the respondent, who was the husband of deceased Shobha. Charge came to be framed against respondent under Sections 498A and 304B of the IPC. He pleaded not guilty and claimed to be tried. The prosecution has examined six witnesses to support its case. After going through the evidence, the learned Sessions Judge, acquitted respondent accused of all the charges, hence this appeal."

2. We have heard learned APP for the appellant State and Advocate Mr. Prashant Raul, for the respondent. After carefully considering their submissions, judgment and order passed by the learned Sessions Judge and the evidence in this case, for the below mentioned reasons, we are of the opinion that the view taken by the learned Sessions Judge is a reasonable and possible view and it is not necessary to interfere with the same.

3. To set aside acquittal, learned APP has placed reliance on the evidence of P.W. 1 Ravindra, P.W. 2 Shalini and P.W.5 Mohan. P.W.1 Ravindra and P.W.5 Mohan are the brothers of deceased Shobha. P.W.2 Shalini was the maternal aunt of Shobha.

4. P.W.5 Mohan has stated that at the time of Dasara, his sister Shobha came to their house. At that time there was injury on her, "nose" and when she was asked what had happened, Shobha told that her husband has assaulted her in the field for money. However, in relation to the demand for money, P.W. 1 Ravindra has stated that at the time of Dasara, Shobha's mother-in-law demanded clothes and Rs. 3,000/-. He further stated that they had given a saree and told that they could not give money. Shobha told him that her mother-in-law was demanding a saree and Rs. 3,000/-. Then his sister Shobha took the saree and went to her in-laws house. Shobha was then taken to the field and assaulted with sickle and stick by her husband. Then Shobha came to their house and narrated this incident to him. Thus, the evidence of P.W.5 Mohan reveals that at the time of Dasara, demand was made by the respondent whereas evidence of P.W. 1 Ravindra, shows that demand was made by the mother-in-law of Shobha and not by the respondent.

5. As far as assault by the respondent on Shobha in the field, as the demand made at the time of Dasara was not met is concerned, P.W.2 Shalini has stated that at the time of Dasara, Shobha had come to her brother's house. When Shobha came there, there were injuries on her, "neck and hands". P.W.2 Shalini asked Shobha how she had sustained the injuries, Shobha told that she was assaulted in the field by sickle and sticks by her husband. However, P.W.5 Mohan, the brother of Shobha, has stated that at the time of Dasara, his sister Shobha came to their house, at that time there was injury on her "nose" and when they asked Shobha what had happened, she told that her husband assaulted her in the field for money. Thus P.W.2 Shalini the maternal aunt of Shobha has deposed that there were injuries on the "neck and hand", however, P.W.5 Mohan has stated that when Shobha came to their house, there were injuries on the "nose" of Shobha. It is further stated by this witness that Shobha was treated by the Doctor. However, neither the said Doctor has been examined nor any medical certificate issued by Doctor has been brought on record to show that at the time of Dasara, Shobha had sustained any injury. In view of the inconsistency regarding injuries which were sustained by the deceased, in the evidence of P.W.2 Shalini and P.W.5 Mohan, it appears that the evidence of these two witnesses is concocted. In relation to demand for money at the time of Dasara also there is discrepancy in the evidence of witnesses. Hence we do not find it safe to rely on evidence relating to demand at the time of Dasara.

6. In addition to the incident which occurred at Dasara, P.W. 1 Ravindra has stated that after the said incident, Shobha was again assaulted. When Shobha came to their house, there was mark of slipper on her cheek. At that time, she told that her husband was demanding Rs. 3,000/- for purchasing buffalo. As far as assault with slipper is concerned, it has been brought out in the cross-examination of P.W.1 Ravindra that this averment is an omission, because Ravindra has admitted in his cross examination that he had not stated before the police that respondent had assaulted Shobha with slipper. Ravindra has further admitted that he has disclosed this fact for the first time in the Court.

7. Ravindra has also stated that after marriage, demand was made for Rs. 3,000/-. However, as far as demand just after the marriage is concerned, P.W.1 Ravindra has stated that the mother-in-law of Shobha fell ill, at that time his sister and respondent demanded Rs. 3,000/-. They paid the said amount. Thus, it is not that only the respondent had demanded money but Shobha had also made demand of Rs. 3,000/- and this demand was made as the mother-in-law of Shobha had fallen sick. Thus, it cannot be said that this demand was made by the respondent in connection with any unlawful demand for money.

8. It is pertinent to note in this case that P.W.1 Ravindra had initially filed missing complaint (Exh. 12) on 26.11.1988. In the said report, he has mentioned that there were quarrels on domestic ground and on this count Shobha's husband had assaulted Shobha. Therefore, Shobha had come to their house on 25.11.1988. In the said report it is stated that Shobha was convinced and she was told to go back to her matrimonial home. On the next day i.e. on 26.11.1988, when P. W 1 Ravindra went to the house of her in-laws at 11.00 a.m. Shobha's mother-in-law told him that she had left their house yesterday to go to Ravindra's house and she had not come back to their house. Hence missing complaint was lodged by Ravindra, immediately after learning that Shobha had not come back to her in-law's house. As stated earlier in the said missing complaint, P.W. 1 Ravindra has stated that there was domestic quarrel and because of that respondent slapped Shobha on the cheek. The missing report Exh. 12 does not disclose about any illtreatment or harassment to Shobha by the respondent on account of demand of money not being met nor does it reveal that any demand of money was made by the respondent. The dead body of Shobha was found in Rankala Talav on 28.11.1988. P.W. 1 Ravindra identified the dead body. Thus, on 28.11.1988, Ravindra was aware about the death of his sister Shobha, yet Ravindra did not lodge any F.I.R. on that day and he lodged F.I.R. on the next day i.e. after Shobha's funeral. No explanation has been furnished in relation to the delay in lodging F.I.R. Absence of allegations of demand of money, illtreatment and harassment in the missing report Exh. 12 shows that F.I.R. was filed on 29.11.1988 only by way of after thought in order to involve the respondent in a criminal case. Admittedly marriage of deceased Shobha and respondent was a love marriage. P.W.2 Shalini who is the maternal aunt of Shobha, has admitted in her cross-examination that "Shobha was in love with accused Balasaheb and Balasaheb was also loving Shobha". In such case, it does not appear probable that within few months of marriage, respondent would have illtreated and harassed Shobha.

9. As stated earlier, in the missing report Exh. 12, complainant P.W. 1 Ravindra has not stated anything about illtreatment or harassment to Shobha or about demand of money by the respondent. Had it been the case that respondent was demanding money and illtreating Shobha, then certainly complainant Ravindra would have mentioned about it in the missing report. Inconsistency regarding cause of quarrel in the F.I.R. Exh. 11 and missing report Exh. 12, creates doubt as to whether respondent had really subjected Shobha to illtreatment.

10. We have already discussed earlier that we find that the evidence of P.W.2 Shalini and P.W.5 Mohan to be concocted. The delay in filing F.I.R. is not explained. There is inconsistency in the evidence of witnesses regarding the demand as well as the injuries sustained by Shobha. All this raises suspicion about the veracity of the prosecution case.

11. It is the prosecution case that when Shobha was illtreated, P.W.4 Pasare was asked to intervene and convince the respondent not to illtreat Shobha. However, P.W.4 Pasare has not supported the prosecution. The facts and circumstances show that the complainant and other witnesses concocted false case and involved respondent accused in this case. Evidence of P.W.1 Ravindra shows that there was love affair between his sister and respondent. There was serious opposition to the said marriage. Later on they agreed to the said marriage. This shows the motive for P.W. 1 Ravindra, P.W. 2 Shalini and P.W.5 Mohan to falsely implicate the respondent in this case.

12. On going through, the evidence, we are of the opinion that the view taken by the learned Sessions Judge is reasonable and possible. In this respect useful reference can be made to the judgment in *Madivallappa V. Marabad and Others Vs. State of Karnataka*, (2013) 1 DMC 510 : (2013) 2 SCALE 665 . In para 11 of this decision, it has been observed as under:--

"11. We find that in quite similar facts, this Court has found in *Rohtash* that the deceased Indro committed suicide by taking pills of poison and the trial Court disbelieved the prosecution case and acquitted the accused in that case from the charges made under Sections 304B and 498A Indian Penal Code. The High Court, however, reappreciated the evidence and reversed the acquittal and convicted the accused and this Court observed:

"27. The High Court interfered with the order of acquittal recorded by the trial court. The law of interfering with the judgment of acquittal is well-settled. It is to the effect that only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

(Vide: *State of Rajasthan v. Talevar and Anr.* and *Govindaraju v. State*)"

Looking to the evidence on record, we are of the opinion that the view of acquittal taken by the trial Court is a reasonable and possible view, hence, no interference is called for. Appeal is dismissed.