
(2019) 12 BOM CK 0084
In the Bombay High Court
Case No : Criminal Appeal No. 677 Of 2003

State Of Maharashtra

APPELLANT

Vs

Chandrakant Bhagwan Katkar And Ors

RESPONDENT

Date of Decision : 16-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 306, 498A

Citation : (2019) 12 BOM CK 0084

Hon'ble Judges : K.R. Shriram, J

Bench : Single Bench

Advocate : Pallavi Dabholkar, Sanjeev P. Kadam, Vilasini Balasubramaniam, S.A. Rajeshirke

Final Decision : Dismissed

Judgement

1. This is an appeal impugning an order and judgment dated 18th December 2002 passed by the 1st Ad-hoc Additional Sessions Judge, Islampur, acquitting the five accused of an offence punishable under Section Section 498 (A) (Husband or relative of husband of a woman subjecting her to cruelty) and Section 306 (Abetment of suicide), read with Section 34 (Acts done by several persons in furtherance of common intention) of the Indian Penal Code (IPC).

2. The case of the prosecution in brief is that one Rupali (deceased) got married to accused no.1 - Chandrakant Bhagwan Katkar on 13th May 1999. After marriage, deceased went to live with her husband in the matrimonial home where apart from her husband, his parents, i.e., accused no.2 - Bhagwan Dada Katkar (Father), Malan Bhagwan Katkar, accused no.3, the Mother and a college going brother Suryakant Bhagwan Katkar, accused no.4, were residing. Accused no.5 is the brother of accused no.2 and uncle of accused no.1, who was living separately nearby. Everything was going fine in the marriage and after one year, accused no.1 and deceased were blessed with a female child, who was named Rutuja. Rutuja was born on 7th June 2002. The child was born in the parental home and after delivery, deceased and Rutuja stayed with the parents for some

time. Deceased thereafter, returned to her matrimonial home with Rutuja. After a month, deceased and Rutuja went to the parental home as deceased had some problem with her back and was complaining of backache. Deceased was hospitalised with one Dr. Bhagwat for eight days, who has not been examined as a witness. After deceased was discharged, deceased went back to her matrimonial home. Subsequently, during Dussehra time, which would be October/November 2002, deceased went back to her paternal home. Just one day before Dussehra, accused no.2 informed the complainant - PW-5 that his wife, i.e., accused no.3, had taken ill and deceased should return to matrimonial home soon. Accordingly, PW-5 and his wife, who is mother of the deceased (listed as a witness but not examined) took deceased and Rutuja to the matrimonial home. When they reached, accused no.3 was in the house, who told complainant, his wife and deceased, that because of deceased accused no.3 had lot of tension and therefore, she fell sick. It seems accused no.3 abused deceased as well as the wife of complainant. An hour later, accused no.1 came and assaulted deceased and also asked what was going on. A crowd gathered and the wife of complainant left for home and some time later, complainant also went back home.

3. It is the case of the prosecution that the accused used to torture deceased by making her do household work, like to collect the cow dung or milk the cow or collect the fodder. Deceased also, it is alleged, was abused in filthy language. What were the abuses have not been mentioned anywhere. It seems deceased used to be not even given food. Deceased, it seems, used to telephone to complainant and complain about the harassment meted out to her and that her life has become unbearable. It seems deceased also informed complainant that her brother-in-law, accused no.4, used to even kick her.

4. Prior to a month before her death, complainant, it seems had gone to the matrimonial home of deceased at which time deceased told the complainant that her mother-in-law had demanded that deceased should get a fridge, water heater and mixer from her parental home and also get Rs.10,000/- as the money was required for accused no.1 to get a better job. It seems deceased was also told that she would not be allowed to visit her parents or meet her parents or speak to her parents unless the demands, which were unlawful, were met. Deceased it seems poured her woes to the complainant, who consoled her and explained to her that it will not be so always. Complainant also told deceased that he would make arrangements to meet with the demands of her in-laws. It seems during one of the visits of the complainant to the matrimonial home of deceased, there were some altercations and accused no.5 even told accused no.1 that he should divorce deceased.

5. On 18th March 2001 at about 7.00 a.m. the complainant, PW-5, received a call from one Rangrao Dada Katkar, who again has not been examined, to come to Karandwadi, which is the place where the deceased was living with accused. Accordingly, complainant went there and found that people had gathered at the bank of river and he saw the dead bodies of Rupali and Rutuja. He learnt that

deceased holding Rutuja with her had jumped into the river and committed suicide. In the drowning, Rutuja also died.

6. Therefore, it is prosecution's case that from October 2000 to 18th March 2001, the accused were, from time to time, making illegal demands of fridge, mixer, water heater, etc. and also Rs.10,000/- and as those demands were not met, deceased was physically and mentally tortured. As that was unbearable, deceased committed suicide, Therefore, the accused are also alleged to have abetted deceased in committing suicide.

7. After due investigation, Police filed chargesheet. As the matter could be tried only by Sessions Court, the Magistrate committed the matter to Sessions Court. The charges were read over to the accused, who denied the charges and claimed to be tried. Prosecution has filed documents like, provisional certificates of Rural Hospital, Islampur at Exhibit 13 and 14, Exhibit 15 to 19 are the arrest panchnamas of the accused, Exhibit 22 is the spot panchnama. Exhibits 28 and 29 are the inquest panchnamas of deceased and Rutuja, Exhibit 31 is the panchnama of production of clothes of deceased and Rutuja by Police Constable, after postmortem. Exhibit 36 is the complaint, Exhibit 33 is the original chit alleged to have been written by deceased and Exhibit 40 is its photocopy. Exhibits 41 and 42 are the postmortem notes of Rutuja and deceased.

8. To drive home their charge, prosecution also led evidence of 7 witnesses, viz., PW-1 - Dadaso Nemisha Wadkar, the witness to the spot panchnama as well as PW-2 - Sandeep Ramchandra Sawant; PW-3 - Suman Shivajirao Ingawale, is the panch witness for the inquest panchnamas of deceased and Rutuja; PW-4 - Sudhir Gorakhnath Jadhav, is the panch witness to the seizure panchnama of the clothes of deceased and Rutuja produced by Police Constable Popat Shamrao Patil after postmortem; PW-5 - Shivaji Sakharam Jadhav, is the complainant and father of deceased; PW-6 - Sachin Shivajirao Jadhav, is the brother of deceased and PW-7 - Harun Hanif Shaikh, is the Investigating Officer.

9. The Trial Court after considering the evidence, passed the order of acquittal. I have also considered the records and proceedings, the evidence and the impugned judgment with the help of Learned APP and Mr. Kadam and I do not find any reason to interfere with the impugned judgment. The Trial Court has listed lot of omissions and inconsistencies, which for the sake of brevity, I do not wish to reproduce in detail. I shall only highlight some of those points as the reason for my decision.

10. PW-1 and PW-2, panch witnesses, who were called when the dead bodies were found have turned hostile. PW-1 says that it is not true that he saw the dead body or that the small kid was tied with the dead body of deceased. PW-1 says the panchnama was not prepared in his presence. PW-2 though in his examination in chief says when he went to the spot on 18th March 2001, the dead bodies were found outside the river and Janardan Katkar (Learned APP says it is accused no.5) showed the spot where the dead body was floating. In his

cross examination, PW-2 says that the Police had already prepared the panchnama. PW-2 says he signed the panchnama in the Police Station. Interestingly in the examination in chief PW-2 says he is a civil diploma holder and does not sign anything without reading but in the cross examination, PW-2 says, the deposition that he read the panchnama and thereafter signed is false. Nothing much turns on the evidence of PW-3 and PW-4 as they were inquest panch witness and seizure of clothes panch witness, respectively. Infact PW-4 was not even cross examined. The star witness for prosecution were PW-5 and PW-6, the father and brother, respectively of deceased. PW-5 is the complainant. Before I go into evidence of PW-5, let us dispose of the evidence of PW-6. The entire evidence of PW-6, rather most part of the evidence of PW-6, is based on hearsay. As regards his personal knowledge, PW-6 says that deceased informed him over telephone about harassment. In cross examination, PW-6 admits that he has not in his statement recorded by the Police mentioned about the date or month when deceased spoke to him. PW-6 also says that he has not informed anyone including his parents regarding the telephone call from deceased when she informed him about the alleged harassment. PW-6 also admits that his statement does not mention that accused no.5, who is the brother of the father-in-law of deceased, ill-treated deceased or assaulted deceased. Here is the brother, who also states that before deceased was taken to her matrimonial home following the telephonic call from her father-in-law just before Dussehra, deceased was in the parental home for 10 days and he did not even enquire with deceased about her life. PW-6 also admits that he did not inform the Police when his statement was recorded about the fact that PW-5 had gone to the house of deceased with apple and deceased had left a chit (Exhibit 33) in the bag. PW-6 also agrees that his statement recorded by the Police does not mention that he was acquainted with the handwriting of deceased or seen her writing.

11. Coming to PW-5, the complainant, PW-5 says that when he went to drop deceased after her hospitalization due to backache, at that time her father-in-law, i.e., accused no.2, quarreled with deceased asking her why she had not come on time and deceased was assaulted and "... they abused us". PW-5 does not say who all were in the house at that time, who assaulted deceased and who are 'they' who abused them. Later PW-5 says that he called accused no.1, who was at his working place and he came and assaulted deceased by saying "kay danga lavalay". PW-5 also says accused no.5 told accused no.1 at that time to divorce deceased. There is nothing to mention how accused no.5 landed there or was he also there when they went to the matrimonial house of deceased. PW-5 states that at that time many people had gathered there and they separated the quarrel. Who all were many people is not mentioned and they also have not been called to give evidence in the matter. PW-5 lists the harassment, which deceased told him that deceased was asked to collect cow dung, milk the cow, wash clothes, fetch water or that she was not given food and accused no.4 used to kick her. These are all rather general statements being made. PW-5 also mentions that he had gone to the house of deceased eight days before her death

at which time deceased informed him about the insults and the ill-treatment and also the demands of fridge and Rs.10,000/-. PW-5 does not say anywhere that the accused made these demands to him. PW-5 also states that he had taken apple for deceased in a bag and deceased returned the bag and he found a chit in the bag in which deceased had listed the ill-treatments. This chit, though the existence has been proved and marked Exhibit 33, has not been proved to the extent that it was in the hand writing of deceased. Ms. Dabholkar, learned APP places her entire case on this chit to drive home the point that deceased was harassed, illegal demands were made and accused therefore, drove deceased to commit suicide. I am afraid, I cannot accept these submissions because it is not proved that that chit was in the hand writing of deceased.

12. In the examination in chief, PW-5 says that one Rangrao Dada Katkar telephoned on 18th March 2001. As mentioned earlier this Rangrao Dada Katkar has not been examined. PW-5 says when he was informed by this Rangrao Dada Katkar that he should come immediately to Karandwadi, he first sent one Hajare and Sunil Patil but they did not return. Thereafter, he sent one Sambha Bhosale and Shrikant Jadhav and they told him that deceased is dead and so also her child and the bodies have been removed from the water and he should come immediately. These four persons, though listed as witnesses, have not been examined. PW-5 says thereafter, when he went to Karandwadi one Kakasaheb Ingwale, Ashok Mohite, Sanjay Jadhav and Shrikant were with him. These four also have not been examined. PW-6 says that when deceased was sent to her matrimonial home after she was discharged from Dr. Bhagwat's hospital, his father and mother took her to the matrimonial home. In his examination in chief, PW-5 does not say that his wife had accompanied him and strangely the mother of deceased has not been examined, though listed as one of the witnesses. In cross examination, PW-5 says that he had not told the Police that he had called accused no.1 and thereafter, he came and assaulted deceased by saying "kay danga lavalay". PW-5 also agrees that in the statement recorded by Police he does not say that he informed the Police that accused no.5 asked accused no.1 to divorce deceased or that many people had gathered and they separated the quarrel. PW-5 says that according to him for one year after her marriage deceased was not made to do any work like collecting cow dung or milk the cow or washing clothes or bringing water. At the same time, PW-5 says that such work was part and parcel of the family and except deceased, all others were doing this work. PW-5 also says that he does not know whether the accused were asking deceased to do these work and he also felt that deceased should do those work.

13. PW-5 says in his statement recorded by the Police that it is not mentioned that he had gone to the house of deceased eight days prior to her death when he was informed by deceased about the ill-treatment and insult and demand of fridge and Rs.10,000/-. At the same time, PW-5 agrees that in his statement recorded by the Police he has mentioned that he had not gone to the house of the deceased for one month prior to her death and she also did not contact him

during that period. Therefore, the testimony of PW-5 that eight days prior to her death he had gone to the house of the deceased and the incident that happened are not believable. Atleast these are very stark inconsistencies. PW-5 also agrees that in his statement recorded by the Police, there is no mention about his visit to the house of the deceased with bag of apple or deceased returned the bag with chit put in that. PW-5 also agrees that on the date of death, i.e., 18th March 2001, he had gone to the Police but he did not inform the Police about the alleged ill-treatment to deceased.

14. PW-7, the Investigating Officer, states that whatever PW-5 has stated that he informed the Police but Police has not recorded the same in his statement were never told to him. Evidence of PW-7 exposes the shoddy investigation done by the Police. PW-7 admits that he has not recorded the statements of the persons, who removed the dead bodies from the river. PW-7 also says that he did not take even the signature of those persons in the spot panchnama that he had prepared. PW-7 says he enquired with the neighbors but none mentioned about the ill-treatment. The approach of the prosecution should be not to instigate with a preconceived motions about the accused but to find out the truth.

This takes care of the charge under Section 498 (A) of IPC.

15. As regards Section 306 of IPC, there is no evidence to speak off. Here is the case of abetment by instigation. The word 'instigate' means to goad or urge or forward or to provoke, incite, or encourage to do an untoward act which that person would have otherwise not done. It is also well settled that in order to amount to abetment, there must be mens rea. Without knowledge or intention, there can be no abetment and the knowledge and intention must relate to the act said to be abetted, i.e., suicide, in this case. In order to constitute 'abetment by instigation', there must be a direct incitement to do the culpable act. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. (Sanju alias Sanjay Singh Sengar V/s. State of Madhya Pradesh) (2002) 5 SCC 371. There is no evidence to suggest or indicate that the accused knew or had reason to believe that deceased would commit suicide. Even if any acts or words uttered by the accused or their conduct are sufficient to demean or humiliate the deceased and even to drive the deceased to suicide, such acts will not amount to instigation or abetment of commission of suicide, unless it is established that the accused intended by their acts that the deceased must commit suicide. It is not enough if the acts of the accused cause persuasion in the mind of the deceased to commit suicide. As held by the Kerala High Court in Cyriac, S/o Devassia and another V/s. Sub-Inspector of Police, Kaduthuruthy and another 2005 SCC Online Ker 346, it is not what the deceased 'felt', but what the accused 'intended' by her act which is more important in this context.

16. Thus there is a fundamental defect in the prosecution's case itself. It does not spell out any offence punishable under Section 306 of IPC.

17. The Apex Court in Chandrappa & Ors. V/s. State of Karnataka (2007) 4 SCC 415 in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under:

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

18. There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

19. In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

20. Appeal dismissed.