

(2015) 08 BOM CK 0024
In the Bombay High Court
Case No : Criminal Appeal No. 675 of 2001

State of Maharashtra

APPELLANT

Vs

Ganesh Vijay Joshi and Others

RESPONDENT

Date of Decision : 28-08-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 306, 34, 498A, 498-A

Citation : (2015) 08 BOM CK 0024

Hon'ble Judges : Shalini Phansalkar Joshi, J

Bench : Single Bench

Advocate : R.M. Gadhvi, APP, for the Appellant

Final Decision : Dismissed

Judgement

Dr. Shalini Phansalkar Joshi, J—This appeal is preferred by the State challenging the judgment dated 3.5.2001, of Assistant Sessions Judge, Malegaon, in Sessions Case No. 22 of 2000, thereby acquitting respondents, for the offences punishable under Sections 306, 498-A read with Section 34 of the Indian penal Code.

2. Facts of the appeal can be stated as follows:-

The marriage of Pratibha, the daughter of P.W.7 Shakuntala Joshi, was performed with respondent No. 1/accused No. 1 Ganesh on 16.2.1997. Respondent No. 2/accused No. 2 is the mother of accused No. 1. After the marriage, Pratibha was residing alongwith her mother-in-law at Manmad; whereas her husband was serving at Amalner. It is alleged by prosecution that the marital life of Pratibha was not happy. She was subjected to harassment and illtreatment to meet the unlawful demand of cash amount and gold ornaments made from time to time by accused Nos. 1 and 2. Ultimately, being fed up with harassment, she committed suicide by consuming some poisonous substance on 16.11.1999. Immediately she was taken to the Doctor, and given treatment, but it was of no use. She succumbed to death on 17.11.1999. On the same day, on the complaint of her

mother P.W.7 Shakuntala, C.R. No. 138 of 1999 came to registered against the accused, for the offences punishable under Sections 498A and 306 read with Section 34 of the Indian penal Code.

3. During the course of investigation, spot panchanama was made vide Exh.27. The clothes of the deceased were seized. Inquest was made vide Exh.46. The postmortem report (Exh.30) was collected. P.W.8 PSI Lolge, who has carried out investigation in the case has then recorded statements of various witnesses, sent the seized Muddemal to Chemical Analyzer. On receipt of Chemical Analyzer's report Exh.28 and further to completion of investigation, he filed chargesheet in the Court against accused.

4. On committal of the case to the Sessions Court, the trial Court framed charge against accused vide Exh.21. The accused pleaded not guilty and claimed trial raising the defence of false implication.

5. In support of its case, prosecution examined in all 8 witnesses and on appreciation of their evidence, the trial Court was pleased to acquit both the accused of the charges levelled against them.

6. This judgment of the trial Court is challenged in this appeal by learned APP by submitting that the death of Pratibha has taken place within three years from the date of her marriage and there is evidence of her mother P. W.7 Shakuntala, brother P.W.3 Rajesh, sister P.W.1 Swati and sister-in-law P.W.2 Supriya proving that since the date of marriage, she was subjected to harassment and illtreatment which ultimately impelled her to end her life by consuming poisonous substance.

7. The learned APP has relying on the evidence of P.W.4 Dr. Laturkar, who has conducted postmortem, P.W.5 Dr. Gupta, who has given immediate treatment and P.W.6 Dr. Pravin Shinge, in whose hospital Pratibha has succumbed to death, submitted that their evidence goes to prove that the death of Pratibha was on account of consumption of some poisonous substance. In such situation, the only inference, according to learned APP can be drawn from the facts of the case is that Pratibha has committed suicide being fed up with the harassment and illtreatment meted out to her at the hands of the accused. Hence according to learned APP trial Court has committed an error in acquitting the accused of the charges levelled against them.

8. At the time of hearing of the appeal, respondents and their learned counsel, however, remained absent. Hence after going through the evidence on record and in the light of submissions made by learned APP, this appeal is being decided without waiting for respondent/accused or their counsel. The reason for the same is that no interference is warranted in the judgment of trial Court as the evidence on record is not of such a convincing and cogent nature as to prove guilt of the accused. Therefore, the presence of the accused and their counsel is dispensed with.

9. Though the prosecution has examined four witnesses who are the close relatives of Pratibha being her sister, mother, brother and brother's wife, who have deposed about the demand and harassment to which Pratibha was subjected at the hands of the accused, it is found that their evidence is at variance with each other and not consistent. It is also consisting of several omissions and improvements.

10. P. W. 1 Swati is the sister of Pratibha. According to her, from her mother and brother she came to know that there was demand of Saree and Chaurang (Square stool) made by accused persons and as said demand was not fulfilled, Pratibha was subjected to harassment. She has deposed that the accused were harassing and mentally torturing Pratibha and she was informing about this harassment to her mother and brother. As per evidence of P.W.1 Swati, she came to know about it when she went to Dhule. Hence her evidence as regards demand and harassment meted out to Pratibha by accused is in the nature of hearsay. Hence it has to be excluded from consideration. Moreover, her evidence that immediately 7 to 8 days after the marriage, Pratibha has reported about this demand and harassment, is not getting support from evidence of any other witnesses. Her brother P. W. 3 Rajesh has flatly denied that Pratibha had come to their house 7 to 8 days after the marriage. Moreover, in cross-examination, omission is elicited that in her statement recorded by police, there is no reference that Pratibha was physically and mentally harassed by the accused and she was therefore, disturbed.

11. P.W.2 Supriya, the sister-in-law of Pratibha, has stated that her marriage with P.W.3 Rajesh, the brother of Pratibha had taken place in the year 1999. Therefore, she had hardly any knowledge about the alleged harassment of Pratibha from the date of Pratibha's marriage till 1999. She has also admitted that from her mother-in-law and her husband she came to know that Pratibha was under mental tension and was harassed by the accused persons. Her knowledge, therefore, is also hearsay. She has deposed about her visit to the house of Pratibha on 11.9.1999 on the occasion of first birthday of Pratibha's daughter. According to her evidence at that time accused had demanded gold chain for the newly born baby. They could not give gold chain, they gave accused Indira Vikas Patra worth Rs. 25,000/-. At that time in their presence Pratibha was beaten by her husband and mother-in-law, so also not given food to her. In cross-examination, however, she has admitted that in her statement recorded by police it is not stated that in her presence on that night Pratibha was beaten up by the accused. This crucial aspect of her evidence is therefore in the nature of omission. Further she has admitted in her cross examination that in her statement recorded by police, there is no mention that there was demand of gold chain by the accused persons and the Indira Vikas Patra were given in pursuance of the demand made by the accused. Her evidence is, thus, also not of much helpful to the prosecution.

12. P.W.3 Rajesh, the brother of Pratibha has deposed that accused No. 1 was

working at Amalner and Pratibha used to stay with accused No. 2 at Manmad. According to him, there was demand of saree and Chaurang which was given. But accused No. 2 was torturing and not giving food to Pratibha. Pratibha used to tell about it to him. At the instance of accused No. 2, accused No. 1 was also beating her. At the time of Diwali, Pratibha told that accused No. 1 has demanded gold ring. However, he could comply with the demand of saree and clothes. There was also demand of Rs. 10,000/- made by the accused which he was unable to satisfy. Hence Pratibha was beaten and harassed by the accused. In his cross examination, however, it is brought on record that he had not stated before police that on the birth day celebration of Pratibha's daughter when he had gone there alongwith his wife P.W.2 Supriya, Pratibha was beaten in their presence. He has further admitted that in his statement recorded by police, it is not mentioned that accused No. 1 was beating at the instance of accused No. 2. He has also admitted though he stated before police, they had not recorded that the accused had demanded Rs. 10,000/- which he was unable to give. His evidence, thus, being in the nature of omission and improvements, is not of much helpful to the prosecution.

13. Lastly, there is evidence of P.W.7 Shakuntala, the mother of Pratibha. In her evidence, she stated that at the time of Diwali, she presented a gold ring to accused No. 1 and a saree to accused No. 2. However, it is pertinent to note that none of the earlier witnesses have deposed about the same. Further she has deposed that Pratibha has told her that accused were demanding Rs. 10,000/- from her for celebrating each festival. Again on this aspect none of the other witnesses, though closely related, have whispered a word. Further she has stated that her son had presented Indira Vikas Patra to Pratibha's daughter, but there is no reference in her evidence that this Indira Vikas Patra was given in pursuance of demand of the accused.

14. In short, in the instant case, on the material and crucial aspect of demand and illtreatment, each and every witness has given different version. There is no consistency and major part of their evidence is in the nature of improvement. As a result of it, their evidence fails to inspire confidence in the judicial mind.

15. Even as regards the death of Pratibha, the evidence is not of a conclusive nature. As per evidence of P.W.4 Dr. Laturkar, who has conducted postmortem examination, the cause of her death was consumption of some poisonous substance. However, Chemical Analyzer's report Exh. 28 does not reveal the presence of any poisonous substance. Several suggestions are given to P.W.4 Dr. Laturkar, who has conducted postmortem, to P.W.5 Dr. Gupta, who has given her immediate treatment and to P.W.6 Dr. Shinge, in whose hospital she was admitted to show that symptoms from which Pratibha was suffering, like the froth coming from the mouth or the pupils being constricted are possible on account of other factors also like septicemia. Though they have denied those suggestions, in the presence of any positive evidence of poisonous substance being detected in the Viscera preserved, in my considered opinion, the benefit of

doubt extended by the trial Court to the accused on that count can be said to be possible view of the matter. The prosecution having failed to prove charge under Section 498A of IPC and the death of Pratibha as suicidal in nature, the accused cannot be held responsible and guilty for her death.

16. In my considered view, therefore, the trial Court has the evidence on record and taken a view which is possible and reasonable view. Hence the appeal holds no merits and therefore, stands dismissed.