

(2006) 12 BOM CK 0100
In the Bombay High Court
Case No : Criminal Appeal No. 90 of 1996

State of Maharashtra

APPELLANT

Vs

Navnath Baban Annadate and Others

RESPONDENT

Date of Decision : 18-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 300
Evidence Act, 1872 — Section 113A
Penal Code, 1860 (IPC) — Section 304B, 306, 34, 498A

Citation : (2007) 2 DMC 508

Hon'ble Judges : M.G. Gaikwad, J

Bench : Single Bench

Advocate : R.D. Reddy, app, for the Appellant; S.D. Pokharkar, for the Respondent

Final Decision : Dismissed

Judgement

M.G. Gaikwad, J.—Heard learned Counsel, appearing on behalf of the respective parties.

2. This appeal is directed against the judgment of acquittal in Sessions Case No. 52/1994, whereby the learned Additional Sessions Judge acquitted the respondents/accused of the offences punishable under Sections 498A, 306 and 304B read with 34 of I.P.C.

3. The facts relevant for the purpose of this appeal are as under:

Deceased Sangita, daughter of PW1 Kalabai was married with accused No. 1 Navnath about one and half years before her death. Accused Nos. 2 to 5 are in-laws of the deceased, After marriage with accused No. 1 while she was cohabiting with her husband, there being harassment to the deceased on account of demand of Rs. 10,000, she had filed a complaint u/s 498A of IPC. The police after investigation of that case submitted charge-sheet against these accused alleging an offence u/s 498A of IPC and that case was pending. When the said

case was pending, the accused agreed to transfer four acres of land in the name of Sangita. They also gave assurance that thereafter Sangita will not be treated with cruelty. In view of that settlement, Sangita was sent to her matrimonial home two months prior to her death. During that span of two months, the harassment was continued. She was not even provided sufficient food. Demand of Rs. 10,000 was also continued. The parents received information of that cruelty, but they just ignored it. However, on 23.11.1993, deceased consumed poison and committed suicide. After receiving a message in that respect, relatives had gone to village Waghluj and had seen the dead body of Sangita. They also noticed some injuries on her person. On her death, intimation was received by the police at Ambhora. A.D. (Accidental Death) No. 25/1993 was recorded. In the inquiry of A.D., PW6 PSI Gafur Patil recorded inquest Panchanama (Exh. 28) on the dead-body. He also recorded spot Panchanama (Exh. 29). Thereafter, her body was sent for post-mortem. PW2 Dr. Rameshwar Kumbhar, Medical Officer attached to Primary Health Centre, Kada conducted autopsy on her body. He noticed five injuries, one contusion and four abrasions. However, on other symptoms noted by him during post-mortem, Dr. Kumbhar opined that the death is due to poisoning. Viscera was preserved and was sent to Chemical Analysis. Chemical Analyser opined by report (Exh 22) that it is a death due to consumption of endosulfan. After the post-mortem, PW1 Kalabai, the step mother lodged complaint with the police, on which PSI Gafur Patil registered the offence, recorded statements of witnesses and submitted charge-sheet against all five accused for the offence under Sections 498A, 306 read with 34 of IPC. The offence being triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions at Beed.

4. Learned IInd Additional Sessions Judge, Beed framed charge (Exh. 10) against all five accused for the offence under Sections 498A, 306 read with 34 of IPC. Subsequently, charge u/s 304B with 34 of IPC came to be added. The plea of the accused came to be recorded and they pleaded not guilty and claimed to be tried. Their defence at the trial was of total denial.

5. At the trial, the prosecution did examine six witnesses. PW1 Kalabai Chaudhari, the step-mother, PW3 Balasaheb and PW5 Pandurang, the cousin brothers and PW4 Malanbai, the sister-in-law of the deceased were examined to prove the cruelty. PW2 Dr. Rameshwar Kumbhar who conducted autopsy on the dead-body proved post-mortem notes (Exh. 20) and produced Chemical Analyser's report (Exh. 22). On the basis of medical evidence and opinion of the Chemical Analyser, the death of the deceased is held to be a suicidal death due to poisoning. At the trial, all four relatives stated that the deceased had lodged a complaint u/s 498A of IPC with Police Station, Ambhora. After investigation, charge-sheet for the offence u/s 498A of IPC came to be filed. All the witnesses have stated that during pendency of that case, settlement did occur and four acres of land of the accused came to be transferred in the name of the deceased and deceased was sent to the matrimonial home two months before her suicidal death. All of them gave a general statement that after the alleged settlement

when deceased was staying with the accused, there was harassment on account of illegal demands to her, but none of them claimed to be an eyewitness of any incident of harassment, nor they claimed that during that span of two months" time, on any occasion, deceased met them and made any disclosure. The learned Judge, because of these facts, held that there was absolutely no evidence to prove the cruelty to the deceased after the alleged settlement. For the previous cruelty during pendency of this trial, learned Magistrate after the death of the deceased, recorded judgment of acquittal. Hence, the learned Additional Sessions Judge held that as they have been acquitted of the earlier offence of cruelty by a competent Court, the accused for that earlier cruelty cannot be tried in view of the provisions of Section 300 of the Code of Criminal Procedure. The evidence led for the offence of cruelty after the alleged settlement is not found satisfactory though her death is proved to be suicidal one, accused came to be acquitted of all the charges.

6. Feeling aggrieved with the said order of acquittal, present appeal came to be filed by the State and this Court admitted the same by order dated 10.9.1996.

7. On behalf of the appellant /State, learned APP Mrs. Reddy advanced submission that when the deceased died, criminal case for the offence of cruelty was pending. Hence, the judgment recorded by the learned Magistrate acquitting of the accused of the offence u/s 498A of IPC is not relevant. The pendency of that case shows that the deceased was being harassed by these accused. Her alternative submission is that the four witnesses, the close relatives gave evidence that the deceased made disclosure with them about alleged cruelty. The death is proved to be a suicidal death. In view of provisions of Section 113A of the Evidence Act, therefore, the Court ought to have presumed the offence of abatement to suicide. According to her, the judgment of acquittal is perverse, hence, same be set aside and the appellants/accused be convicted for the alleged offences.

Learned Advocate Mr. Pokharkar, appearing on behalf of the appellants submitted that this is a judgment of acquittal. The evidence on record led by prosecution before the Trial Court is appreciated and it was not found satisfactory in proof of any charge. There is no perversity in the judgment. Hence, the appeal is without any merit and is liable to be dismissed.

8. It is settled principle of law that the judgment of acquittal cannot be disturbed by the Appellate Court unless the same is found to be perverse and it was found to be one of the possible views from the evidence on record. Hence, it has to be seen in this appeal as to whether there is any perversity in the judgment of acquittal. In case any infirmities or perversities are found in the judgment on reappreciation of the evidence, then this Court can set aside the judgment of acquittal.

9. It is not disputed that the marriage of the deceased with accused No. 1 was performed one and half years before her death. It is also not disputed that the

deceased died at the house of her husband. After her death, inquest Panchanama (Exh. 28) came to be recorded on her body and at the time of inquest, some marks of injuries were noticed on her body. Spot Panchanama (Exh. 29) came to be recorded. It was a spot inside the house of the accused. One quilt came to be seized from that spot and the dead body was sent for post-mortem. PW2 Dr. Kumbhar conducted the autopsy on the dead body of Sangita. He noticed one contusion of 3 cm. x 3 cm. on left maxillary region and four abrasions. However, Doctor has not stated a single word that those injuries are the cause for her death, nor the prosecution alleged that it is a homicidal death. On the basis of other symptoms noticed by the Doctor, he opined that this is a suicidal death. Viscera was preserved and sent to Chemical Analyser. After examination, Chemical Analyser issued report (Exh. 22) and opined that organo chloro insecticide endosulfan was detected in the viscera. The quilt seized from the spot on which the deceased had vomited was also sent to Chemical Analyser. On its examination, report (Exh. 21) came to be issued and same poison i.e. organo chloro insecticide endosulfan is detected on the same. Thus, from the above evidence, it is established that deceased Sangita met with suicidal death and it is due to poisoning.

10. The death of the deceased did occur within one and half year of the marriage. It was a suicidal death. Prosecution came with a case that because of cruelty, deceased committed suicide. The accused was tried for the offence under Sections 498A, 306 and 304B read with 34 of IPC. One of the charges against the accused is of dowry demand alleging that this is a dowry death. In the complaint (Exh. 24) lodged by the step-mother of the deceased PW1 Kalabai, there are no allegations of demand of dowry. At the trial, step, mother Kalabai, cousin brothers PW3 Balasaheb and PW5 Pandurang and sister-in-law Malanbai (PW4) though gave evidence about some demands, they have not deposed a single word that it was a dowry demand. In proof of offence of dowry death punishable u/s 304B of IPC, there was absolutely no evidence on behalf of the prosecution.

11. The death is proved to be a suicidal death. Hence, the material question for consideration was as to whether the deceased was treated with cruelty. Evidence of the relatives who were examined to prove the cruelty needs to be scrutinized.

PW1 Kalabai is the step-mother of the deceased. She gave general statement that the accused persons were beating her daughter. They were not providing her with meals. Whenever Sangita used to visit her house, she has stated before her that she was being ill-treated by accused persons and Sangita had filed a complaint in Ashti Police Station alleging offence u/s 498A of IPC. This is the statement made by her about the cruelty to the deceased prior to the alleged settlement. Further, she states that during pendency of a case u/s 498A of IPC, accused assured to maintain her properly and will not harass her. They have also actually transferred four acres of land in the name of her daughter and the matter was compounded in Ashti Court. A copy of the judgment is found in the

record of the Trial Court, which shows that the matter was not at all compounded. Regular Criminal Case No. 14/1993 is decided by judgment dated 16.11.1994 and all the accused came to be acquitted of the offence. In that case also, present complainant PW1 Kalabai and cousin brother Vithal gave evidence. Their evidence was found exaggerated and not reliable and the judgment of acquittal came to be recorded. Admittedly, it came to be recorded during pendency of this trial. It is nobody's case that this judgment of acquittal came to be challenged. Hence, the Trial Court has rightly held that for earlier offence of cruelty before the settlement, as the accused were tried and acquitted of the offence of cruelty, they cannot be again tried for the same offence. Apart from this legal position, as regards earlier cruelty, step mother PW1 Kalabai gave a general version that whenever deceased Sangita used to meet her, she used to tell her that she was not provided with food and was being ill treated. As to when the said visits of the deceased had taken place is not disclosed by PW1 Kalabai. It may be mentioned here that this complainant Kalabai first concealed the fact in the examination-in-chief that she is the step-mother of the deceased, but in cross-examination, she admitted that she is the step-mother of the deceased. In the cross-examination, the step-mother gave a statement that she cannot tell as to in which year, the marriage of Sangita with accused No. 1 was performed. She has also expressed inability about the relations of the accused Nos. 1 to 5 inter se. Hence, on perusal of her statement, it cannot be said that deceased made any statement with her and her evidence is sufficient in proof of cruelty as it was found to be a general statement. As regards the harassment after the alleged settlement, she has stated that after settlement, deceased had gone to her matrimonial home two months prior to her death and during that two months' period, there was demand of an amount of Rs. 10,000 and on that account, she was being harassed. She is not claiming any personal knowledge of such demands. On the contrary, she has stated that she got knowledge about the harassment to deceased Sangita from various persons, but none of them is examined at the trial. Hence, her statement is found to be a hearsay knowledge, which is not admissible in evidence. It was not her case that about that harassment, deceased had made any statement with her. As such, evidence of step-mother PW1 Kalabai on the point of cruelty was not found sufficient.

12. PW3 Balasaheb is the cousin brother of the deceased. He proved inquest Panchanama (Exh. 28) and spot Panchanama (Exh. 29) produced on record. As regards the cruelty, he has stated thus:

...The marriage was performed by aunt. Sangita started cohabiting with the accused. The accused persons used to beat her, they used to take hard work performed. They were ill-treating and harassing her to meet out the demand for radio and watch. Sangita lodged report against the accused persons. The case was tried before Ashti Court.

He thus also tried to give evidence about a complaint being filed for the offence u/s 498A of IPC against the accused. It may be mentioned here that he gave

statement that she was being harassed, ill-treated or demands were made, but he is not claiming that from the deceased, he got knowledge of these facts, nor he claims to be an eye-witness about any incident of alleged cruelty or harassment to the deceased. Such general statement will not take part of evidence. In relation to the cruelty after the alleged settlement, this witness has stated that after the settlement, Sangita stayed with her husband for two months and during that period of two months, she was being beaten and food was not being provided to her and accused illegally made a demand of Rs. 10,000. Again for this harassment or cruelty it is not his contention that he got knowledge of these demands or harassment from the deceased, nor he claims any personal knowledge. On the contrary, in the cross-examination, he gave statement that many persons visiting from that village gave information to him, but he expressed inability to tell the name of any such messenger. Again for the said alleged harassment during the period of two months after the settlement, there is no personal knowledge to him. His evidence thus does not help to prove cruelty to the deceased.

13. The third witness is PW4 Malanbai who is the wife of cousin brother of deceased Sangita. On the point of cruelty to the deceased, she has stated that when Sangita had been to her parental house, she told her about the beating and ill-treatment and she was not being provided with sufficient food. Such general version without any particulars cannot be treated to be a valid evidence in proof of cruelty. According to her, after the compromise in a criminal case, Sangita had gone to stay with the accused and after that settlement also, accused persons used to beat her on account of demand of Rs. 10,000 and she got knowledge of this incident as Sangita had sent a message. However, in her cross-examination, a material omission has been brought on record and she admits that she has not stated the very material fact in her earlier statement. On the contrary, she has admitted in clear terms that she had no occasion to visit village Waghluj where the accused were residing, when Sangita was staying there. Thus, this statement makes clear that she is having no personal knowledge or direct information about the alleged harassment and her general statement is not found worthy to be relied upon on the point of cruelty.

14. The last witness on this point examined at the trial is PW5 Pandurang Chaudhari, the cousin brother of the deceased. On the point of cruelty, he has stated that Sangita was ill-treated and harassed by the accused on account of demand of radio and wrist watch. Hence, she had filed a complaint for the offence u/s 498A of IPC. The step-mother who lodged complaint has not stated that such demand of radio and wrist watch was made by the accused. Again, this witness has also not stated that deceased had made disclosure about such harassment with him, nor he claims to be an eye-witness of any incident. Such a general version of this witness also cannot be relied upon in proof of offence of cruelty. He also tried to give evidence that after the settlement, when deceased stayed with the husband for two months, she was being harassed on account of demand of Rs. 10,000. In cross-examination, he stated that he got knowledge

from his nephew who is not examined at the trial. He admits that he has not disclosed at the time of his earlier statement that he received such a message from Annasaheb. Hence, that omission also falsifies him.

15. The evidence of the relatives whose evidence is discussed above, is found to be the general statements. None of them have claimed that the deceased had made a statement with them, nor they claimed any personal knowledge as regards cruelty before the settlement or the cruelty after the alleged settlement. The learned Judge has rightly held that for earlier cruelty, accused were tried by the competent Court and came to be acquitted of that offence. For the same offence, they cannot be tried again. Apart from this legal position, the evidence discussed above was found insufficient to record the conviction u/s 498A of IPC against the accused.

16. The deceased met with a suicidal death. It occurred within one and half years of the marriage. u/s 113A of the Evidence Act, the Court may presume the abatement of offence, if suicidal death is occurred within seven years of the marriage, and the prosecution succeeds in proving cruelty to the deceased. That is also rebuttable presumption. But here in this case, the cruelty itself is found not proved. For the offence of abatement to suicide, there are no circumstances or material to show that deceased was instigated or abetted by these accused persons by any act or omission which drove her to commit suicide. Hence, in proof of offence u/s 306 of IPC, no material is there on record. The presumption u/s 113A of the Evidence Act is, therefore, not available in this case. As such, the judgment of acquittal recorded by the Trial Court for all the charges i.e. 498A, 304B and 306 r/w 34 of IPC is found justified. No perversities are found in the said judgment. But this appeal filed by the State is found without any merit. Hence, same needs to be dismissed confirming the judgment of acquittal.

17. The appeal preferred by the State is dismissed and the judgment of acquittal of the accused/respondent Nos. 1 to 5 of the offence under Sections 498A, 304B and 306 read with 34 of IPC in Sessions Case No. 52/1994 is hereby confirmed. The bail bonds of the accused/respondents shall stand cancelled.