

(2016) 01 BOM CK 0165
In the Bombay High Court
Case No : Criminal Appeal No.880 of 2002

State of Maharashtra

APPELLANT

Vs

Raju Vasant Kalsait

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

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

Citation : (2016) 2 AIRBomRCri 570 : (2017) ALLMRCri 768

Hon'ble Judges : Dr. Shalini Phansalkar-Joshi, J.

Bench : Single Bench

Advocate : Mrs. A.S. Pai, A.P.P, for the Appellant; None for the Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Shalini Phansalkar-Joshi, J. (Oral) - This Appeal is preferred by the State challenging the Judgment and Order dated 23rd April 2002 of IInd Ad-hoc Assistant Sessions Judge, Solapur in Sessions Case No.237 of 2001, thereby acquitting Respondent Nos.1 to 4 for the offences punishable under Sections 498-A, 306 and 504 r/w. 34 of IPC.

2. Brief facts of the Appeal can be stated as follows :-

The marriage of Meena, the daughter of PW-6 Bhagwat Lohar, was solemnized with Respondent No.1 on 19th April 2000. After the marriage, she started residing jointly along with Respondent No.1, her husband, Respondent Nos.2 and 4, his parents, and Respondent No.3, his brother. Initially, for a period of 2 to 4 months, she was treated properly. Thereafter she was subjected to harassment and ill-treatment on some minor counts. She informed about the same to her father at the time of Panchami and Diwali festivals. Her father tried to persuade the Respondents to treat her properly, however, it was of no use. As a result, she continued to stay in the house of her father for about 9 months. Her father then issued a notice to Respondent No.1 calling upon him either to accept Meena for

cohabitation or to pay separate maintenance to her. He also approached Women's Help Centre. PW-3 Saraswati Shete, who was the President of the said Women's Centre, intervened and, as a result, Meena was accepted for co-habitation and she resumed her co-habitation with Respondent No.1 on 1st August 2001. Within three days thereafter, on 4th August 2001, her father received information that Meena has sustained burn injuries and has succumbed to those burn injuries. Hence, on 5th August 2001, he went to Vairag Police Station and lodged complaint against the Respondents for subjecting Meena to cruelty and thereby abetting the commission of her suicide.

3. Meanwhile, on the information given by Respondent No.1 to Vairag Police Station on 4th August 2001 itself, PW-5 Police Head Constable Ankush Darade has registered A.D. No.36 of 2001 and has sent the dead body of Meena for postmortem examination. PW-1 Dr. Padmakar Patil conducted the autopsy and has opined that the cause of her death was "shock due to 100% burns". The Postmortem Report (Exhibit-16) was accordingly collected. On the complaint (Exhibit-28) of PW-6 Bhagwat, PW-7 API Kuber Chavare registered Crime No.55 of 2001. He drew the Scene of Offence Panchanama (Exhibit-32) and from the spot, he collected the plastic can, the kerosene stove and some burnt pieces of clothes. As a part of further investigation, he recorded the statements of witnesses, sent muddemal property to Chemical Analyzer and further to completion of investigation, filed Charge-Sheet in the Court against the Respondents.

4. Trial Court framed charge against the Respondents vide Exhibit-3. The Respondents pleaded not guilty and claimed trial, raising the defence of denial and false implication.

5. In support of its case, prosecution examined in all 7 witnesses and on appreciation of their evidence, the Trial Court found that the prosecution has failed to prove its case against the Respondents beyond reasonable doubt. Accordingly, the Trial Court recorded the finding of acquittal against the Respondents.

6. This Judgment of the Trial Court is challenged in this Appeal by learned A.P.P. by submitting that the married life of Meena with Respondent No.1 was a very short one. She was treated properly only for 2 to 4 months and then subjected to harassment and ill-treatment on one count or the other, as a result, she was constrained to reside in the house of her parents. Only with the efforts of mediator, she resumed cohabitation with Respondent No.1 on the assurance that she will be treated properly; however, within three days of resuming co-habitation, she was constrained to end her life. Hence, according to learned A.P.P., no other inference but that of the guilt of the Respondents for subjecting her to cruelty and thereby abetting her to commit suicide, can be drawn from the evidence on record. According to learned A.P.P., therefore, the impugned Judgment of the Trial Court acquitting the Respondents, giving them the benefit of imaginary doubts, is required to be quashed and set aside.

7. With the assistance of learned A.P.P., I have gone through the entire documentary and oral evidence on record, which, no doubt, substantiate the submission of learned A.P.P. that it was a tragic case of marital life and the death within less than two years from the date of the marriage. Admittedly, the marriage of Meena with Respondent No.1 was performed on 19th April 2000, whereas, her death took place in her matrimonial home on 4th August 2001. Out of this total period of about 17 to 18 months, as deposed by her father, she was treated properly for initial period of 2 to 4 months. Thereafter, for about 9 months, she was residing in the house of her parents and, thus, the remaining period of co-habitation with Respondent No.1 comes hardly to 4 to 5 months.

8. The prosecution has also proved the fact that her death has taken place on account of the burn injuries sustained by her while she was in the house of the Respondents. PW-1 Dr. Padmakar Patil has conducted the postmortem examination on her dead body and found that she had unnatural burn injuries to the extent of 100% and the cause of her death was "shock due to burns". The Postmortem Report (Exhibit-16) is eloquent to that effect, which proves that soot particles were found in larynx and trachea and from head to toe, her body was found to be totally burnt. The Scene of Offence Panchanama (Exhibit-32) and the evidence of PW-7 API Kuber Chavare proves that her dead body was found in the room, which was closed from inside. Hence, the door plank of the room was required to be broken open for removal of her dead body. It necessarily, therefore, follows that her death was on account of her own act of ending her life by pouring kerosene on herself and setting ablaze. Therefore, the prosecution has also proved the fact that Meena has committed suicide in her own matrimonial home within seven years from the date of her marriage.

9. The real question for consideration is "whether the prosecution has proved that the cause of her suicide was the cruelty and harassment alleged to be meted out to her at the hands of the Respondents?". In this respect, the main reliance of the prosecution is on the evidence of her father PW-6 Bhagwat. According to his evidence, after the initial period of 3 to 4 months from the marriage, Meena used to complain that the Respondents were harassing her. They were abusing and beating her on the ground that she was unable to conceive the child and she was not cooking food properly. She has informed her father about this harassment and ill-treatment at the time of Panchami and Diwali festivals. He persuaded the Respondents to treat her properly and left her in the house of the Respondents after Diwali festival. He has further deposed that, in the meanwhile, Respondent No.1 got the job at Bhalvani and he used to go there daily. After 8 days, Respondent No.2 brought Meena to his house and left her there saying that she was a cause for tension to Respondent No.1. According to his further evidence, at that time, Meena resided with him for 9 months. Then he sent notice (Exhibit-25) to Respondent No.1 calling upon him to accept Meena for co-habitation or to pay maintenance to her. He also approached Women's Help Centre and submitted the application (Exhibit-27). Thereafter, PW-3 Saraswati Shete, President of the said Centre, called a meeting, in which Respondent No.1

accepted Meena for co-habitation and thereafter on 1st August 2001, Meena went to the house of the Respondents. On 4th August 2001, she succumbed to burn injuries. In his evidence before the Court, PW-6 Bhagwat has also produced on record one letter (Exhibit-29) written by Meena to her uncle, in which, according to him, Meena has informed her uncle about the ill-treatment and harassment.

10. However, perusal of the letter (Exhibit-29) nowhere discloses that Meena was subjected to harassment and ill-treatment on the ground that she was unable to conceive the child. The letter also nowhere proves that she was subjected to beating or starving at the hands of the Respondents. In her letter, her grievance appears to be only against her mother-in-law for instigating her husband to quarrel with her. But, except for that, there is no such allegation of beating or of other mental or physical cruelty. For that matter, even the notice (Exhibit-25) issued by Meena to Respondent No.1 also nowhere makes mention about the beating or the harassment on the count that Meena was unable to conceive or not cooking the food properly. The notice conversely reveals that there was some marital discord between Meena and her husband and the cause of the discord was some provocation or instigation at the hands of her mother-in-law, but it nowhere speaks about the beating or any mental torture as such.

11. Even the evidence of PW-2 Popat Kale, who has acted as Mediator to resolve this marital discord between Meena and Respondent No.1, nowhere depicts that there was any serious complaint or grievance of Meena against the Respondents. According to him, he was requested by Meena's father to act as a Mediator to settle the matter and, therefore, he contacted PW-3 Saraswati Shete from Women's Help Centre and they convinced Respondent No.1 to accept Meena for co-habitation. Respondent No.1 then accepted her for co-habitation. Even PW-3 Saraswati Shete, President of Women's Help Centre, has also deposed that Meena has informed her that she was not allowed to co-habit with Respondent No.1 in spite of her desire to co-habit with him and it was on account of some minor and trifling grounds like she was not cooking the food properly. According to her evidence, she intervened and called the meeting, in which Respondent No.1, Meena and her father were present and on persuasion, Respondent No.1 accepted her for co-habitation.

12. Though both these witnesses have deposed that Meena had also complained to them about the ill-treatment and harassment, this evidence is in the nature of improvement, as they have admitted in their cross-examination that they have not stated these facts before Police when their statements were recorded. Conversely, their evidence and the letter written by Meena to her uncle and the notice issued by her to Respondent No.1, all go to prove that Meena wanted to reside separately with Respondent No.1, especially, after Respondent No.1 got job at Bhalvani and he was daily going there from village Vairag. This fact is abundantly proved on record through the documentary evidence as well as the oral evidence of her father that Meena did not want to reside in the joint family

of Respondent No.1; especially, with her mother-in-law. It is clear that on this very ground, she resided in the house of her parents for about 9 months. Only when with the intervention and mediation of PW-2 Popat Kale, PW-3 Saraswati Shete and her father, she was constrained to stay in the house of the Respondents and that appears to be the cause for her to end her life.

13. In the light of these facts, in my considered opinion, even assuming that there was some marital discord between the parties, it would not be possible to infer that Meena was subjected to cruelty at the hands of the Respondents and this cruelty was of such a nature as is likely to drive her to commit suicide or to cause grave injury to herself. There is also no evidence on record to prove as to what happened all of a sudden, within three days, after she resumed her co-habitation in the house of the Respondents.

14. Thus, in the absence of any clinching, strong, convincing and reliable evidence on record, the Trial Court is justified in holding that the prosecution has failed to prove its case against the Respondents beyond reasonable doubt. The finding to that effect arrived at by the Trial Court being based on the evidence, in the Appeal against acquittal, this Court cannot and need not interfere therein. The Appeal, therefore, stands dismissed.

15. The Bail Bonds of the Respondents are cancelled.