

(2020) 11 BOM CK 0037
In the Bombay High Court
Case No : Appeal No. 1233 Of 2012

State Of Maharashtra

APPELLANT

Vs

Sharad Ramdas Shelar And Ors

RESPONDENT

Date of Decision : 25-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 378, 378(1)
Indian Penal Code, 1860 — Section 34, 107, 306, 498(A)
Evidence Act, 1872 — Section 113(A), 113(B)

Citation : (2020) 11 BOM CK 0037

Hon'ble Judges : A. S. Gadkari, J

Bench : Single Bench

Advocate : S.S. Hulke, Amey Deshpande, V.M. Bait

Final Decision : Dismissed

Judgement

1. The Appellant, State of Maharashtra, has preferred present Appeal under Section 378(1) of the Code of Criminal Procedure, 1973 (for short,

the Cr.P.C.), impugning the Judgment and Order dated 7th May, 2012 passed by the learned Additional Sessions Judge-2, Niphad, District

Nashik in Sessions Case No.24 of 2010, acquitting the Respondents from the offence punishable under Section 498-A, 306 read with Section 34 of the

Indian Penal Code (for short, the IPC).

2. Heard Mr. Hulke, learned APP for the Appellant and Mr. Amey Deshpande, learned counsel for the Respondents. Perused the entire record.

3. The prosecution case in brief is as under:-

(i) The marriage of Mrs. Manisha, daughter of Bhagwan K. Khaire (P.W. No.1) resident of Tisgaon, Taluka Chandwad, District Nashik was

solemnized with Respondent No.1 i.e. Sharad R. Shelar on 24th March, 2008.

The family of the Respondent No.1 was a joint family. Mrs. Manisha (Deceased) after her marriage with Respondent No.1, started cohabiting with the joint family of the Respondent No.1. Initially for one year from her marriage, the Respondents treated her fairly and properly. A male child is begotten from their wedlock. In the year 2009, Mrs. Manisha had been to her parental house and told her parents that, the Respondents were subjecting her with ill- treatment on count of domestic work. The deceased stayed at her parental house for 2 to 3 days and then returned to her matrimonial house. Again on the eve of Diwali, the parents of Mrs. Manisha brought her to their house. At that time also, Mrs. Manisha told her family members that, ill treatment was continued, not only on the earlier count but also on the ground that, she could not perform agricultural work properly. She also informed the family members from her parental side, that at the instigation of her husband Sharad (Res. No.1) and her sister-in-law Smt.Ujawala (Res. No.5), the other Respondents were causing ill treatment to her. The parents of Mrs. Manisha consoled her by stating that, domestic issues do arrive in matrimonial life and asked her to happily cohabit with her husband. In the month of January, 2010, the mother of Mrs. Manisha was ill and therefore, Mrs. Manisha and her husband Sharad (Res.No.1) had been to her parents house. At that time, Mrs. Manisha informed her parents that, her husband Sharad and other Respondents were subjecting her to ill treatment for want of Rs.30,000/-for purchasing a motor-cycle. It is the prosecution case that, after about a month, in order to avoid ill treatment to Manisha at the hands of Respondents, her father (P.W. No.1) went to the house of the Respondents and paid the said amount of Rs.30,000/- to Ramdas (Res. No.2) and requested him to treat his daughter properly.

(ii) It is the further prosecution case that, on 17th March, 2010, at about 9.00 a.m., the mother of Mrs. Manisha namely Smt. Mandabai and brother namely Sopan B. Khaire (P.W. No.2) had been to the house of Mrs. Manisha. At that relevant time, Mrs. Manisha told them that, the Respondents were still causing ill treatment and were asking her to bring Rs.10,000/- from her parents for purchasing a grinder machine. At that time, Ujawala, (Respondent No.5), raised quarrel with Mrs. Manisha and threatened her that, she would see how the deceased cohabits there. Therefore, the mother of Mrs. Manisha expressed her intention to take her daughter at her house,

however, Respondent No.2 assured her about safety and security of the deceased.

(iii) Smt. Mandabai, i.e. the mother of deceased and Sopan Khaire (P.W. No.2) brother of deceased came back to their house between 11.00 a.m.

and 12.00 noon. At about 5.00 p.m. on the same day, Sopan Khaire (P.W. No.2) received a phone call from Respondent No.4 informing that, the

deceased was missing since 2.00 p.m. and thereafter P.W. Nos.1 and 2 rushed to the house of the deceased. They took search of the deceased in the

vicinity. Dead body of Mrs. Manisha (deceased) was found floating in a well, situated in the precincts of the house of Respondent No.2. The police

were informed accordingly. Police rushed at the spot and took out dead body of Mrs. Manisha and inquest panchanama (Exh. 24) was drawn on 18th

March, 2010 between 1.30 a.m. to 2.15 a.m. Police also effected spot panchanam (Exh.23) on 18th March, 2010 between 9.00 a.m. to 9.30 a.m.. Mr.

Babulal Baviskar, Police Sub-Inspector, initially recorded accidental death case and started inquiry of it.

(iv) During the course of the said inquiry, it was revealed to him that, Mrs. Manisha committed suicide due to constant ill treatment and harassment

meted out to her by the Respondents. A crime bearing No.33 of 2010 was accordingly registered. On completion of investigation, PSI, Mr. Baviskar,

(P.W. No.4) submitted charge-sheet in the Court of learned Judicial Magistrate, First Class under Sections 498-A and 306 read with Section 34 of the

IPC.

Learned Magistrate committed the said case to the Court of Additional Sessions Judge, Niphad as the offence punishable under Section 306 of the

IPC is exclusively triable by the Court of Sessions. The Trial Court framed charge below Exh-11 under Sections 498-A and 306 read with Section 34

of the IPC against the Respondents. The said charge was read over and explained to them. The Respondents pleaded not guilty and claimed to be

tried. The defence of the Respondents was of total denial. Their pleas have been recorded below Exhs.-12 to 16.

(v) To substantiate charges against the Respondents, prosecution examined in all four witnesses namely, Shri. Bhagwan K. Khaire (P.W. No.1),

father of deceased Mrs. Manisha; Mr. Sopan Bhagwan Khaire (P.W. No.2), brother of deceased Mrs. Manisha; Mr. Ratan K. Khaire (P.W.No.3), a

relative of deceased Mrs. Manisha and Investigating Officer, PSI Baburao Baviskar (P.W. No.4). Statements of the Respondents under Section 313

of the Cr.P.C. were recorded below Exhs.38 to 42. The Trial Court after recording evidence and hearing the learned Advocates for the respective

parties, acquitted Respondents from the charges framed against them by its impugned Judgment and Order dated 7th May, 2012.

4. Mr. Hulke, learned APP submitted that, the deceased committed suicide within a period of 2½ years of her marriage and therefore, the

presumption under Section 113-A of the Evidence Act will be applicable to the present case. He submitted that, the Respondents had quarreled with

the deceased on 17th March, 2010 in presence of P.W. No.2 and thereafter the deceased committed suicide. He submitted that, the Trial Court has

failed to appreciate these vital aspects in the present case and therefore, the acquittal of the Respondents from the charges, is erroneous. He

therefore, prayed that, the present Appeal may be allowed by setting aside the impugned Judgment and Order.

5. Mr. Deshpande, learned counsel for the Respondents submitted that, if a married woman commits suicide within a period of 7 years of her

marriage, the presumption under Section 113-A of the Evidence Act would automatically not apply. In support of his contention, he relied on a decision

of the Honâ??ble Supreme Court in the case of Mangat Ram Vs. State of Haryana reported in (2014) 12 SCC 595. He submitted that, P.W. No.1

has admitted that, the deceased was happily residing at her matrimonial house and therefore, Section 498-A of the IPC is not attracted to the present

crime. He submitted that, in the cross-examination of P.W. No.2, the defence has successfully brought on record vital omissions which are detrimental

to the interest of prosecution. The evidence of P.W. No.3 who was close relative of the deceased is hear-say in nature and has no direct bearing on

the prosecution case. He therefore submitted that, the present Appeal may be dismissed.

6. Perusal of evidence of material witnesses i.e. P.W. Nos.1 and 2 would indicate that, in their examination-in-chief, they have deposed the facts as

narrated hereinabove in sub-paragraph Nos.(i) to (iii) of paragraph No.3, .

In the cross-examination of Mr. Bhagwan Khaire (P.W. No.1), the father of deceased Mrs. Manisha, he has admitted that, whenever he met the

deceased, she herself did not make any complaint of demand of money by the Respondents. That, during the period when Mrs. Manisha (deceased)

stayed at parental house at the time of her pregnancy, she lived happily in the said two months. That, Mrs. Manisha and Respondent No.1 were on

visiting terms at his house and they used to come on a motor-cycle of Respondent No.1.

In the cross-examination of Mr. Sopan Khaire, (P.W. No.2) an omission that, on 17th March, 2010, when he along with his mother went to the house

of the deceased, at the relevant time, Respondents were found quarreling with his sister, has been brought on record. He has further admitted that,

even prior to the marriage of Mrs. Manisha with Respondent No.1, a motor-cycle was there at the home of the Respondent.

During the course of trial, the Respondents (defence) admitted certain documents namely the spot panchanama (Exh.23), inquest panchanama

(Exh.24), post-mortem report (Exh.26) etc., and therefore, these documents have been accordingly exhibited.

7. Minute perusal of the evidence of P.W. Nos.1 and 2 clearly discloses that, the Respondents did not demand dowry from the deceased. The

deceased was living at her matrimonial house happily. The alleged demand of Respondents of Rs.30,000/- for purchase of motor-cycle and payment

of it by the P.W. No.1 to the Respondent No.2 is not corroborated by other evidence and it appears that, the said statement is as vague as possible. It

is to be further noted here that, Exh-23 i.e. the spot panchanama discloses that, the well had parapet wall and there was no possibility of accidental fall

of the deceased into the well. It appears to this Court that, the prosecution has failed to prove the basic fact of causing cruelty by the Respondents for

want of dowry to Mrs. Manisha (deceased). The evidence on record further reveals that, the prosecution has failed to establish the willful conduct on

the part of the Respondents to attract Section 498-A of the IPC and their conduct with deceased was of such a nature that it would likely to drive the

deceased to commit suicide.

8. The Honâ??ble Supreme Court in the case of Mangat Ram Vs. State of Haryana (Supra) in paragraph Nos. 30 and 31 has held as under:-

â??30. We are of the view that the mere fact that if a married woman commits suicide within a period of seven years of her marriage, the

presumption under Section 113-A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under Section 498-A IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term “the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband” would indicate that the presumption is discretionary. So far as the present case is concerned, we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor would the reasoning adopted by the Courts below would be sufficient enough to draw a presumption so as to fall under Section 113-A of the Evidence Act.

31 In this connection, we may refer to the judgment of this Court in *Hans Raj v. State of Haryana* (2004) 12 SCC 257 : 2004 SCC (Cri.)

217, wherein this Court has examined the scope of Section 113-A of the Evidence Act and Sections 306, 107, 498-A etc. and held that,

unlike Section 113-B of the Evidence Act, a statutory presumption does not arise by operation of law merely on the proof of circumstances

enumerated in Section 113-A of the Evidence Act. This Court held that, under Section 113-A of the Evidence Act, the prosecution has to first

establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband

has subject her to cruelty. Even though those facts are established, the Court is not bound to presume that suicide has been abetted by her

husband. Section 113-A, therefore, gives discretion to the Court to raise such a presumption having regard to all other circumstances of the

case, which means that where the allegation is of cruelty, it can consider the nature of cruelty to which the woman was subjected, having

regard to the meaning of the word “cruelty” in Section 498-A IPC.”

9. It is clear from the evidence on record that, the prosecution has failed to prove beyond reasonable doubt the fact that, the deceased was subjected

to cruelty for non-fulfillment of demand of dowry by the Respondents and

therefore, the presumption under Section 113-A of the Indian Evidence Act will not be attracted in the present case.

10. In the case of Chandrappa and Ors. Vs. State of Karnataka, reported in (2007) 4 SCC 415, the Honâ??ble, Supreme Court, after considering

almost all the leading decisions on the point of Appeal against acquittal as contemplated under Section 378 of the Cr.P.C., in paragraph No.42 has held

as under:-

â??42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate Court while

dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise 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 accused. Firstly,

the presumption of innocence is 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 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.

11. From the evidence discussed hereinabove, it can be safely inferred that, the deceased Mrs. Manisha herself jumped into the well thereby ending

her life. The Respondents did not cause cruelty to her thereby abetting her to commit suicide.

In view of the above discussion and after taking into consideration the entire evidence available on record, this Court is of the opinion that, the view

adopted by the Trial Court is probable in the facts and circumstances of the present case. The Trial Court has not committed any error either in law or

on facts while passing the impugned Judgment and Order.

There are no merits in the Appeal. Appeal is accordingly dismissed.