

(2022) 01 BOM CK 0043
In the Bombay High Court
Case No : Criminal Appeal No. 130 Of 2003

State Of Maharashtra

APPELLANT

Vs

Shriram Mahadev Nikam And Others

RESPONDENT

Date of Decision : 27-01-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 304B, 306, 498A
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2022) 01 BOM CK 0043

Hon'ble Judges : S. S. Shinde, J;N. R. Borkar, J

Bench : Division Bench

Advocate : S. S. Hulke, Sandeep S Salunkhe

Final Decision : Dismissed

Judgement

S. S. Shinde, J

1 The Appellant-State has preferred this appeal against the judgment and order passed by the learned II Ad-hoc Asstt. Sessions Judge, Solapur in

Sessions Case No.270 of 2001 thereby acquitting the Respondents â?" Accused for the offence punishable under Sections 498-A, 306, 304B r/w 34 of

the Indian Penal Code (for short â??IPC).

2 The case of the prosecution, in brief, can be stated thus :-Deceased Rageshri was the daughter of Complainant â?" Sadashiv Agatrao Chowre (PW-

1). She married to Accused No.1 on 25/11/1999. After her marriage, the deceased went to her matrimonial home to cohabit with Accused No.1 at

village Belati. After marriage, for initially period of one year, she was well treated by the accused persons. Thereafter the accused persons started

harassing the deceased for their demand of Rs.20,000/- for their grocery shop. When the deceased came at the time of Diwali festival, she informed

her parents about the demand of Rs.20,000/- made by the accused for their shop. At that time, no amount was paid by the complainant. Therefore, the accused got angry and started harassing the deceased. It is further the case of prosecution that, the accused directed the deceased to deposit an amount of Rs.7,000/- for becoming member of AMWAY Company. She accordingly informed her father. When the complainant-father refused to deposit the said amount, the accused started harassing the deceased. It is alleged that the Accused insisted the complainant to stand surety for his loan from the bank, and as per their request, the complainant stood surety to the loan amount. But Accused No.1 did not refund the said amount, and therefore, the bank has detained pigmy account of the complainant's wife. It is alleged by the complainant that two months prior to the incident, they had received telephone call from the deceased informing them that her husband i.e. Accused No.1 tried to kill her by seizing her throat and, also insisted her to pour kerosene on her person and set herself to ablaze. The complainant went to the accused and persuaded them. It is therefore alleged that all the accused were harassing the daughter of the complainant for their unlawful demand of money.

As per prosecution story, on 03/09/2001, the complainant was admitted in the hospital as he was sick. His daughter i.e. the deceased came to see him and returned back at about 5.00 pm. At about 7.00 pm the complainant was discharged from hospital and returned back to home. Thereafter the complainant received a telephone message from village Belati that his daughter sustained injury due to hot milk. Therefore, the complainant sent his son and two other relatives by name Arvind Shinde and Rahul Bhosale to see what had happened with his daughter. The said persons went to village Belati. Thereafter the complainant received message from them on telephone that his daughter died due to burn injuries. On the next day, in the morning, the complainant went to the civil hospital where post-mortem was conducted and the dead body of his daughter was handed over to the accused. Then all of them went to village Belati and performed funeral on the dead body. Thereafter complainant returned back to Solapur and lodged a report with the police. On the basis of the report of complainant, crime being CR No.92/2001 came to be registered under Sections 498A, 306 r/w 34 of the Indian Penal Code.

3 Thereafter API Dhanaji Baba Ombase (PW-6) investigated the matter, prepared inquest panchanama and panchnama of scene of offence,

recorded the statements of complainant and other witnesses and, arrested the accused on 04/09/2001. During investigation, API Dhanaji Ombase

(PW-6) seized stove, iron rod, match box, kerosene and the ash of burnt clothes. He sent the dead body to civil hospital for post mortem as also he

sent muddemal property to Chemical Analyzer for analysis. Then on 02/10/2001 API Dhanaji Ombase came to be transferred and further

investigation was done by Shri. Ghoghardare, who sent charge-sheet on 23.11.2001.

4 The medical officer Dr. S. S. Sardar, of Dr. V M Medical College & SCSM General Hospital, Solapur, conducted the autopsy over the dead body

of Rageshri, and, in column No.17 of PM Report he mentioned the percentage of burn injuries on the person of deceased and found 100% burn

injuries. According to the doctor, the cause of death is, 'shock as result of Burns'. Accordingly, the doctor issued post mortem notes (Exh.13).

5 On completion of investigation, charge-sheet came to be filed before the Judicial Magistrate First Class, Solapur. However, the charge under Section

306 of the IPC is exclusively triable by the Court of Sessions, the learned Judicial Magistrate First Class, Solapur, committed the case to the Court of

Sessions.

6 Thereafter the learned Additional Sessions Judge, Solapur framed charge against the accused for the offences punishable under Sections 498-A, 306

and 304B of the IPC. The charge was read over and explained to the accused. The accused pleaded not guilty and claimed to be tried. The defence

of the accused was of total denial. According to the accused, they never harassed and illtreated and subjected to cruelty to the deceased, and

therefore, they are not responsible for the death of Rageshri.

7 To bring home the guilt of the accused, during the trial the prosecution has examined in all six witnesses in support of its case. The Trial Court has

recorded statements of accused under Section 313 of the Criminal procedure Code. The learned Sessions Judge, after considering the entire evidence

available on record, came to a conclusion that the circumstantial evidence brought on record cannot be said to be sufficient to prove the guilt of the

accused, and therefore, the prosecution has failed to prove any of the alleged

offences against the accused beyond reasonable doubt. Hence this Criminal Appeal filed by the State against the said order of acquittal.

8 We have heard the learned APP for the Appellant â?" State and the learned counsel for the Respondents â?" Accused. With their able assistance perused the grounds taken in the Appeal Memo, the evidence led by the prosecution, as well as evidence led by the accused in their defence, the documents produced on record, and the reasons recorded by the learned Sessions Judge in the impugned judgment.

9 It is submitted by the learned APP that the learned Sessions Judge has erred in acquitting the accused and not taking into consideration the material on record, and in discarding the evidence led on behalf of the prosecution. He submits that the learned Sessions Judge has not applied his mind in appreciating the oral as well as documentary evidence on record. There is sufficient evidence to show that the accused persons demanded money from the parents of deceased and, when the parents refused, the accused started harassing and ill-treating the deceased. The prosecution, by adducing sufficient evidence, has proved that the death of Rageshri was due to cruelty and harassment on the part of the accused. The view taken by the trial court is not a plausible view. The learned APP therefore submits that, the impugned judgment and order passed by the learned II Ad-hoc Asstt.

Sessions Judge, in Sessions Case No.270/2001 acquitting the Respondents â?" Accused from the offence punishable under Sections 498-A, 306 and 304B of the IPC is erroneous and is liable to be quashed and set aside. He further submits that the Appeal filed by the Appellant/State against the acquittal of the Respondents/Accused may be allowed.

10 The learned counsel appearing for the Respondents/Accused submits that, the prosecution has failed to bring home the guilt of the accused. It is also submitted that the case of the prosecution is based on circumstantial evidence as there is no eye witness to the incident. Rageshri was physically weak and the accused were giving her medical treatment. Therefore, the trial Court has rightly observed that Rageshri might be mentally suffering on the date of incident and therefore, she might have committed suicide. The Respondents/Accused are not responsible for the death of Rageshri. The Respondents - Accused have been falsely implicated in the commission of alleged offence as there is no eye witness to the incident and, the witnesses

examined by the prosecution are interested witnesses, and therefore, the Trial Court has rightly discarded their evidence. The evidence on record is

not sufficient and satisfactory to prove that all the accused were harassing and ill-treating Rageshri for the unlawful demand or for any other reasons.

He also submits that there are contradictions and omissions in the evidence led by the prosecution to prove its case. The trial Court after considering

the evidence and material on record has rightly acquitted the accused. He lastly submits that the impugned order is well reasoned order and needs no

interference at the hands of this Court. He therefore submits that the Appeal filed by the State may be dismissed.

11 There are certain undisputed facts which are required to be mentioned before considering the evidence led by the prosecution as well as the

evidence led by the accused in their defence. The relationship between the complainant and the accused persons as also the marriage dated

25/11/1999 are not in dispute. It is also not in dispute that Rageshri died due to burn injuries, and therefore, it is not a natural death. From the evidence

it is crystal clear that the incident had happened in a closed room. At the time of incident, the deceased was alone in the room. There is no eye

witness to the incident, and the prosecution case is based on circumstantial evidence. During investigation the police seized one stove, one match box

ash of the burnt clothes and one iron rod from the spot of incident. The PW-2 with the help of iron rod broke open the door of the said room and they

saw that the dead body was lying on the ground and it was wholly burnt. The doctor who conducted the post mortem found 100% burn injuries on the

person of Rageshri and the cause of death mentioned in the P M Notes is "shock as result of burns".

12 In order to prove the alleged offences levelled against the accused, the prosecution has examined in all six witnesses, they are Complainant

Sadashiv Agatrao Chowre (PW-1) "the father of the deceased, Kumar Vasant Kokate (PW-2) "the Panch witness to the panchanama of scene

of offence, Chaya Sadashiv Chowre (PW-3) "the mother of the deceased, Satyabhama Ashok Gavakari (PW-4) "the neighbour of the

complainant, Arvind Bhikaji Shinde (PW-5) "the relative of the complainant and, API Dhanaji Baba Ombase (PW-6) "the Investigating Officer.

13 In their defence the accused stated that, they never harassed, ill-treated and subjected the deceased to cruelty and that they are not responsible for

the death of Rageshri; to strength the aforesaid defence, the Accused examined two witnesses. They are Rukmini Abhiman Badwane (DW-1) and Sushila Dasut Bandgar (DW-2).

14 The Complainant (PW-1) in his depositions stated that for the period of one year after marriage, the deceased was carried well and there were no complaints and disputes between the couple and other accused during the said period. Thereafter the accused have demanded Rs.20,000/- from him

for the grocery shop. They have also sent message through his daughter (deceased) that after sanction of their loan, they will refund the money.

However, the complainant has not paid the said amount as per the demand of the accused. He further deposed that, therefore, the accused started

harassing his daughter. Thereafter, the accused insisted the complainant to stand surety for their loan amount of Rs.60,000/-, which has been

borrowed by Accused No.3, and as accused No.3 did not refund the said amount to the bank, the bank issued notice to the complainant as he stood as

surety for the said amount. PW-1 further deposed that thereafter the accused started insisting them through the deceased that complainant should take

agency of AMAWY company by depositing Rs.7000/-, and as he did not become the member of said company, they have started harassing to his

daughter. He further deposed that two months prior to the incident, he received telephone call from his daughter informing him that her husband

pressed her neck and gave her can of kerosene and told her to set herself to fire by pouring kerosene. Then the complainant and his wife went to the

matrimonial house of their daughter. The accused No.2 only was present in the house. The complainant and his wife persuaded and requested the

accused not to harass his daughter as they were unable to comply the demand. The complainant further stated that when he was admitted in the

hospital on 03/09/2001, his daughter (deceased) came in the hospital and met him at about 3.30 and then went back. The complainant was discharged

and returned back to his house at about 7.30 pm. Then he received a telephone call that his daughter has received burn injuries as hot milk fell on her

person. He sent his son - Sheshraj Sadashiv Chavre, one Rahul Bhosale and Arvind Shinde to Belati to see what had happened. All of them went to

Belati and informed the complainant that his daughter was severely burnt and there is no possibility to save her. On next day in the morning, the

complainant went to civil hospital and came to know about the death of his daughter. After post-mortem dead body was handed over in their custody.

Then all of them went to Belati, where at about 1.30 pm funeral was performed on the dead body at Belati. Then the complainant went to Salgar

Wasti Police station and lodged a complaint against the accused. Complainant Sdashiv Chawre (PW-1) in his cross examination has stated that health

of his daughter was weak and her nature was sensitive, and in order to improve her health, the persons from her matrimonial home were insisting her

to eat more for her health. The complainant (PW-1) in his cross has categorically admitted that neither he has made any complaint with any forum

during the life time of his daughter that her husband pressed her neck and that she should set herself ablaze by pouring kerosene, nor did he file any

complaint with police.

15 We have gone through the evidence of other prosecution witnesses and find that they deposed more or less like the complainant (PW-1). Upon

careful perusal of the deposition of complainant and other prosecution witnesses, we find that no particulars of alleged demands are mentioned in their

deposition. There are vague allegations without mentioning particular dates or instances. The complainant himself has stated in his deposition that there

was no demand or ill-treatment and harassment for one year from the date of marriage. He categorically admitted in his cross examination that neither

he has made any complaint with any forum during the life time of his daughter that her husband pressed her neck and that she should set herself

ablaze by pouring kerosene, nor did he file any complaint with police. PW-3 and PW-5 admitted in their deposition that deceased was physically weak,

and therefore the accused were giving her medical treatment for improving her health. Even PW-5 in his cross examination admitted that he had not

filed complaint at anywhere in her life time, as also PW-5 could not state the date, day and month when his maternal uncle i.e. the complainant

informed him about the harassment to her. The Investigating Officer â?" PW-6 stated in his deposition that during investigation none of the witnesses

stated before him that there was harassment to Rageshri by the accused. During investigation PW-6 recorded the statement of the boy Pravin

Dattatray Bhosale who used to go for tuition to deceased, and he has not stated anything about the quarrel between the deceased and accused on that

day.

16 In its entirety the prosecution case does not inspire confidence. It appears that the incident in question had taken place in a closed room when the deceased Rageshri was alone. The accused in their defence stated that they never harassed and ill-treated and subjected to cruelty to the deceased, and therefore, they are not responsible for the death of Rageshri. The witnesses examined by the accused in their defence have stated that the accused were treating deceased Rageshri in a well manner and, because Rageshri was weak, they were giving medical treatment. Both the defence witnesses have categorically stated that, the mother-in-law of Rageshri was treating her as her own daughter and, the accused No.1 and deceased were residing happily and carrying well, and it was the deceased Rageshri who insisted accused No.1 to stay at Solapur city as she was not in habit to reside in village.

17 The Trial Court in depth has scrutinized the evidence adduced by the prosecution in support of its case as well as the evidence adduced by the accused in their defence, and reached a conclusion that the evidence adduced by the prosecution on record cannot be said to be sufficient and satisfactory to prove that all the accused were harassing Rageshri or ill-treating her for their unlawful demands or for any other reasons. The Trial Court further observed that there are no allegations against the accused regarding physical harassment to the deceased. On the basis of the evidence on record and the material placed on record, the trial court came to the conclusion that the prosecution has failed to prove any of the alleged offences against the accused beyond reasonable doubt. We have noticed that the Trial Court has meticulously dealt with the entire evidence of the prosecution and reached to a correct conclusion. The law is well settled that the view taken by the Trial Court thereby acquitting the accused cannot be lightly interfered into, unless the Appellate Court on re-appreciation of evidence comes to a conclusion that the findings recorded by the Trial Court are perverse and the view taken was not plausible at all.

18 In the light of the discussion made in the foregoing paragraphs, we are of the considered view that the Trial Court has taken a plausible view and has rightly acquitted the Respondent "accused. No case is made out for interference in the impugned judgment and order. There is no merit in the

Appeal. Hence the following order :-

:ORDER:

Criminal Appeal No.130 of 2003 stands dismissed.