
(2009) 01 BOM CK 0105
In the Bombay High Court
Case No : Criminal Appeal No. 68 of 1992

State of Maharashtra

APPELLANT

Vs

Smt. Kausalayabai Ramnath Dayama

RESPONDENT

Date of Decision : 07-01-2009

Acts Referred:

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

Citation : (2009) CriLJ 4259 : (2010) 7 RCR(Criminal) 186

Hon'ble Judges : V.K. Tahilramani, J

Bench : Single Bench

Advocate : V.B. Konde-Deshmukh, app, for the Appellant; A.P. Mundargi Amol Patankar and Prestam Runawal, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J.—The applicant-State of Maharashtra has challenged the judgment and order dated 19.11.1991 passed by the learned Additional Sessions Judge, Pune in Sessions Case No. 290 of 1991. By the said judgment and order, the learned Sessions Judge acquitted the respondent - orig. accused u/s 306 of Indian Penal Code.

2. The prosecution case, briefly stated, is as under:

On 18.11.1986 the marriage of Kalpana (deceased) took place with Umakant who is the son of the accused. After the marriage, Umakant took his wife Kalpana to Kolhapur where he was working. They resided at Kolhapur for about one and half year then Umakant left his job at Kolhapur and came to Shirur along with Kalpana and started residing jointly with his parents and brothers. It is the prosecution case that after Umakant and his wife Kalpana came to reside at Shirur the accused started ill-treating Kalpana. According to the prosecution, the accused used to pick up quarrel with Kalpana and due to these frequent quarrels Kalpana was fed-up and she, decided to end her life. On 21.1.1991 at about 9:30 a.m. Kalpana poured kerosene on her person and set herself on fire.

Kalpana was taken to the hospital. Kalpana has found to have sustained 99% burn injuries. Thereafter her dying declarations i.e. Exh.14 & Exh.37 came to be recorded. In both the dying declarations, Kalpana stated that quarrels used to always take place with her mother-in-law and on account of this she was fed-up and, therefore, she set herself on fire.

3. On the basis of the dying declarations of Kalpana, offence came to be registered u/s 498-A & 306 of IPC against the accused. After completion of investigation, the case was committed to the Court of Sessions.

4. Charge came to be framed against the accused under Sections 306 & 498-A of IPC. The accused pleaded not guilty to the said charge and claimed to be tried. The defence of the accused is that of total denial. After going through the evidence adduced by the prosecution, the learned Sessions Judge convicted the accused u/s 498-A IPC, however, the learned Sessions Judge acquitted the accused u/s 306 of IPC. Hence this appeal.

5. I have heard Mr. Konde-Deshmukh, the learned APP for the appellant-State of Maharashtra and Mr. Mundargi the learned Counsel for the respondent-accused. I have perused the judgment and order passed by the learned Sessions Judge as well as the record pertaining to the present case.

6. The prosecution case is mainly founded on the evidence of PW-5 Pramod who is the brother of Kalpana, dying declarations Exhs. 14 & 37 given by Kalpana and letters Exhs.30 & 31 written by Kalpana to her relatives.

7. Even though the prosecution has alleged that day to day quarrels used to take place between the accused and the deceased, there is no evidence on record to show nature of the quarrels. In the letters deceased Kalpana has vaguely alleged that the accused was reproaching her in bitter words. She has not mentioned the actual words uttered by the accused. The deceased in the dying declarations or in the letters has not stated about any particular incident describing the actual act committed by the accused. Only vague allegations of day to day quarrels are made.

8. PW-5 Pramod has stated that his sister Kalpana was married to Umakant who is the son of the accused. The said marriage took place on 18.11.1986. In the month of March-April, 1988 Kalpana came to their house for delivery. During that period Kalpana used to tell that day to day" quarrels took place in her house and due to the quarrel she was fed-up. Thereafter Kalpana wrote a letter to her brother stating that she is unwell and hence she should be called to stay at the house of her brother at Aurangabad. Accordingly Kalpana was called to the house of her brother. Kalpana stayed there for some time. During that period, she informed her brother and others that her mother-in-law used to pick-up quarrels and she was harassing Kalpana. On 21.1.1991 PW-5 Pramod received a message that his sister Kalpana was admitted in hospital. He met Kalpana in the hospital. At that time she informed him that due to harassment caused by her mother-in-law, she was fed-up and therefore she set herself on fire. On 25.1.1991 he

returned back to Aurangabad, on the same day at Aurangabad he received one inland letter Exh.31 written by his sister Kalpana. In the said letter, Kalpana had made complaint against the accused stating that her mother-in-law was always speaking to her in a taunting manner. In the said letter, Kalpana further stated that she is really fed-up with the quarrels with her mother-in-law and the bitter words uttered by her mother-in-law hence she is committing suicide. Apparently this letter was written by Kalpana shortly before she committed suicide and after she posted the letter she committed suicide. The words used by the accused have not been stated by Kalpana in these letters nor any witness has stated about any specific words being used by the accused or the language used by the accused.

9. Out of the letters i.e. Exhs.23 to 31 & Exh.40 to 50 written by Kalpana, it is seen that the allegations have been made by Kalpana against the accused only in Exhs.30 & 31. In the letter Exh.30, she has stated that her mother-in-law did not allow her to scold her son. In the letter Exh. 31 Kalpana has stated that her mother-in-law used to speak to her in a taunting manner and stated that no money remained in her hand (i.e. Kalpana's hand) and she should shut her mouth. In this letter, Kalpana has stated that she was fed-up by the constant quarrels with her mother-in-law, hence she was committing suicide.

10. It is seen that in the present case there is no allegation of any physical violence nor is there any allegation that there was any demand and as, the demand was not met, there was ill-treatment and harassment to Kalpana. The only allegation is that mother-in-law of Kalpana used to speak to her in a taunting manner and there were frequent quarrels between the two of them relating to the minor son of Kalpana.

11. The evidence on record shows that Kalpana and respondent i.e. mother-in-law used to attend social and religious functions together. There were good relations between them. However, from time to time quarrels of trifle nature used to take place between the respondent and Kalpana. It is seen that since Kalpana got married, she went to reside with her husband at Kolhapur. At that time the respondent was not residing with them. After about 1 & 1/2 year Kalpana's husband left his job and they came back to reside with his parents and his brother at Shirur. It has come on record that at Shirur parents of Kalpana's husband i.e. including the respondent rendered assistance to her husband to start a factory, however, he could not establish his business. Hence, during that period Kalpana and her husband were in financial difficulty. It is possible that due to the difficult financial position, Kalpana may have become frustrated. Besides this, earlier Kalpana was residing independently with her husband at Kolhapur. Thereafter she came to reside in the joint family with the respondent. On account of this, Kalpana may have been frustrated or she had adjustment problems in the joint family. Looking to the evidence on record, it is seen that the prosecution has not proved any single incident on the basis of which it can be said that the deceased was harassed or subjected to cruelty by the respondent in such a

manner as to abet her suicide. All the allegations made against the respondent are vague and general in nature. Even the words used by the respondent have not been mentioned in any of the dying declarations or in letters written by Kalpana or by any witness.

12. In this case there are no allegations of physical violence. Further there are no allegations of any demand of money or valuable security. In letter Exh.31 the deceased has specifically mentioned that due to day to day quarrels with the accused she decided to commit suicide. In the dying declarations Exh.37 and Exh. 14 and complaint Exh. 16, the deceased consistently stated that due to the quarrels with the accused she was fed-up and so she poured kerosene on her person and set herself on fire. As discussed above on the basis of abovesaid evidence, it is already held that the prosecution has proved the alleged offence punishable u/s 498-A of I.P.C. against the accused. However, in this case there is no evidence on record to prove that the accused instigated or engaged in conspiracy or rendered intentional aid for facilitating commission of offence of suicide. It is revealed from the evidence on record that day to day quarrels used to take place between the accused and the deceased. However, there is no evidence on record to support submission advanced on behalf of the learned prosecutor that the accused subjected to such cruelty that there was no alternative before the deceased but to end her life. It is true that in the dying declarations and in the letter Exh.31 the deceased has specifically mentioned that due to day to day quarrel with the accused she was fed-up and so she committed suicide. The deceased has not given any particulars about the nature of quarrel or about the taunts or bitter words uttered by the accused. PW-5 who is the brother of the deceased has stated that the deceased was a sensitive girl. It appears that on account of being extremely sensitive, Kalpana has taken even the slightest remark to her heart and got hurt and upset. PW-5 has also stated that when he learnt about the incident he was shocked. From his evidence, it is clear that from whatever he heard about the acts of the accused, he did not think that they were such as to cause his sister to commit suicide. In my opinion, merely on the basis of petty quarrels an accused cannot be convicted for an offence u/s 306 of Indian Penal Code.

13. From the evidence on record, especially of PW-7 Dr. Kamble it is seen that the deceased had told him that the respondent had made attempt to extinguish the fire. The fact that the accused made attempt to extinguish the fire runs counter to the prosecution case of abetment to commit suicide. The learned Sessions Judge has taken into consideration all these facts and held that the prosecution has failed to prove the allegation that the respondent had abetted the commission of suicide. Looking to the above facts, I am of the opinion that the view taken by the learned Sessions Judge is a reasonable and possible view.

14. It is well settled that if the view of acquittal could have been reasonably arrived at then mere circumstance that the lower Court would have taken a different view, would be no ground to interfere. In this connection, there is no

dearth of authorities but to eschew prolixity, I am referring to only one of them i.e. C. Antony Vs. K.G. Raghavan Nair, . In the case of C. Anthony, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in Appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record.

15. As stated earlier, the view taken by the learned Sessions Judge is a reasonable and possible view hence, no interference is called for. Appeal is dismissed.