

(2012) 02 BOM CK 0214

In the Bombay High Court

Case No : Criminal Appeal No. 275 of 1996 and Criminal Revision Application No. 114 of 1996

State of Maharashtra

APPELLANT

Vs

Vasant Kumar Chudiwale
 Madanchand Kashyap Vs The
State of Maharashtra and Vasant Kumar Chudiwale

RESPONDENT

Date of Decision : 17-02-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 306, 498A

Citation : (2013) ALLMR(Cri) 47 : (2012) BomCR(Cri) 187 : (2012) 114 BOMLR 897

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : S.S. Doifode app-State Mr Sharma, Adv holding for Mr R.M. Daga, for the Appellant; Ashish Chawre, Advocate for respondent Mr S. Doifode, Additional Public Prosecutor for State Mr Ashish Chawre, Advocate, for the Respondent

Judgement

A.P. Bhangale, J.—By Criminal Appeal No. 275 of 1996 and Criminal Revision Application No. 114 of 1996, acquittal of original accused Vasant Kumar Chudiwale is under challenge.

2. Accused Vasant Kumar had married with Maya on 27.6.1985 at Wardha. After marriage the couple resided at Wardha and Amravati where accused was working. Out of wedlock, accused and Maya were begotten with girl child. After two years of marriage, it is alleged that accused started ill-treating Maya on the ground that she had illicit relations with Rakish Kumar (PW 8), husband of her sister Meena. He insisted upon Meena to admit to the position and he will forgive her. Maya declined to admit such position which was non-existent. They came to Nagpur some time on 19.7.1987 and stayed at the house of Madanchand, uncle of deceased Maya. Looking at the tense situation, Madanchand called father and brother of Maya and a meeting took place in which it was decided to obtain clarification from Rakeshkumar. Therefore, brother of Maya by name Ramkumar

went to Raipur, however, in the mean-while on 22.7.1987 Maya committed suicide by pouring kerosene on her person and setting herself on fire in her uncle Madanchand's house. Special Executive Magistrate recorded the dying declaration of Maya at the Government Hospital. It is alleged that Maya blamed accused for her suicide. Maya died on 25.7.1987. Brother of Maya lodged report at Police Station, Tahsil, Nagpur. After investigation, accused was charge-sheeted for the offences punishable under Sections 498A and 306 of the Indian Penal Code.

3. Learned Assistant Sessions Judge, Nagpur convicted the accused on both the counts and sentenced him to suffer rigorous imprisonment for one year each for the offences punishable under Sections 498A and 306 of the Indian Penal Code and directed him to pay fine of Rs. 500/- on each count.

4. Accused preferred appeal against the order of conviction and sentence and learned Extra Joint District Judge and Additional Sessions Judge, Nagpur while allowing the appeal, set aside the same. Aggrieved by the order of acquittal, the State has preferred appeal while uncle of deceased Maya by name Madanchand has preferred revision.

5. Learned Additional Public Prosecutor appearing for State and learned counsel appearing for revision applicant tried to assail the judgment of acquittal by pointing dying declaration and they contend that Maya clearly and in specific words stated that her husband (accused) always used to say that she had illicit relations with her Jijaji (P. W. 8 Rakeshkumar) which she could not tolerate and that was the reason why she poured kerosene on her person and set herself on fire. Learned counsel further contend that Maya also blamed Rakeshkumar because of whose version, her husband suspected her chastity.

6. It is not in dispute that main plank of the prosecution case is the said Dying Declaration (exhibit 35). Said Dying Declaration was recorded by the Special executive Magistrate and it bears thumb impression of Maya. It was recorded in Hindi language. She disclosed her name as Maya Chudiwale d/o Kewalchand Kashyap and Vasant Chudiwale as husband's name and stated that she was residing at Wardha with joint family consisting of mother-in-law, brother- in-law, wife of brother-in-law. When questioned about how she was burnt, she disclosed thus :

Then she was asked about the cause, she stated thus :

Reading the above dying declaration as it is, would at the most indicate intolerant nature of deceased as a result of which she decided to end her life by pouring kerosene upon her own body and igniting it. The reason stated was that accused was suspecting because of some statements made by Rakeshkumar (who is not accused)that he had illicit relation with Maya. In order to constitute the offence u/s 306 of the Indian Penal Code, it is necessary that there must be some evidence that the accused has abetted the deceased to commit suicide. It is necessary that accused must have instigated the person who has committed

suicide or intentionally aided by any act or illegal omission causing the doing of that thing. The Apex Court in Ramesh Kumar Vs. State of Chhattisgarh, has held as under :

Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

7. Thus, there should be positive act on the part of the accused necessary to spell mens rea. It is settled legal position that "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea is the necessary concomitant for instigation. Words uttered in a quarrel or on the spur of moment, such as "to go and die", cannot be taken to be uttered with requisite mens rea. Section 306 of the Indian Penal Code requires abetment as an essential ingredient which is defined u/s 107 of the Penal Code which lays down that "a person abets the doing of a thing who, firstly instigates any person to do that thing, or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing, is said to have committed the abetment.

8. Bearing the above principles in mind, in the present case, the dying declaration in question does not spell out offence punishable u/s 306 as also u/s 498A of the Indian Penal Code. Considering the evidence led before the trial Court, in my opinion, the lower Appellate Court was right in reaching to a conclusion of acquittal and to set aside the judgment and order passed by the trial Court for want of essential ingredients to make out offences punishable u/s 306 and 498A of the Indian Penal Code. I do not find any valid ground or reason to interfere with the impugned judgment and order.

9. In the result, both the criminal appeal as well as criminal revision application fail and are dismissed.