
(2019) 12 BOM CK 0081
In the Bombay High Court
Case No : Criminal Appeal No. 966 Of 2003

State Of Maharashtra

APPELLANT

Vs

Vijay Maruti Bombale And Ors

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302, 303, 304, 305, 306, 498A
Code Of Criminal Procedure, 1973 — Section 216, 313

Citation : (2019) 12 BOM CK 0081

Hon'ble Judges : K.R. Shriram, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This appeal is filed impugning an order and judgment dated 29-5-2003 passed by the learned Vth Adhoc Additional Sessions Judge, Pune, acquitting 6 accused of offences punishable under Sections 498A, 306, 201 read with Section 34 of the Indian Penal Code. Initially the prosecution had charged the accused with offences punishable under Sections 498A (husaband or relative of husband of a woman subjecting her to cruelty), 302 (punishment for murder), 201 (causing disappearance of evidence of offence, or giving false information to screen offender) read with Section 34 (Acts done by several persons in furtherance of common intention) of IPC. Prosecution later filed an application to reduce the charge from Section 302 to Section 306, since the postmortem report indicated that the death is by committing suicide and not murder.

2. The case of prosecution in brief is that complainant Prabhakar Padval (P.W.-1) had 6 daughters and 1 son. The 4th daughter was Jayshree, who was married to accused no.1 on 27-5-2001. Accused nos.4 and 5 were the biological parents of accused no.1. Accused no.1 was given on adoption to accused no.2 about 6 months before the marriage. Accused no.3 is the son of accused nos.4 and 5 and accused no.6 is a relative, who was living in Pune.

3. After marriage, Jayshree went to live in her matrimonial home. Some days

after marriage, it seems, Jayshree visited her parental home for 2 or 3 days and then again went back to her matrimonial home. During the brief stay in the parental home, Jayshree is stated to have informed that she was being harassed at her matrimonial home and that the accused were beating her, not giving her enough food and also accused no.1 was demanding money for buying a Hero Honda Motor Cycle. After 15 days, Jayshree went again to her parental home, at which time, she stayed for 4 or 5 days and during that stay also Jayshree mentioned about the ill treatment and the demand for money to buy the Motor Cycle.

4. During Gokulashtmi, complainant (P.W.-1) along with his cousin (P.W.-4) Vitthal Padval, went to the matrimonial home of Jayshree, at which time, Jayshree also complained to them about the ill treatment and demand of money. It seems, P.W.-1 spoke to the in-laws of Jayshree and made them realise that they should not ill treat Jayshree. On 18-8-2001 in the morning, complainant (P.W.-1) received a message from one Dnyaneshwar Dhamale (who has not been examined) that Jayshree was dead. Therefore, P.W.-1 went to the matrimonial home of Jayshree along with his nephew Namdeo Padval (who also has not been examined) when he found Jayshree's dead body and P.W.-1 observed legature marks on her neck. Thereafter, P.W.-1 went to the police station and informed about the incident. Police visited the spot and prepared inquest panchnama and sent body for postmortem. Subsequently, police prepared spot panchnama and after postmortem, the body of Jayshree was handed over to P.W.-1, who took the body to his village and performed the final rites.

5. P.W.-1 has lodged the complaint in the intervening night between 18-8-2001 and 19-8-2001 in the police station, alleging that the accused have ill treated Jayshree on account of demand of money for purchase of Motor Cycle and made her life miserable and thereafter murdered her. Based on that complaint, offence was lodged and charge sheet for offences punishable under Sections 498A, 302, 201 and 34 of IPC, was filed before the JMFC, Khed. JMFC Khed, committed the case to the court of Sessions, as the offence punishable under Section 302 of IPC was exclusively triable by the court of Sessions.

6. In the light of these facts and circumstances, charge was framed under Sections 498A, 302, 201 and 34 of IPC, to which, all the accused pleaded not guilty and claimed to be tried. Their defence is of total denial and according to the accused, they are falsely implicated in the case.

7. During the pendency of trial, after recording the evidence of three prosecution witnesses, which included P.W.-2 Dr. Sandip Sonawane, the medical officer, who conducted the postmortem and gave the postmortem report (Exhibit-20), the prosecution moved an application under Section 216 of CrPC to alter the charge to 498A, 306, 201 and 34 of IPC, in view of the evidence of P.W.-2, who opined that the cause of death was by hanging, i.e., suicide and not murder. Complainant himself moved a separate application not to delete the charge under Section 302 of IPC, but to keep it, as it is. The Trial Court after hearing the

parties allowed the application of the prosecution and dismissed the application of complainant and altered the charge from Section 302 to Section 306 of IPC. The modified charge was read over and again the accused pleaded not guilty and claimed to be tried. While the application for modification of charge was pending, prosecution examined three more witnesses.

8. In support of its case, prosecution has examined in all 6 witnesses, i.e., Prabhakar Genbhau Padval -complainant/father of Jayshree (P.W.-1), Dr. Sandip Sonawane, who perform postmortem (P.W.-2), one Jaya Shelke, a cousin of Jayshree (P.W.-3), Vitthal Rakhma Padval, who is neighbour of P.W.-1 (P.W.-4), Ramchandra Namdeo Pathare, Investigating Officer (P.W.-5) and Jaywant Jijaba Chavan, retired Head Constable (P.W.-6).

9. The documents produced by the prosecution were all admitted. During the course of recording of statement under Section 313 of CrPC by way of defence, the accused also placed certain documents on record as per the list at Exhibit 75. After hearing the parties, production of those documents was also allowed and received in evidence. Documents at Sr. Nos.1 to 3 of the list, pertains to Hero Honda Motor Cycle in the name of accused no.1 and loan taken by him for its purchase. Document at Sr. No.4 pertains to ration card of the accused, in which one ration card had names of accused nos.1, 3, 4 and 5 and the other ration card had name of accused no.2 and the third ration card had the name of accused no.6, to indicate that they were living separately.

10. After hearing the parties and considering the evidence, the Trial Court pass the order of acquittal, which is impugned in this Appeal. The Learned APP submitted that the accused were harassing and ill treating Jayshree by unlawfully demanding Hero Honda Motor Cycle. The Learned APP invited court's attention to the evidence of P.W.-1 and P.W.-4. The Learned APP also relied on evidence of P.W.-3, who was married in the same village as that of Jayshree and who lived just about 5 minutes away from Jayshree. The Learned APP submitted that Jayshree could not bear the harassment on the part of the accused and all the accused, therefore, abetted the commission of suicide by Jayshree. To conclude, the Learned APP submitted that the accused were harassing Jayshree by unlawfully demanding money for purchase of the Motor Cycle and unable to bear the constant harassment and demand, Jayshree committed suicide, abetted by the accused and hence all the accused have to be convicted.

11. Mr. Patil, of course defended the impugned judgment and submitted that the evidence of none of the witnesses can be taken to have proved the offence under Sections 498A or 306 or 201 of IPC.

Having considered the evidence, I am in agreement with Mr. Patil.

12. Going straight to the evidence of P.W.-3, there are material omissions and improvements in her testimony. According to P.W.-3 Jaya Shelke, who is the cousin of Jayshree, who got married on the same day and venue as Jayshree and who went to reside in the same village at a walking distance of 5 minutes away

where Jayshree lived, has testified that whenever she used to go to fetch water and wash clothes, Jayshree used to also come there and used to tell her about the ill treatment at the hands of the accused. P.W.-3 in her testimony, had stated that Jayshree allegedly told her that the members of Jayshree's in-laws house were all ill treating her and her husband, i.e., accused no.1 used to beat her and make demand of money to buy a motor cycle. P.W.3 also says she met Jayshree on the day prior to her death when she went to wash clothes and at that time also Jayshree told her about the harassment and that Jayshree's husband threatened to kill her by hanging. In the cross-examination, P.W.-3 agrees that in the statement recorded by the police, she has not informed the police that Jayshree used to meet her when she used to fetch water and to wash clothes and that she used to go to house of Jayshree and meet the family members of Jayshree and explained to them not to harass Jayshree and that on the day before her death Jayshree informed her that her husband threatened to kill her. These are very serious omissions and it confirms that P.W.-3 has only improvised her case. P.W.-3 also states that she had no occasion to inform anybody about whatever Jayshree has informed her. This is despite the fact that P.W.-4 and P.W.-1 have stated that they went to the matrimonial home of Jayshree on Gokulashtmi and before going to Jayshree's house, have visited the house of P.W.-3 since their houses are near to each other's house. Even at that stage, P.W.-3 did not inform P.W.-1 or P.W.-4 about what all Jayshree has informed her. Therefore, this evidence of P.W.-3 is not credible.

13. As regards P.W.-4, he has in his testimony stated that Jayshree used to visit her parental home and when he inquired about her marital life, she informed him that her in-laws were ill treating her and also making demand of money to buy Hero Honda Motor Cycle. P.W.-4 says that police did not record his statement and the incidence narrated by him in the examination-in-chief was for the first time stated before the court and he had no occasion to disclose that to anybody till his testimony was recorded. Later, P.W.-4 says in his cross-examination that his statement was recorded by the police. Strangely, that statement is not produced on record by prosecution. P.W.-4 also says that when he went to the matrimonial home of Jayshree on Gokulashtmi day, she was not present at home as she had gone to the field and he also did not meet any members of her in-laws. Significantly, P.W.-4 along with P.W.-1 had visited P.W.-3 before going to Jayshree's house, but P.W.-3 says she never informed P.W.-1 or P.W.-4 about the alleged ill treatment to Jayshree. If there was any ill treatment to Jayshree by the accused and P.W.-3 was aware of that, I see no reason why P.W.-3 would not have disclosed it to P.W.-1, who is the father of Jayshree, as well as P.W.-4, who is the neighbour of P.W.-1. Therefore, in my view, the evidence of both these witnesses, i.e., P.W.-3 and P.W.-4, are full of improvements, discrepancies and omissions. Evidence of P.W.-4 also, therefore, is not credible.

14. Coming to the prime witness, i.e., P.W.-1, who is the father of Jayshree, admittedly, P.W.-1 and his relatives were present when police was preparing inquest panchnama of Jayshree and also spot panchnama. According to P.W.-1,

the procedure took about 3 to 4 hours when the police also was there. P.W.-1 was also present at Khed, when the dead body of Jayshree was brought for postmortem and after postmortem, the body was handed over to him for funeral. Even though P.W.-1 was in the company of police for nearly 12 hours, he did not make any complaint to the police about the ill treatment or the cause of death of Jayshree. Similarly, even on inquiring by the police also, he did not make any complaint. Even his relatives did not raise any sort of grievance about the unnatural death of Jayshree. Even, while taking the dead body of Jayshree, P.W.-1 did not raise any grievance. Therefore, the conduct of P.W.-1 raises or creates a doubt and suspicion about so called harassment of Jayshree at the hands of the accused.

15. P.W.-5, Investigating Officer, says that on 19-8-2001 he recorded the statements of Devidas Padwal and 10 others. Who are those 10 others, has not been disclosed. In the charge sheet, 28 witnesses have been listed. Even if we discard the need of panch witness to be examined in view of the admission of documents by the accused, still that would leave at least 20 other witnesses. As against that, only 6 witnesses have been examined including complainant (P.W.-1). P.W.-5 also says, on 21-8-2001, he recorded the statements of 7 witnesses. Who they are, has not been mentioned and they have also not been called to depose. Similarly, P.W.-5 says, on 24-8-2001, he recorded the statements of 4 witnesses. Who they are, is not mentioned and they also have not been called to depose. In his cross-examination, P.W.-5 says that P.W.-3 Jaya Shelke in her statement did not state when she used to go to fetch the water and wash clothes Jayshree used to meet her. P.W.-5 also says that P.W.-3 did not state that she used to go to the house of Jayshree to pacify her. P.W.-5 also says that P.W.-3 has not stated in the statement that on the day before Jayshree's death, when she went to wash clothes, Jayshree even met her. P.W.-5 also states that he had even sent letter to the mother and sister of Jayshree, who despite reminders, did not come forward to give their statements. P.W.-5 says that he has recorded the statements of neighbours of Jayshree, i.e., Shantaram Dhamale, Dattatray Dhamale, Dadabhau Dhamale and Sushila Dhamale and some others. None of them have been called to depose. P.W.-5 also says that the address of accused no.6 Bapusaheb is shown as Ahilyadevi Chowk, Rajgurunagar, Dist Pune, which confirms that accused no.6 was not residing in the matrimonial home of Jayshree or even in its close vicinity. There is nothing on record as to why accused no.6 was included as an accused. All allegations made are rather general. Role of each accused has not been spelt out, except the demand by accused no.1 for money to buy a Motor Cycle.

16. As regards the evidence put forth regarding demand of money for purchase of Motor Cycle, I am unable to accept the allegations. This is because on record, are documents at Sr. Nos.1 to 3 in the list at Exhibit 75, which shows that accused no.1 was having a Motor Cycle even before he got married to Jayshree on 27-5-2001. The documents also indicate that accused no.1 had taken a loan from Rajguru Nagar Sahakari Bank Ltd., to purchase the Motor Cycle and the

entire loan had been repaid even before the marriage. P.W.-1 has also admitted in his cross-examination that accused no.1 was using a Motor Cycle and he had agricultural land, which was good. That also indicates that accused no.1 was financially sound.

17. As regards Section 306 of IPC, there is no evidence to speak off. Here is the case of abetment by instigation. The word 'instigate' means to goad or urge or forward or to provoke, incite, or encourage to do an untoward act which that person would have otherwise not done. It is also well settled that in order to amount to abetment, there must be mens rea. Without knowledge or intention, there can be no abetment and the knowledge and intention must relate to the act said to be abetted, i.e., suicide, in this case. In order to constitute 'abetment by instigation', there must be a direct incitement to do the culpable act. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. (Sanju alias Sanjay Singh Sengar V/s. State of Madhya Pradesh) (2002) 5 SCC 371. There is no evidence to suggest or indicate that the accused knew or had reason to believe that deceased would commit suicide. Even if any acts or words uttered by the accused or their conduct are sufficient to demean or humiliate the deceased and even to drive the deceased to suicide, such acts will not amount to instigation or abetment of commission of suicide, unless it is established that the accused intended by their acts that the deceased must commit suicide. It is not enough if the acts of the accused cause persuasion in the mind of the deceased to commit suicide. As held by the Kerala High Court in Cyriac, S/o Devassia and another V/s. Sub-Inspector of Police, Kaduthuruthy and another 2005 SCC Online Ker 346, it is not what the deceased 'felt', but what the accused 'intended' by her act which is more important in this context.

18. There are many other points, which have been raised by the Trial Court Judge in the impugned judgment, which for the sake of brevity, I am not reproducing.

19. In view of the above and having considered the evidence, prosecution has failed to drive home the charge under either Section 498A or Section 306.

20. I have to observe, prosecution has accepted blindly opinion of the doctor (P.W.-2) that it was a case of suicide. I do not find anywhere, and learned APP also agrees, that the prosecution has examined whether Jayshree could have committed suicide in the bathroom. Even if, one accepts the statement of P.W.-5 that the bathroom was having an height of 5 ft x 10 inches and Jayshree's height was only 4 ft x 7 inches, I ask myself, was there a hook in the bathroom strong enough for somebody to hang from that or take the weight of a full grown human adult ? Such hooks are normally found in the rooms for hanging a ceiling fan. Secondly, Jayshree has hung herself to death by a rope. I find no evidence, as to whether the prosecution even bothered to check about the finger prints on the rope, how was the rope tied to the hook or the ceiling from where Jayshree hung herself to death.

21. As regards the charge under Section 201, in order to prove the charge prosecution has to establish that the accused knowing or having reason to believe that offence had been committed had caused the evidence to disappear. Investigating Officer did not even point out that any evidence had disappeared or when he prepared the panchnama of the spot bathroom, where Jayshree was found hanging.

22. As regards accused no.3, who is alleged to have given false information in his statement recorded under Section 313 of CrPC, he submits that he went to the police station and only gave information that Jayshree was dead.

23. The Apex Court in Chandrappa & Ors. V/s. State of Karnataka (2007) 4 SCC 415, in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under:

"42. From the above decisions, in our considered view, the following general principles regarding powers of 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 the accused. Firstly, the presumption of innocence 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 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."

24. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to the accused under the

fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless they are proved guilty by a competent court of law. Secondly, accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting accused, the Sessions Court in Appeal rightly observed that the prosecution had failed to prove its case.

25. In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, need not be interfered with.

26. Appeal dismissed.