

(2006) 04 BOM CK 0085
In the Bombay High Court
Case No : Criminal Appeal No. 49 of 1990

State of Maharashtra

APPELLANT

Vs

Vimlabai and Others

RESPONDENT

Date of Decision : 04-04-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 34, 498A

Citation : (2006) CriLJ 3118 : (2007) 1 DMC 157 : (2006) 3 RCR(Criminal) 731

Hon'ble Judges : V.G. Munshi, J;P.S. Brahme, J

Bench : Division Bench

Advocate : U.K. Patil, app, for the Appellant; C.V. Thombre, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Brahme, J.—Heard Mr. U. K. Patil, A.P.P. for the appellant-State & Mr. C.V. Thombre, advocate for Respondents.

2. This Criminal Appeal is against the judgment and order, passed by the Additional Sessions Judge, Latur in Sessions Case No. 31/89 dated 2-9-1989, whereunder the Respondent No. 1 is acquitted of the offences punishable under Sections 302 and 498-A of I.P.C.; whereas Respondents No. 2 and 3 are acquitted of the offences punishable under Sections 498-A read with 34 of the Indian Penal Code.

3. Victim Gomati " Sunita was the daughter of one Sudhakar Girwalkar (P.W.2) and Prabhavatibai (P.W.3). She was married to Respondent No. 2 on 14-3-1988. Respondent No. 1 Vimalbai is the mother-in-law of victim Gomati while Respondent No. 3 is related to Respondents No. 1 and 2. After marriage, Gomati lived with her husband Uttam and mother-in-law Vimalbai in her matrimonial home for about a week and thereafter she went to her parents house and during her stay there, she informed her parents that her mother-in-law and husband were demanding bed and cot. Her father, however, reached her to her matrimonial home where she lived for 8 to 10 days and again her father brought

her to his house for some festival. During her stay with her parents, she disclosed that her mother-in-law and husband were harassing her to their demand of cot and bed. Her father Sudhakar reached her to her matrimonial home on 22-4-1988. On the next day, while her father Sudhakar and Respondent No. 3 Narayan had been to the land of Narayan, Respondent No. 1 Vimalbai told Sunita to take rest at noon time.-So Sunita slept in the house and then Respondent Vimalbai poured kerosene on the person of Sunita and set her on fire and thereafter ran away from there. Sunita came out of the house while burning in flames and that time, one Yamunabai, residing in the neighbourhood of the accused persons, poured water on the person of Sunita to extinguish the fire. Jayashree, a daughter of one neighbour of the accused persons, reported Sudhakar, who was with accused Narayan in his land, that Sunita had sustained burns. So Sudhakar reached to the house of accused persons and on reaching there, he learnt from Sunita that her mother-in-law Vimalbai had poured kerosene on her person and set her on fire, as a result of which, she suffered burn injuries. Sudhakar carried Sunita in a bullockcart to the Rural Hospital at Chakur where she was admitted. The Medical Officer, Rural Hospital, Chakur, informed P.S.I., Police Station Chakur about the admission of Sunita in the hospital by letter dated 23rd April 1988 (Exhibit-23) and in response to that, one Maroti Kamble, Assistant Sub Inspector, attached to Chakur Police Station, reached to the hospital, who inquired into the matter. He, on his arrival, recorded statement of Sunita (Exhibit-24) and registered Crime No. 56/88 for the offence u/s 307 of I.P.C. on the basis of the said statement and entrusted further investigation in the matter to P.S.I., Police Station Chakur.

4. The Medical Officer, Rural Hospital, Chakur, after giving first aid to Gomati " Sunita, referred her to General Hospital Latur for further treatment. The Medical Officer of General Hospital Latur informed Shivajinagar Police about the admission of Sunita in burnt condition. So, P.S.I., Shivajinagar Police Station, Latur, sent one Pramod Randive, Head Constable, for recording statement of Sunita on 24-4-1988. He, in turn, on having inquired with Sunita, recorded her statement and thereafter sent a letter to one Gorba Pawar, Special Executive Magistrate, for recording dying declaration of Sunita. That is how, Gorba Pawar, after receiving requisition, recorded dying declaration of Sunita.

5. In the meantime, Sunita's mother Prabhavatibai and her maternal uncle Ramchandra reached to the hospital and when they enquired with Sunita, she disclosed that her mother-in-law Vimalbai set her on fire after pouring kerosene on her person. Thereafter Sunita was shifted to Medical College & Hospital at Ambajogai on 24-4-1988, where, on her admission in the said hospital, the Medical Officer on duty informed the ambajogai Police about her admission in the hospital in burnt condition. So, the Police Station Officer of Ambajogai Police Station directed one Sadashiv Shete, Police Head Constable, who was on duty in the Medical College & Hospital, Ambajogai, to record the dying declaration of Sunita and accordingly he recorded the dying declaration of Sunita on the same day and thereafter Sunita died in the said hospital on 29-4-1988. Meanwhile,

after registration of crime, Digambar Hanchate, then Police Sub Inspector of Chakur Police Station visited the place of residence of accused Nos. 1 and 2 and during the course of investigation, drew panchanama of the scene of offence vide Exhibit-14, whereunder he seized burnt saree and a glass lamp from the house of accused Nos. 1 and 2. He also received the dying declarations of Sunita recorded, from time to time, in the hospital, where she was shifted, so also the post mortem notes Exhibit- 11. After completing the investigation, charge sheet came to be filed against the accused persons in the Court of Judicial Magistrate, First Class, Ahmedpur, who in turn, committed the case to the Court of Sessions at Latur. Before the learned Sessions Judge, accused pleaded not guilty to the charge and claimed to be tried. Their defence is that Sunita was studied upto 6th standard. She was, so to say, an literate lady, whereas her husband Uttam was an illiterate person, earning his livelihood on labour and he was residing in one room with his parents, sister and so Sunita did not like her husband, so also the environment, in which they were living. Therefore, she was reluctant to stay in the matrimonial home. But, her parents and maternal uncle insisted and persuaded her to stay in the matrimonial home and that is how for whatever period she lived in the matrimonial home, it was against her wish and desire and that is how, she expressed her desire to return to her parents house, time and again. Therefore, it is the contention of the defence that Sunita, in such circumstances, committed suicide by setting herself on fire.

6. At the trial, the prosecution examined in all nine witnesses, including Sudhakar (P.W.2) father and Prabhavatibai (P.W.3) mother of victim, Pramod Randive (P.W.4) -a Head Constable of Shivajinagar Police Station, Latur, who recorded dying declaration Exhibit-18, Ramchandra Kulkarni (P.W.5), who happens to be the maternal uncle of Sunita, Maroti Kamble (P.W.6), A.S.I. Chakur Police Station, who registered the crime on the basis of dying declaration Exhibit-24, recorded by him, treating that as complaint, Gorba Pawar (PW.7), the Special Executive Magistrate, who recorded dying declaration Exhibit-33 and Sadashiv Shete (P.W.9), Police Head Constable of Ambajogai Police Station, who recorded dying declaration Exhibit-40.

7. With the assistance of learned A.P.P., we have gone through the evidence of prosecution witnesses, so also the evidence of material witnesses and relevant part of the judgment, wherein the trial Court has scrutinised the evidence of witnesses. After careful scrutiny of the evidence, the trial Court reached to the conclusion that the claim of the prosecution witnesses, more particularly the parents of Sunita and relatives, including her maternal uncle, the factum of ill-treatment is not at all born out. The Trial Court observed that, considering the span of few days after marriage Sunita lived in the matrimonial home intermittently, as it was the claim of the witnesses that she was subjected to harassment and cruelty for non fulfilment of demand of bed and cot, is neither established nor it was found to be probable- Sunita's father Sudhakar was very much in the village on the day when Sunita caught fire and suffered burns while she was in the house. Admittedly, Sudhakar had been to the field of accused

Narayan. If that was so, then, as observed by the trial Court, basically the claim that Sunita was set on fire by her mother-in-law i.e. Respondent No. 1 does not stand probable. That apart, as regards the dying declarations recorded by Police, so also the Special Executive Magistrate, time and again, the trial Court found that the version of Sunita, in those dying declarations, is totally inconsistent. The Trial Court, therefore, found that none of the dying declarations inspire confidence. In addition to that, what weighed with the trial Court was the fact that Sunita's mother and maternal uncle were very much by her side in the hospital, whom she had disclosed about the incident and whatever she had stated in her subsequent declarations, was the outcome of Sunita being tutored by them. In the result, the trial Court found that none of the dying declaration was truthful and inspiring confidence. At the same time, the trial Court found that the evidence of witness Laxmibai, who was examined by the accused persons, as defence witness, was acceptable throwing light on the real facts and the circumstances that prevailed when Sunita was living in the matrimonial home. That version of defence witness lends assurance to the defence of the accused persons that Sunita, being not satisfied with her husband, and being not ready to live in the matrimonial home, committed suicide, which ultimately caused end of her life. That is how, the trial Court recorded finding of acquittal. Hence this appeal.

8. Before going into the merits of the matter, at the outset, we would refer to the decisions of our High Court so also of the Apex Court wherein the settled legal position in case of appeal against the judgment and order of acquittal has been laid down. To be very precise, in these decisions, the parameters are given for the Courts dealing with appeal against acquittal and particularly as regards when and how much interference, in the decision of the acquittal, is called for.

9. In the case of *The State of Maharashtra Vs. Haribhau Krishnaji Deshmukh and Others*, this Court has observed that:

The power of interfering with the order of acquittal is equal to that of interfering with the order of conviction and it can be done for substantial and compelling reason or it may be said that sufficient and cogent reasons or for strong reasons. In effect what has been laid down is that unless appeal has strong reasons to interfere with the order of acquittal, it need not be done.

The High Court can interfere with the order of acquittal only when-

- (1) The appreciation of evidence by the trial court is perverse or the conclusion drawn by it cannot be drawn on any view of the evidence.
- (2) Where the application of law is improperly done.
- (3) Where there is substantial omission to consider the evidence existing on record.
- (4) The view taken by the acquitting court is impermissible on the evidence on record.

(5) If the order of acquittal is allowed to stand, it will result in miscarriage of justice.

10. In the case of Dhanna, etc. v. State of Madhya Pradesh reported in AIR 1996 SC 2478 the Apex Court again reiterated the fact that the presumption of innocence of a person is only strengthened by the order of acquittal and the High Court should be very conscious in interfering. It may be so if there is absolute assurance of the guilt of the accused upon appreciation of evidence on record.

11. The Apex Court, in the case of Ramanand Yadav v. Prabhunath and Ors. reported in 2004 Cr. LJ 604: AIR 2004 SC 1053 observed that:

There is no embargo on the appellate court reviewing the evidence upon which the order of acquittal is based. Interference by the appellate court is permissible only when there are convincing and substantial reasons for doing so.

12. The Apex Court in the case of Kunju Muhammed and Kumani and Anr. v. State of Kerala reported in 2003 ALL MR (Cri) 2635 held that the order of acquittal can be interfered only if there is absolute assurance of the guilt of the accused, upon the evidence on record. The Apex Court further held that though the High Court has full powers to review the evidence and to arrive at its own independent conclusion whether the appeal is against conviction or acquittal. While doing so, it ought to bear in mind, first that there is a general presumption in favour of the innocence of the accused in criminal cases and that the said presumption is only strengthened by the acquittal. Secondly it should bear in mind that every accused is entitled to benefit of reasonable doubt regarding his guilt and when the trial court has acquitted him, he would retain that benefit in the appellate court also. It is further held that, the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse.

13. In the case of State of Rajasthan Vs. Bhanwar Singh and Others, the Apex Court has reiterated the same principle wherein it is stated that the High Court cannot be said to be unjustified in doubting veracity of the prosecution case on defence version is probable one and accordingly the impugned judgment of acquittal, rendered by it, cannot be said to be perverse, in any manner, so as to be interfered with by this Court, more so, when in the present case, it cannot be said that only one view is possible, but, here is a case where two views are possible. It is well settled that in a case where two views are possible, one of acquittal and the other of conviction, the higher Court should not interfere with the order of acquittal impugned before it. That is much more so, when a view taken by the trial Court acquitting the accused persons is found to be reasonable and possible one. In other words, the view, which is favourable to the accused person, if taken, by the trial Court, while acquitting the accused, the appellate Court, before whom the order of acquittal is challenged, should not interfere with the judgment of acquittal.

14. So bearing in mind these principles and the para meters laid down by this

Court, as well as the Apex Court, from time to time, we shall consider the evidence in this case. We have carefully gone through the evidence of father, mother and maternal uncle of victim Gomati " Sunita. In the first place, without there being any scrutiny as such, the evidence even if it is accepted as it is, it does not at all make out a case of either unlawful demand or harassment to the victim, in that regard. As stated earlier, victim Sunita, after marriage, lived for a very short span in the matrimonial home and that too intermittently and at a stretch, approximately for seven days only. In this background, it is very difficult to conceive even that there would have been demand, as claimed by the witnesses and harassment to Sunita by the accused persons. That apart, even if we read the dying declarations, which are multiple in number, do not specifically spell out a case of harassment to Sunita on account of non fulfilment of the demand. Therefore, the finding recorded by the trial Court, in that regard, that Sunita was not subjected to cruelty, as contemplated u/s 498A of I.P.C. cannot be said to be erroneous, much less, perverse.

15. As regards the version of Sunita, in all the dying declarations, we have carefully scrutinised the dying declarations on record vis-a-vis evidence of the witnesses, who have recorded these dying declarations. In our considered opinion, on the basis of thorough assessment of the dying declarations and the evidence of the witnesses, we are of the view that what has been stated in the dying declarations does not stand probable and it does not inspire confidence.

16. We have referred to the evidence of defence witness Laxmibai, who, in her evidence, made the picture clear as to what was in the mind of victim. Her evidence brings to light what was passing in the mind of the victim showing that the victim was not ready and willing to live in the matrimonial home as she disliked her husband, he being illiterate, so also the financial condition as compared to the condition and situation that prevailed at her parents house. It is the fact that Sunita, even after marriage, did not live in the matrimonial house continuously. It has come in the evidence on record that though she lived in the matrimonial home intermittently, it was for seven days at the most. But the fact remains that it was her father Sudhakar who used to bring her to her matrimonial home. The manner in which Sunita lived in the matrimonial home, after marriage, goes to show and lend assurance to what has been contended by the defence about unwillingness of Sunita in cohabiting with her husband in the matrimonial home. The inconsistency in the dying declarations makes the claim of prosecution, that accused No. 1 set on fire Gomati " Sunita after pouring kerosene on her person, improbable. But the fact remains that on the day, when this incident of burning took place, Sudhakar, father of Sunita had been to the matrimonial home of Sunita and he had gone to the field of Respondent No. 3 Narayan. So basically, in that situation, it does not stand probable that Respondent No. 1 dared to put an end to the life of Sunita by pouring kerosene on her person and setting her on fire. In fact, the situation that prevailed, as can be seen from the spot panchanama, does not spell out accused No. 1 having set on fire Sunita in the house. It has come in the evidence that one Yamunabai,

who happened to be the neighbour of Sunita, immediately rushed to the house of Sunita and when she saw Sunita coming out of her house in burnt condition, she immediately poured water on her person to extinguish the fire. The trial Court has rightly observed that the prosecution has not examined that lady Yamunabi who could have certainly thrown light as to what actually happened at the place of occurrence. In all probability, deceased must have disclosed her as to how that was happened. But the prosecution, for the reasons best known to it, did not examine Yamunabai as witness. In the absence of her evidence and the surrounding circumstances that prevailed, what was contended by the defence that Sunita having been dissatisfied and not willing to live with Respondent No. 2 in the matrimonial home, must have decided to put an end to her life and in that situation, it stands more probable, that she suffered burns in her attempt to self immolate her. If that is so, then the view taken by the trial Court, in holding that the prosecution has failed to establish the guilt of the accused persons, seems to be quite reasonable and possible view. If that is so, then interference, in view of the law laid down by this Court as well as by the Apex Court, in catena of decisions, is not permissible. In any case, it cannot be said that this is a case where the view taken by the trial Court is perverse. Therefore, even if it is found that other view is possible, still then, interference by this Court in appeal is not permissible.

17. In the result, for the reasons stated above, we do not find any merit and substance in this appeal. The appeal is, therefore, dismissed. The bail bonds of the respondents shall stand cancelled.