
(2012) 08 BOM CK 0034
In the Bombay High Court
Case No : Criminal Appeal No. 340 of 1998

State of Maharashtra

APPELLANT

Vs

Yadav Daulatrao Dofe

RESPONDENT

Date of Decision : 09-08-2012

Acts Referred:

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

Citation : (2012) BomCR(Cri) 365

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

Bench : Single Bench

Advocate : D.B. Patel, app, for the State, for the Appellant; R.N. Khare, for the Respondent

Final Decision : Dismissed

Judgement

Bhangale A.P., J.—The State has preferred this appeal against the judgment and order dated 25th June, 1998 passed in Sessions Trial No. 143 of 1994 delivered by the learned 2nd Additional Sessions Judge, Wardha whereby the respondent/accused was acquitted of the offence punishable u/s 306 of the Indian Penal Code. The facts, briefly stated, are as under: Respondent/accused Yadav Daulatrao Dofe, resident of village Khangaon, Tq. Hinganghat was a neighbour of Ashok Phasate (PW-4). It is alleged that deceased Rekha Phasate (wife of Ashok Phasate (PW-4) died since she committed suicide by pouring kerosene on her own body and setting herself on fire. According to prosecution, her dying declarations were recorded as per Exhs. 15 and 16. She alleged in her dying declaration dt. 25.3.1994 recorded at about 1.30 p.m. that she was married prior to two years from the date of incident and has got one son, aged about 11/2 years. She and her husband were residing separately in their residential house where her mother-in-law and brother-in-law were residing. According to her, the respondent/accused used to abuse her on consuming liquor and on 24.3.1994, at about 6 0 clock in the evening, when she had returned home after doing labour work, the respondent/accused, in the absence of her husband, entered her

house, gave abuses and threatened to kill her. He also caught hold of her hands, pushed and pulled her and dragged her out of the house when wife of accused Yadav rescued her. According to the dying declaration, because of this incident, victim Rekha went inside the house, poured kerosene on her body and set herself on fire; while the respondent/accused extinguished fire to some extent. She had sustained burns. However, she stated that she has no harassment from anybody in the house, but she was annoyed with respondent/accused.

2. According to prosecution, the Executive Magistrate had also recorded dying declaration (Exh. 15) which shows that the accused used to quarrel with the victim daily and on the relevant day, when the deceased came from the field in the evening, she was beaten and abused in the absence of her husband. She got annoyed and she poured kerosene on her person and set herself on fire. According to dying declaration (Exh. 15), the victim had rushed straightway to accused Yadav, who had extinguished the fire to some extent and sent her back home by pushing her. Thus, there were two dying declarations.

3. Prosecution has examined six witnesses in support of the prosecution case. Dr. Jaichand Sakharamji Moon (PW-1) gave evidence regarding fitness certificate which he has granted regarding ability of injured Rekha to give her statement. While Gorakhnath Namdeorao Ganvir is the Police Constable who had recorded the dying declaration (Exh. 16). Husband of the deceased namely Ashok Udhav Phusate was examined as PW-4. The doctor who conducted post-mortem over the dead body namely Dr. Meena w/o. Rajendra Daga is examined as PW-3, who deposed about cause of death as septicemic shock due to 77 % deep burns. The Investigating Officer Suresh Mahadeorao Lambat was examined as PW-5. Narayan Krushnaji Dhobale, the Tahsildar who recorded the dying declaration (Exh. 15) was examined as PW-6. No defence evidence was led.

4. In the impugned judgment and order, the learned trial Judge noted the submissions from the side of State regarding the allegations of mental torture from the respondent/accused, which is stated as a reason for commission of suicide by the-deceased. According to the prosecution, because on the date of incident modesty of the victim was outraged, she decided to commit suicide. The learned trial Judge found discrepancies in the two dying declarations viz. Exhs. 15 and 16. It appeared to him that the victim in both the dying declarations stated regarding the assault being given to her by the accused and regarding outraging of her modesty by the accused. While, according to witness Ashok (PW-4), a quarrel had taken place between Rekha and respondent/accused eight days prior to the incident on account of fetching water and due to the said quarrel, the victim had set herself on fire. But, in the course of examination-in-chief itself, he made a contrary statement as follows:

Mrs. Rekha was unable to speak. Hence, she did not tell me anything.

5. During the course of his cross-examination, Ashok (PW-4) also stated that Rekha was restless on the day of incident and could not speak. She started

speaking 2 or 3 days after her admission in the hospital. Witness Ashok (PW 64) was disowned by the prosecution and was cross-examined. Nothing is stated by witness Ashok as to whether the respondent/accused has outraged modesty of the deceased. According to the learned A.P.P., when cross-examined, Ashok has admitted that he stated before police about his statement that Rekha told him that accused dragged her out of house and assaulted her. The contents of police statement were sought to be brought on record in the deposition of witness Ashok by putting leading questions to him as to what he had stated before police while giving statement to the police. Such evidence would not be legally admissible in a criminal trial to prove offence. Prosecution is expected to lead evidence regarding guilt of the accused beyond all reasonable doubts and in accordance with law.

6. Be that as it may, considering the legal requirements of section 306 r/w. section 107 of the Indian Penal Code, it is apparent that the evidence must be crystal clear to indicate that there was an intention on the part of the accused to bring about the incident of suicide. Mens rea (guilty mind) is essential ingredient. The term "abetment" involves mental process to instigate a person or intentionally aid a person to commit suicide. It is a positive act to instigate or aid in the commission of suicide. The evidence must indicate that the victim was pushed into such a position that the victim had no other option but to commit suicide. There is no material in the present case to indicate that, prior to commission of suicide, the respondent/accused used any such utterance or words which led the deceased to end her own life by pouring kerosene on her body. The evidence must indicate certain acts on the part of the accused who allegedly abetted the deceased to commit suicide. The acts may be in the form of instigation or any intentional act or omission which, in fact, drove the victim to commit suicide. The word "instigation" means to goad, urge forward ,provoke or encourage a victim to do an act i.e. to commit suicide.

7. In the present case, except quarrel and pushing and dragging etc. by the respondent/accused, no such concrete evidence is found which can be considered as proximate to commission of suicide or which can be considered as acts or omissions on the part of the accused which led the victim to commit suicide with no other option. The victim in the present case did not complain about any harassment or cruelty against her husband or in laws. The alleged assault or pushing or dragging was imputed to the neighbour who had, in fact, tried to extinguish fire according to dying declaration itself. Therefore, one cannot say with confidence that the respondent/accused was really involved in the matter so as to instigate or aid deceased Rekha to commit suicide. In a given case, it may happen that alleged victim may be hypersensitive person to ordinary petulance or discord or differences or quarrel in domestic life, which are quite common in the society and if such person ends his or her own life without any concrete material to attribute certain acts or omission on the part of the accused, the accused cannot be blamed for a serious offence like that punishable u/s 306 of the Indian Penal Code. Therefore, the learned trial Judge, who considered the

evidence led by the prosecution, came to the logical and correct conclusion so as to acquit the respondent/accused.

8. The High Court as a Appellate Court would not normally interfere with an order of acquittal unless there is prima facie perversity in the judgment or compelling circumstances. While, a reasoned judgment and order of acquittal ought not to be disturbed since the order of acquittal strengthens the presumption of innocence in favour of the accused throughout the trial. Interference by the High Court is only called for if the findings given by the trial Court are perverse and contrary to the evidence on record or the entire approach of the trial Court was patently illegal leading to miscarriage of justice or unreasonable judgment based on erroneous law and facts on record. And, under such circumstances only, the Appellate Court being a final Court of facts is fully competent to re-appreciate, reconsider and review the evidence and take its own decision keeping in mind that acquittal bolsters up presumption of innocence. For all the reasons aforementioned, no ground is made out for interference in the appeal. Hence, the appeal is dismissed.