

(1994) 09 BOM CK 0085

In the Bombay High Court

Case No : Criminal Appeal No. 379 of 1991

Supchand Lonare

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 19-09-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 174, 313
Penal Code, 1860 (IPC) — Section 306, 34, 498A

Citation : (1995) CriLJ 3939

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : T.A. Mirza, for the Appellant; L.K. Khamborkar, Assistant Public Prosecutor, for the Respondent

Judgement

1. The original accused No. 1 Supchand, appellant herein, has preferred the present appeal before this Court aggrieved by the judgment dated 30-9-1991 passed by the IInd Additional Sessions Judge, Bhandara in Sessions Trial No. 16 of 1990 State of Maharashtra v. Supchand and another whereby the said court has convicted the accused-appellant for the offence u/s 306 of the Penal Code and sentenced him to suffer R.I. for five years and to pay a fine of Rs. 1000/- and in default of payment of fine further R.I. for one year, and also convicted the accused-appellant for the offence u/s 498A of the Penal Code and sentenced him to suffer R.I. for one year and to pay a fine of Rs. 1000/- and in default of payment of fine further R.I. for three months. Both these substantive sentences were ordered by the Additional Sessions Judge, Bhandara, to run concurrently.

2. In brief, the prosecution case is that the accused-appellant married Geeta on 5-12-1976 Geeta stayed with the accused-appellant after her marriage for three years and one son and one daughter were born from the wedlock during that period. The prosecution case further is that the accused-appellant used to mentally harass and cause physical cruelty to the wife Geeta by beating her severely many a time. As a result of cruelty caused by the accused-appellant

husband to the wife Geeta, she was constrained to file a petition for judicial separation. In the meantime, it is alleged that the accused-appellant also married one Mangla during the subsistence of the marriage of the accused-appellant with Geeta. Geeta then joined the service as Teacher at Anganwadi, village Ushikheda and she started residing with her mother-in-law in a separate room opposite the house of the accused-appellant and the children started living with the parents of Geeta at Deori. Geeta's mother-in-law also expired. On 4-9-1989 Geeta was found dead and a report in writing was lodged by Antaram Nathu Lonare, Police Patil of village Kanharpaili, who also happened to be the brother of the accused-appellant. In the said report (Exh. 32) it was stated that on 4-9-1989 at 7.00 a.m. when he was present at his house, his brother Supchand, accused-appellant, came to his house and informed him that Geeta had not woken up till then and that the door of her room was closed. Then Antaram Nathu Lonare asked the accused-appellant to open the door, but he went away. Shortly his son Sunil Antaram Lonare came home and informed that Geeta was dead and that her dead-body was lying in her house. Immediately thereafter he went there and found that Geeta was dead. It was also stated that Geeta was residing separately alone and she was serving at Anganwadi as Teacher. On the said written report Exh., 32, the death report No. 7 of 1989 u/s 174 of the Code of Criminal Procedure vide Exh. 33 was registered at Police Station Deori, District Bhandara. Later on the first information report came to be registered as Crime No. 53 of 1989 (Exh. 61) on 5-9-1989 at Deori, Sub-Division Gondia on the report made by P.S.I. Nale, P.S.O. Deori. The accused-appellant Supchand as well as his brother Shiocharan were mentioned as accused persons in the said Crime No. 53 of 1989 under Sections 498A and 306 of the Penal Code. On the basis of this first information report (Exh. 61), the investigation commenced. The investigating officer prepared the inquest panchanama (Exh. 40), spot of occurrence (Exh. 39), various seizure memoranda (Exhs. 42, 43 and 47), and seizure panchanamas (Exhs. 41 and 46). The postmortem of deceased Geeta was conducted on 5-9-1989 (Exh. 55), and various articles seized were sent for chemical analysis and the report of the Chemical Analyser is dated 1-11-1989 (Exh. 56). The investigating officer also recorded the statements u/s 161 of the Cr.P.C.

3. On completion of investigation, the investigating officer challaned the appellant-original accused No. 1 and his brother Shiocharan - original accused No. 2 for the offence under Sections 306 and 498A of the Penal Code and since the case was exclusively triable by the Sessions Judge, the same was committed to the IInd Additional Sessions Judge, Bhandara. The IInd Additional Sessions Judge, Bhandara, framed the charge on 6-4-1990 to the effect that on or about 4-9-1989 between 5.00 a.m. and 7.00 a.m. at Mouza Kanharpaili Geeta committed suicide and the accused persons abetted its commission by compelling her to consume poison and thereby committed the offence punishable under Sections 498A and 306 read with Section 34 of the Penal Code.

4. The prosecution examined Antaram Nathu Lonare (P.W. 1), Sushila Shamrao

Sontake, mother-in-law of the accused-appellant (P.W. 2), Bhimrao Hagru Ganvir (P.W. 3), Dashrath Dago Watti (P.W. 4), Parnita Shamrao Sontakke, sister-in-law of the accused-appellant (P.W. 5) and Murlidhar Jagan Nale (P.W. 6). The prosecution also exhibited the written report lodged by Antaram Nathu Lonare (Exh. 32), death report (Exh. 33), letter sent by Geeta (deceased) to her mother dated 25-2-1989 (Exh. 35), panchanama of spot of occurrence (Exh. 39), inquest panchanama (Exh. 40), seizure panchanamas (Exhs. 41 and 46 respectively), postmortem report dated 5-9-1989 (Exh. 55), Chemical Analyser's report dated 1-11-1989 (Exh. 56) and first information report dated 5-9-1989 (Exh. 61).

5. The statement of the accused-appellant was recorded u/s 313 of the Cr.P.C. and in his statement the accused-appellant submitted that he has been falsely implicated.

6. The trial Court after hearing the learned counsel for the parties and examining the evidence came to the conclusion that the prosecution has been able to prove that on or about 4-9-1990 between 5.00 a.m. and 7.00 a.m. at Mouza Kanharpaili Geeta wife of the accused-appellant committed suicide and the accused-appellant abetted its commission by compelling her to consume poison powder as alleged and thus found that the accused-appellant has been proved by the prosecution beyond reasonable doubt to have committed the offence under Sections 306 and 498A of the Penal Code and sentenced the accused-appellant for the said offence as stated above.

7. Undisputedly deceased Geeta died on 4-9-1989 and the postmortem examination was conducted on 5-9-1989 in the morning between 9.30 a.m. to 11.30 a.m. In the said postmortem report (Exh. 55), probable cause of death of Geeta was suspected to be poisoning and it was recorded that definite opinion can be given only after chemical analysis of viscera. From the result of analysis of seized articles sent and recorded by the Chemical Analyser in his report dated 1-11-1989 (Exh. 56), that thyme organ phosphorus insecticide methyl parathion has been detected. It is also apparent from the spot occurrence panchanama that a packet containing "Khatmalmar" bugs killing poisonous substance was found at the spot of occurrence and the same was seized. A steel glass emitting smell of poisonous substance was also found at the spot of occurrence and the same was seized. A paper packet containing ash coloured poisonous substance emitting strong and poisonous smell was also found at the spot of occurrence and the same has been seized, and all the three articles referred to hereinabove contained the poisonous substance and that has been found to be so in the Chemical Analyser's report. In this view of the matter, the learned counsel for the appellant did not contest the commission of suicide by deceased Geeta.

8. The principal question to be determined in the present appeal is that whether the accused appellant abetted the commission of suicide committed by the deceased Geeta. P.W. 2 Sushilabai, who is the mother-in-law of the accused-appellant, has stated in her deposition before the Court that the accused-

appellant Supchand and the deceased Geeta got married on 5-12-1976 and Geeta went to stay with the appellant-accused No. 1 after her marriage and she stayed there for about three years, and two children were born. P.W. 2 Sushilabai also has narrated one incident that the accused-appellant sent one man and communicated that his condition was serious and on that she went to the house of the accused-appellant, but she went to the house of the accused-appellant, but she found that he was all-right and on the other hand found that her daughter Geeta sustained injury on the head and it was bleeding. P.W. 2 Sushilabai asked Geeta as to what had happened and it was told by Geeta that the accused-appellant had beaten her severely by means of stick resulting in injury over the head. The appellant told P.W. 2 Sushilabai that he did not want to maintain and keep Geeta and she should be taken by her at her house. The accused-appellant arranged for the bullock-cart and sent both of them. P.W. 2 Sushilabai further stated that thereafter Geeta stayed at her house for about 3-4 years and the accused-appellant refused to maintain her and, therefore, Geeta was constrained to file a petition for judicial separation and in that proceedings the Court awarded the maintenance to Geeta. In the meanwhile, the accused-appellant married with one Mangala despite subsistence of the first marriage and in this situation Geeta joined the service as Teacher in Anganwadi at village Ushikheda and started residing with her mother-in-law in a separated room opposite the house of the accused-appellant. The son and daughter of Geeta started living at Deori. The mother-in-law of Geeta expired and whenever Geeta used to come to Deori, she used to tell her that the accused-appellant used to ill treat her by abusing and beating. P.W. 2 Sushilabai further testified that 3-4 days prior to her death Geeta came to her house and told her that Mangala wanted that Geeta should be driven out from the house. She further deposed that on having received the message that Geeta was unconscious, she could not go to the house of the accused-appellant since she was not in good physical condition. She saw the dead body of Geeta at the Primary Health Centre, when it was brought for post-mortem. She further stated that the said messenger told her that the accused-appellant had seen one person coming out of the room where Geeta was residing and then he assaulted Geeta by means of stick. As regards the letter (Exh. 35), she said that the said letter has been written by her daughter. In her cross examination P.W. 2 Sushilabai was confronted with her statement made before the police and she testified that she has stated before the police that they had sent Geeta to the house of her husband 2 or 3 times during the period when Geeta was residing with her and that the accused-appellant has refused to maintain her and beaten her, but she could not say why this did not find place in her statement before the police. She also admitted that about the incident of beating narrated in her examination-in-charge, she had not lodged any report against the accused-appellant. About other contradictions pointed out to her in her statement made before the police, she has stated that these facts were stated before the police and she could not assign any reason as to why these facts do not find place in her statement made before the police. Confronted with the portion marked "A" that "on 1-9-1989 Geeta came to her

house at Deori and met her another daughter Indirabai. She said to her (Indirabai) that at present Supchandji is all right. She resides separately but he behaves with her properly. He came to her house in the night of Pola festival. He stayed, talked with her nicely and went away. He wishes to keep her with him". P.W. 2 Sushilabai admitted in her cross-examination that she did state before the police about the said portion marked "A". Confronted with the portion "B" that every thing is okey. He is ready to mix up with them", P.W. 2 Sushilabai stated that she did not state about the portion marked "B" and she could not assign any reason as to why it has so appeared in her statement before the police. She further reiterated in her cross-examination that it was not true that the messenger came from the accused-appellant on 4-9-1981 and did not state that the accused-appellant had seen one person coming out of the room where Geeta was residing and then he assaulted Geeta by means of stick. She further admitted that she had stated this fact before the police, but could not assign any reason why it did not find mention in her statement. She also admitted in cross-examination that it was correct that nobody from her family went to the house of the accused after the said messenger had come from the accused-appellant and her husband had been to Kanharpaili on the next day after the post-mortem examination was over as he was not available at Deori when the said messenger had come.

9. P.W. 5 Pranita (sister of the deceased Geeta) has deposed in her examination-in-chief in the same manner, as has been deposed by her mother P.W. 2 Sushilabai. However, in cross-examination P.W. 2 Pranita deposed that she did not know as to for what purpose the accused used to ill treat Geeta. Confronted with the contradiction in her statement made before the police she has stated that she could not assign any reason as to why there was no mention in her statement before the police relating to those facts. In her cross-examination she further deposed that it was not true to say that on 1-9-1989 when Geeta had come to their house at Deori, she told that she was alright and her husband was maintaining her properly and then she left. Confronted with the portion marked "A" in her statement made before the police that "she met her, She told her that everything was okay and her husband was also alright. Thereafter she went away", she deposed before the Court that she did not state about this portion marked "A" in her statement. However she could not assign any reason as to why the police had mentioned about the same. She admitted that nobody from their family went to village Khanharpaili after having come to know the death of Geeta at about 9.00 a.m. to 10.00 a.m. on 4-9-1989.

10. Murlidhar Jagan Nale, Investigating Officer (P.W. 6), has deposed about the investigation conducted by him and has also deposed that the portions marked "A" and "B" in the statement of Sushilabai and the portion marked "A" in the statement of Pranita (Exh. 66, 67 and 68 respectively) have been recorded as per the version of Sushilabai and Pranita respectively.

11. "Adverting to the letter dated 25-2-1989 (Exh. 35), written by the deceased

Geeta to her mother, it would be seen that she had disclosed her mind that she was fed up from the life since she was living separately and there was no substance in what her husband says and it would have been good if she had performed the second marriage. She has further written that she felt like committing suicide and attempted to do so twice, but due to the children she could not do so. She has also written that the house haunts her and asked her mother to find a job for her. She has also stated that she would try to adjust alone because she has to live for her children.

12. A close scrutiny of the letter (Exh. 35) which was written more than six months before the date of incident reveals that the deceased was undergoing mental pressure and her family life was not happy since she was living separately. It is also borne out from the said letter that she had attempted to commit suicide twice, but she could not do so in view of her children. However, the said letter does not disclose that the accused-appellant was beating the deceased Geeta or was causing mental cruelty for the demand of dowry or otherwise. The marital life of deceased Geeta though appears to be full of pains, but it cannot be said that by the acts or omissions, aiding or abetting of the accused-appellant Geeta was driven to commit suicide. The marriage between the deceased Geeta and the accused-appellant appears to have been irretrievably broken and she did not have the happy marital life because she was living separately, but at the same time it cannot be inferred that the accused-appellant could be held responsible for the suicide committed by the deceased Geeta. As a matter of fact if the evidence of P.W. 2 Sushilabai and P.W. 5 Pranita is properly assessed and evaluated in the light of the contradictions pointed out in their cross-examination, the letter dated 25-2-1989 (Exh. 35) written by the deceased Geeta to her mother, the fact that she had been living separately in a separate room for the last number of years, the fact that her son and daughter have been staying with her mother Sushilabai and also the fact that Geeta was employed as a Teacher, the testimony of P.W. 2 Sushilabai and P.W. 5 Pranita, both of them even did not go to Geeta's place after information that she is dead, about the cruelty caused by the accused-appellant to the deceased Geeta is not believable. It is not at all in dispute that the deceased Geeta was living separately for number of years. The trial Court has been also influenced largely by the circumstance that the accused-appellant has married Mangala and the manner in which the deceased Geeta struggled for her existence, were sufficient to hold that essential ingredients to constitute the offence under Sections 498A and 306 of the Penal Code have been duly proved. I find myself unable to agree with the reasoning given by the trial Court. As indicated above the testimony of P.W. 2. Sushilabai and P.W. 5 Pranita suffers from inherent contradictions and inconsistencies. Their evidence is not reliable and sufficient to rope in the accused-appellant for the offences punishable under Sections 498A and 306 of the Penal Code. Truthfulness of witnesses Sushilabai (P.W. 2) and Pranita (P.W. 5) has been shattered in cross-examination. The circumstantial evidence referred to by the trial Court is not sufficient to connect the accused-appellant with the

offence punishable under Sections 306 and 498A of the Penal code. In the letter (Exh. 35) the deceased Geeta has not mentioned anything sort of what has been stated by P.W. 2 Sushilabai and P.W. 5 Pranita in their statements. Unhappiness of marital life might have led Geeta to commit suicide, but for that the accused-appellant cannot be held guilty of criminal act and he cannot be roped in for the offence under Sections 498A and 306 of the Penal Code because that by itself is not sufficient to hold the accused-appellant guilty for the offence punishable under Sections 498A and 306 of the Penal Code. It cannot be forgotten that before commission of suicide by the deceased Geeta, for last so many years, she has been living separately from the accused-appellant. For all these reasons, it cannot be said that the conviction of the accused-appellant for the offence punishable under Sections 306 and 498A of the Penal Code was based on proper appreciation of evidence on record and that the prosecution has been able to prove beyond reasonable doubt the offence under Sections 498A and 306 of the Penal Code against the accused-appellant.

13. For the reasons stated above, this appeal deserves to be allowed and is hereby allowed. The judgment dated 30-9-1991 passed by the IInd Additional sessions Judge, Nagpur (Bhandara) convicting the accused-appellant for the offences under Sections 498A and 306 of the Penal Code in Sessions Trial No. 16 of 1990 State of Maharashtra v. Supchand and another is quashed and set aside. As a result thereof, the sentence awarded to the accused-appellant by the said Court for the offences under Sections 306 and 498A of the Penal Code is also set aside. The accused-appellant is acquitted of the offences under Sections 306 and 498A of the Penal Code. The bail bonds are discharged.

14. Appeal allowed.