
(2018) 02 BOM CK 0133
In the Bombay High Court
Case No : 413 of 2002

Surendra s/o Motipuri Goswani

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 09-02-2018

Acts Referred:

[Indian Penal Code, 1860](#), [Section 34](#), [Section 306](#), [Section 498-A](#), [Section 113-A](#) - Acts done by several persons in furtherance of common intention - Abetment of Suidde

Citation : (2018) 02 BOM CK 0133

Hon'ble Judges : Rohit B. Deo

Bench : Division Bench

Advocate : R.B. Gaikwad, ?Trupti Udeshi

Final Decision : Dismissed

Judgement

1. The appellant seeks to assail the judgment and order dated 15-7-2002 rendered by the learned 4th Ad hoc Additional Sessions

Judge, Nagpur in Sessions Trial 75/1999, by and under which the appellant-accused is convicted for offence punishable under Section 306 of the Indian Penal Code (" IPC " for short) and is sentenced to suffer rigorous imprisonment for five years and to payment of fine of Rs.1,000/- and is further convicted for offence punishable under Section 498-A of the IPC and is sentenced to suffer rigorous imprisonment for two years and to payment of fine of Rs.500/-.

2. Heard Shri R.B. Gaikwad, learned Counsel for the appellant-accused and Miss Trupti Udeshi, learned Additional Public

Prosecutor for the respondent-State.

3. The accused faced trial alongwith his parents Shri Motipuri and Smt. Anjanabai for offences punishable under Sections 498-A and 306 read with Section 34 of the IPC. The parents of the accused are acquitted of the said offences.

4. The genesis of the prosecution is in oral report dated 15-9-1997 (Exhibit 15) lodged by Ramsagar Santoshpuri Goswami (P.W.2) who is the brother of deceased Rekha. The gist of the report is thus :

The marriage of Rekha and the accused was solemnized at Nagpur in 1994. She was treated well for a year. The couple was blessed with a son in June 1995. The delivery was caesarean due to which Rekha was unable to work for sometime and she was assaulted by lathi and driven out of the house. She was not permitted to take her son. Rekha took shelter in the house of her sister at Pardi. The informant took Rekha to Police Station Lakadganj and lodged the report. The accused was summoned in the police station and the custody of the son was delivered to Rekha. The informant then took Rekha to his village Wag. Rekha stayed with the informant in village Wag for six months during which period the accused visited the village seven to eight times and requested that Rekha be sent with him. He was asked to give a written undertaking in presence of some persons. The elder brother of the accused Narendrapuri and a friend Nikose came to the village. In their presence and in the presence of five panchas representing the family of Rekha and one Vasantrao Itkelwar the accused gave a written undertaking pursuant to which Rekha was sent with him. On 25-9-1996 Rekha was blessed with a daughter, the informant went to meet Rekha who was weeping and she disclosed that she was being assaulted by the accused and his parents. Rekha conveyed that the harassment was unbearable and that she would

cause harm to her life. She further conveyed that the accused was insisting that Rekha must bring some money from the informant for business and she was beaten on this issue. On 11-9-1997 when Shakunbai who is Rekha's sister, visited Rekha, it was conveyed to her that in the morning Rekha was abused by her mother-in-law and beaten by her father-in-law. Rekha reiterated that the harassment was unbearable and that she would cause harm to her life. Rekha committed suicide on 13-9-1997 by hanging herself. However, the family of the accused did not inform the family of Rekha. On 14-9-1997 at 10-00 a.m. the informant and other members of the family received the news from the brother-in-law of the informant Rambhau Pragat of Pardi. The informant and other members of the family reached Pardi at 4-00 p.m. The report (Exh. 15) was lodged by PW 2 on 15.9.1997.

5. On the basis of the said report, offence punishable under Sections 498-A and 306 of the IPC was registered against the accused and his parents. In the interregnum, accidental death enquiry was registered on information given by the accused. The spot was inspected on 13-9-1997 and panchanama (Exhibit 48) was drawn. At the time of preparing the spot panchanama, the police found one note book containing a suicide note penned by the deceased Rekha and another note book with one pen. The said articles were seized. The inquest panchanama (Exhibit 49) was prepared, the autopsy conducted and post-mortem report (Exhibit 17) obtained.

6. The document styled as "VERNACULAR MATTER OMITTED" dated 30-1-1996 (Exhibit 53) was seized vide seizure panchanama (Exhibit 57). The opinion of the expert (Exhibit 36) was obtained as regards the handwriting in the note books. Statements of witnesses were recorded and upon completion of the investigation charge-sheet was submitted in the Court of Chief Judicial Magistrate, Nagpur, who committed the

proceedings to the Sessions Court. The learned Sessions Judge framed charge (Exhibit 4) under Sections 498-A read with Section 34 and 306 read with Section 34 of the IPC. The accused abjured guilt and claimed to be tried. The defence is of total denial.

7. Irrefragably, Rekha died on 13-9-1997 within seven years of the marriage. Indubitably, her death is suicidal. If the prosecution is successful in establishing that Rekha was subjected to cruelty within the meaning of Explanation (a) or (b) of Section 498-A of the IPC, this Court would be entitled to invoke, subject to the attending circumstances, presumption under Section 113-A of the IPC that the accused abetted the suicide. The pivotal issue is whether the prosecution has proved beyond reasonable doubt that the accused subjected deceased Rekha to cruelty as is statutorily defined.

8. P.W.1 Rambhau Pragat is the brother-in-law of the deceased. He has deposed that after three to four months of the birth of the son in the year 1995, the accused started quarrelling with the deceased. Accused 1 did nothing to earn livelihood and did not take care of the financial needs of the family. The accused used to have meals at the house of his mother. Rekha was blessed with the second child in 1996. The beating continued, although P.W.1 is not aware of the reason for such beatings, is the deposition. Rekha used to narrate the ill-treatment to which she was subjected to during her visits to the house of P.W.1, is the deposition.

In the cross-examination on behalf of accused 1, it is elicited that Rekha and the accused were cohabiting well and that there was no dispute between them. In the cross-examination on behalf of accused 2 and 3, it is extracted that Rekha was happy in her family.

9. P.W.2 Ramsagar Goswami is the informant. He is the brother of the deceased. He has deposed that after the first delivery, which was caesarean, the accused beat Rekha with stick. Due to the

beating, Rekha left her matrimonial house and sought shelter in the house of her sister at Pardi. The son was with the accused. Rekha conveyed to P.W.2 that she was beaten. P.W.2 took her to the Lakadganj Police Station and lodged a report. The custody of the child was secured by Rekha due to the intervention of the Lakadganj Police Station. After Rekha recovered from illness, she came to the house of P.W.2 at Wag and resided with P.W.2 for six months. The accused was intermittently visiting the house of P.W.2 to take Rekha to the matrimonial house. However, Rekha was refusing to accompany the accused. She was saying that the accused was demanding money for business. A meeting was arranged which was attending by representatives of both the sides. The accused gave an undertaking on a stamp paper that he would treat Rekha well. It was only thereafter that Rekha went to the house of the accused. A year later, she gave birth to a girl child. P.W.2 visited her house once or twice after the birth of the girl child and it was disclosed by Rekha that the accused used to abuse and beat her on the issue of money and that there was no improvement in the behaviour of the accused. P.W.2 did not pay the money. Rekha's sister visited the house of the accused and to her Rekha disclosed that when the father of the accused fell in a ditch, he blamed her.

In the cross-examination, P.W.2 admits that he lodged the report after discussing with family members. The statement that Rekha was beaten by stick, is brought on record as an omission. P.W.2 admits that his relationship with the accused was good when the accused was visited his house on seven to eight occasions. P.W.2 admits that the accused and Rekha started residing separate from the father and mother of the accused after the birth of the second child. The suggestion that Rekha was hot tempered, is denied. The suggestion that her marriage was performed against her will, is denied.

In the cross-examination on behalf of accused 2 and 3 certain omissions are brought on record. However, most of the omissions which are brought on record are minor and do not touch the core of the prosecution case.

P.W.2 was further examined pursuant to order below Exhibit 74 to prove that the handwriting on the note book seized is that of deceased Rekha. In the cross-examination, it is extracted that the witness cannot say definitely whether writing at Exhibit 29 and Exhibit 35 are of deceased Rekha.

10. P.W.3 Shakun Pragat is the sister of Rekha. She has deposed that the incident of beating with stick was disclosed to her by Rekha. She corroborates the testimony of P.W2 that a report was lodged and due to police intervention, the custody of the child was handed over to Rekha. She states that Rekha narrated that she was assaulted by the accused on the issue of household work. She has testified as to the meeting convened in village Wag pursuant to which Rekha accompanied the accused to her matrimonial house. She has also deposed that Rekha was not willing to accompany the accused and was saying that the accused would beat her and ask her to bring money. She has deposed that the accused neglected the financial needs of the family and was having meals in the house of his parents while the deceased Rekha starved. P.W.3 has deposed that two days prior to the death of Rekha, she disclosed to her that the accused was questioning the paternity of the girl child. Rekha was weeping when she made the disclosure, is the deposition. P.W.3 has further deposed that when accused 2 fell in a ditch under the influence of liquor, Rekha was blamed and accused of keeping the ditch open. She was inflicted two to three slaps by her father-in-law.

In her cross-examination, several omissions are brought on record. The statement that Rekha conveyed that accused beat her, the

statement that Rekha refused to accompany the accused on the ground that the accused used to demand money, is an omission. The statement that the accused was present in the meeting and said that he will not repeat such acts and then he would reside separate, is an omission. The statement that the accused did not bring anything in the house and Rekha was starved, is again an omission. The statement that the incident of the father-in-law falling in the ditch and blaming Rekha was narrated, is an omission. It is brought on record in the cross-examination on behalf of accused 2 and 3, that the accused had lodged complaint against her brother that he was assaulted and the assault caused injury on the nose.

11. P.W.4 Vishwas Ranjangaonkar is the handwriting expert who is examined to prove that the suicide note is written by deceased Rekha.

12. P.W.5 Ranjana Durge is a neighbour of the accused who has proved spot panchanama (Exhibit 48) and the seizure of the two note books. She has deposed that Rekha used to narrate the instances of ill-treatment which she was subjected. She has further deposed that Rekha disclosed to her that the accused used to taunt her as "daughter of beggar" and used to ask her to bring Rs.50,000/- from her parents. In the cross-examination, she has denied the suggestion that her relations with the accused are inimical. The statement that Rekha narrated that she was asked to bring Rs.50,000/- from parents, is an omission. The statement that Rekha narrated that she was told that her parents were beggar, is again an omission. The statement that a day prior to the incident the deceased narrated that accused used to beat her, is again an omission.

13. P.W.6 Chandrahas Baseshankar was Sarpanch of village Wag from 1992 to 1997. He has deposed that Rekha was subjected to ill-treatment and resided at village Wag with her brother for five to six

months. He states that Rekha conveyed that she did not have desire to live. P.W.6 has deposed that when the accused visited village Wag, he assaulted the brother and uncle of the deceased with a broken glass bottle under the influence of liquor. The cause of the altercation was that the accused was not permitted to take Rekha to her matrimonial house. He has deposed that a meeting took place on 30-1-1996 in which the accused gave a written undertaking styled as "le>ksrk i=". P.W.3 has identified the signatures of the accused and deceased Rekha on the said "le>ksrk i=" (Exhibit 53). P.W.6 states that he visited the house of the deceased when she gave birth to the girl child. During the said visit, Rekha was weeping and complaining of ill-treatment. Rekha also conveyed that the accused used to suspect her character. Several omissions are brought on record in the cross-examination, the significance or otherwise of the omissions shall be discussed, at a later stage in the judgment.

14. P.W.7 Ashok Kawale has proved seizure panchanama (Exhibit 57) vide which the document styled as "le>ksrk i=" was seized. He has cross-examined extensively, however, the testimony is not shaken in the cross-examination.

15. P.W.8 Krushnarao Kaurate, then attached to Kalamna Police Station as Assistant Sub-Inspector recorded the accidental death report (Exhibit 59) and prepared the spot panchanama.

P.W.9 Anil Sonowane is the Investigating Officer who registered the offence and recorded the statements of the relatives of the deceased on 16-9-1997.

16. One omission in the evidence of P.W.1 Rambhau, which is to the effect that the accused was not doing anything and used to take meal at the house of his parents, is proved. The omission in the evidence of P.W.2 Ramsagar that he informed others about the ill-treatment to which Rekha was subjected, is duly proved. The omission

is vis-a-vis the oral report lodged by P.W.2. The other omissions which are brought on record do not affect the core or the substratum of the testimony of PW 2 Ramsagar.

The omission in the evidence of PW 3 Shakunbai that the deceased narrated to her that she was beaten, is proved. The omission that the deceased resided with her for 15 days and her brother and deceased went to the Police Station to lodge report, is proved. The omission that the accused did not bring anything in the house and that two days prior to the death she had gone to the house of the accused, is duly proved. The omission that deceased reported that the accused used to ask her sister to die if she fails to bring money, is proved. The omission that a day prior to the incident, the deceased conveyed that the accused used to beat her is duly proved.

The omission brought on record in the evidence of PW 6 Chandrahas that after the delivery of the second child, he went to the house of the deceased and was told that the accused used to beat the deceased, is proved.

17. The learned counsel for the accused submits that the prosecution has not established that deceased Rekha was subjected to cruelty within the meaning of explanation (a) or (b) of section 498-A of the IPC, with the result, the presumption under section 138 is not activated. The submission is, that the harassment and illtreatment which is alleged by the prosecution, must be persistent and continuous and must be of such nature and extent as would drive a woman to commit suicide or as is likely to cause grave injury or danger to life, limb or health of the woman. The submission of the learned counsel Shri R.B. Gaikwad is that the evidence on record is not cogent enough to prove willful conduct of the nature envisaged by explanation (a) or (b) of section 498-A of the IPC. In so far as section 306 of the IPC is concerned, the submission of the learned counsel is that the

prosecution has failed to bring on record the requisite mens-rea to prove that the accused instigated the deceased to commit suicide. Implicit in the definition of abetment under section 107 of the IPC is that the conduct must be willful and the gravity and degree of the willful conduct must be such as would drive the woman to such a situation as would leave her with no option to take the extreme step, is the submission. The submission, as a proposition of law, is unexceptionable. The pivotal issue, therefore, is whether the prosecution has established that the deceased was subjected to cruelty within the meaning of section 498-A of the IPC and whether having regard to the other circumstances, the learned Sessions Judge was justified in invoking the statutory presumption under section 113-A of the Indian Evidence Act.

18. The conscious of the Court is satisfied that the prosecution has proved beyond reasonable doubt that Rekha was subjected to cruelty within the meaning of section 498-A of the IPC. The evidence of PW 2 Ramsagar, which is more than amply corroborated by the evidence of PW 3 Shakunbai is that soon after the birth of the first child, Rekha was assaulted and was compelled to leave the matrimonial house. The version of the prosecution witnesses that Rekha sought shelter in the house of her sister at Pardi and the custody of the child could be secured only due to the intervention of the Lakadganj Police Station is not shaken in the cross-examination. The evidence of PW 2 Ramsagar and PW 3 Shakunbai that Rekha was forced to reside with PW 2 for six months at village Wag and she returned to her matrimonial home only after the accused undertake to treat her well, is confidence inspiring. It is true that the statement of PW 6 Chandrahas who was the Sarpanch of village Wag from 1992-97, is recorded belated on 9.3.1998 and the explanation given by the Investigating Officer for the delay in recording the statement is not

satisfactory. However, while delay in recording the statement must put the Court on guard, the implication and significance of the delay would depend on the facts and no general proposition can be laid down that belatedly recorded statement must, in every case, give rise to an inference that the deposition of the witness is unreliable. The evidence of PW 6 that a meeting was convened at village Wag between accused and his representatives and the family members of deceased Rekha in which meeting the accused executed a document styled as "Samzota Patra" (Exh. 53), is duly corroborated by PW 2 Ramsagar. The Samzota Patra (Compromise Deed) Exh. 53 records the assurance of the accused that the deceased shall not be subjected to harassment. The Samzota Patra Exh. 53 further records that the accused shall be solely responsible should any untoward incident occurs. There is no serious challenge to the authenticity of Exh. 53 which is duly signed by the accused. The evidence on record is cogent enough to prove that the deceased Rekha was compelled to leave her matrimonial home and it was only after more than six months that she returned to her matrimonial home in view of the assurance extended in writing that she will not be illtreated or harassed.

The prosecution has further established that even after deceased Rekha returned to her matrimonial home and gave birth to her second child, a daughter, the illtreatment continued. PW 3 Shakunbai has indeed indulged in some exaggeration and improvement. But then, her entire testimony can not be discarded and it is the duty of the Court to separate the grain from the chaff. The evidence that the deceased was starved appears to be an exaggeration. However, the evidence of PW 3, which corroborates the evidence of PW 2 Ramsagar that their sister Rekha narrated that she was physically assaulted and harassed and was asked to bring money from the parental home, is reliable and is not shaken in the cross-examination. The prosecution has successfully

proved that the illtreatment to which deceased Rekha was subjected was persistent and continuous notwithstanding the assurance incorporated in Samzota Patra Exh. 53 that she will not be harassed. The evidence of PW 3 Shakunbai that the accused suspected the paternity of the girl child has gone virtually unchallenged. No suggestion is given to PW 3 in the cross-examination that the deceased did not narrate to PW 3 that the accused suspected her character and the paternity of the girl child. The evidence is more than amply corroborated by the suicide note Exh 29 which reads thus:

"VERNACULAR MATTER OMITTED"

The handwriting on the suicide note is proved by PW 2 Ramsagar. It is true that in the cross-examination it is extracted that he can not definitely say that the handwriting is that of the deceased. However, the prosecution has examined PW 4, the handwriting expert to prove the handwriting on the suicide note. In my opinion, the prosecution is successful in proving that the suicide note Exh. 29 is in the handwriting of the deceased Rekha.

19. The evidence on record would suggest that the deceased Rekha was forced to take the extreme step in view of the cruelty to which she was subjected. She was illtreated, forced to leave the matrimonial home, persuaded to return in view of an undertaking given by the accused not to illtreat her, notwithstanding the undertaking given the illtreatment continued and the final straw was the allegation that the accused was not the father of the girl child. Such a allegation, per say, would ordinarily constitute cruelty. In my opinion, the prosecution has established beyond reasonable doubt that the willful conduct of the accused was such as was likely to drive Rekha to commit suicide. I do not see any infirmity in the findings recorded by the learned Sessions Judge and the

conviction recorded and sentence imposed pursuant to the finding that the deceased was subjected to cruelty of such nature and extent as would constitute instigation and therefore abetment within the meaning of section 306 of the IPC.

(i) The appeal is sans merit and is rejected.

(ii) The accused be taken into custody forthwith to serve the sentence. The bail bond of the accused stand cancelled.

(iii) The accused shall be entitled to set of under section 428 of the Code of Criminal Procedure.

(iv) Police Station Officer, Police Station Kalamna, Tahsil & District Nagpur is directed to file a compliance report in the Registry of this Court within 15 days.