
(2004) 06 BOM CK 0029
In the Bombay High Court
Case No : Criminal A. No. 259 of 2002

Suresh Murlidhar Bhagat

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 21-06-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2005) 1 DMC 777 : (2004) 4 MhLj 366

Hon'ble Judges : P.S. Brahme, J

Bench : Single Bench

Advocate : P.B. Patil, for the Appellant; B. Lanjewar, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.S. Brahme, J.—Heard Mr. P. B. Patil, learned counsel for the appellant and Mr. Lanjewar, learned A.P.P. for the respondent-State.

This is an appeal preferred by one Suresh Murlidhar Bhagat - appellant herein who came to be convicted and sentenced for offence u/s 306 and 498-A of Indian Penal Code to suffer R. I. For 6 years and to pay fine of Rs. 1,000/-, in default to undergo further R. I. for four months and for R.I. one year and to pay fine of Rs. 500/-, in default to undergo further R. I. for 2 months, respectively, by the learned Sessions Judge, Buldana in Session Trial No. 5 of 2002.

2. The victim Satyabhamabai was married to appellant-Suresh almost 12 years prior to 7-11-2001, the date on which she was found dead; her dead body was floating in the well that was situated in the agricultural land belonging to the appellant. It is not disputed that deceased Satyabhamabai and appellant were blessed with three children and according to the prosecution since after the birth of third child namely - Rahul there was ill-treatment to Satyabhamabai on account of non-fulfilment of unlawful demand of money, as stated in the complaint -Exhibit 32 lodged by Pralhad on 7-11-2001, after seeing his daughter

deceased - Satyabhama found lying dead in the well. Some days prior to the incident when the appellant had been to his house accompanied by victim Satyabhama a demand was made for Rs. 10,000/- as he needed amount for construction of the house and after the amount was paid to him he left to his village taking Satyabhamabai with him. But then some days thereafter again a demand of Rs. 10,000/- was made which was not satisfied, however witness - Pralhad told the appellant that the amount would be paid after the harvesting season when the cotton crop in the field would be available. The witness - Anjanabai some days thereafter, visited matrimonial house of Satyabhama and she also noticed that there was some sort of dissatisfaction as the demand of amount made by the appellant was not satisfied. But she assured that the amount would be paid after the harvesting season. After Anjanabai returned, few days thereafter, Pralhad and Anjanabai were informed that the victim Satyabhamabai died and that is how both of them visited the village where Satyabhama was residing with appellant-Suresh. There they found that their daughter Satyabhama died due to drowning in the well In the background that the demand of amount was not satisfied by them, they particularly -P.W. 1 Pralhad approached Police Station and lodged complaint - Exhibit 32 alleging therein that the appellant-Suresh and his brothers and their wives in furtherance of their common intention subjected Satyabhama to cruelty and as a consequence of ill-treatment and cruelty which she was subjected to, she was driven to commit suicide and as such she died suicidal death. So on his complaint offence came to be registered vide C.R. No. 93/2001 against the appellant and his brothers and their wives who came to be arrayed as accused in the criminal case that came to be filed on the basis of the charge sheet submitted by the A.P.I. Pawar in the court of Judicial Magistrate, First Class, Malkapur. During the course of investigation, A.P.I. Anil Thakre carried out investigation in the matter.

3. The dead body of Satyabhama was sent to Medical Officer for postmortem. Dr. Charushila Patil (P.W, 4) Medical Officer, Civil Hospital, Buldana who conducted autopsy on the dead body noticed contused lacerate wound on fore-head (frontal bone) at left side admeasuring 4 x 1 c.m. as described in the postmortem notes Exhibit 40. In her opinion the said injury was ante mortem in nature. While dissecting the body, the Medical Officer found stomach was containing liquid about 250 to 300 M.L. and lungs voluminous and cut section showed the froth. In her opinion, the cause of death of Satyabhama was asphyxia due to drowning in water. It may be noted at this juncture that Doctor in her cross examination admitted that the external injury which she noted and found to be ante mortem in nature was possible if a person falls down from the high place if the head of the person comes in contact with an iron bar or hard and blunt object. The learned Judicial Magistrate, First Class in due course committed the case to the Court of Sessions by his order dated 7-1-2002.

4. Accused including the present appellant when the charge was framed against them vide Exhibit 13 pleaded not guilty and claimed to be tried. The prosecution examined in all 5 witnesses including Pralhad Lande (P.W. 1) and Anjanabai

Lande (P.W. 2), parents of the deceased - Satyabhama, witness - Kisan Lande (P.W. 3) cousin - nephew of P.W. 1, P.W. 4 - Dr. Charushila Patil and A.P.I. Anil Thakre (P.W. 5). The defence denied that victim was subjected to cruelty and that she committed suicide. From the tenor of the cross examination of the prosecution witnesses it appears that according to the defence the victim died accidental death by falling into the well when she had gone there in the morning for answering the call of nature. It is a matter of record that before Pralhad lodged complaint in the police station, accidental death was registered in the police station, on information given by Police Patil and one Shivcharan who was original accused No. 2, A.P.I. Anil Thakre (P.W. 5) had conducted enquiry in the same during which panchanama of the scene of offence was drawn as also inquest panchanama on the dead body and then the dead body was sent to Civil Hospital, Buldana for postmortem. The trial Court accepting the evidence of prosecution witnesses as also the medical evidence came to the conclusion that Satyabhama committed suicide. He discarded the plea of defence that Satyabhama died accidental death. The trial Court further found on evidence that there was unlawful demand of amount by the appellant-Suresh and that because of non-fulfilment of demand. Satyabhama was subjected to cruelty by the appellant as a result of that she was driven to commit suicide, that is how the trial Court convicted the appellant-Suresh for offence u/s 306 and 498 Indian Penal Code and awarded sentence as stated earlier.

5. I have heard Mr. P.B. Patil, Advocate for the appellant and Mr. Lanjewar, learned A.P.P. for state-respondent. The learned counsel for the appellant took me through the evidence of principal witness including the parents of the victim and Kisan brother. He submitted that there is absolutely no evidence, on record to show that there was unlawful demand and that victim Satyabhama was subjected to cruelty for non-fulfilment of demand. He submitted that there is no evidence to show that there was at all any reason for the appellant to cause physical and mental cruelty to the victim. The findings recorded by the trial Court about the ill-treatment as also of unlawful demand is perverse, much less it is based on no evidence. The learned counsel for the appellant pointed out from the evidence that witnesses - Pralhad and Anjanabai that though they have claimed in their first examination about the demand of amount of Rs. 10,000/- by appellant from time to time, their claim is totally shattered in cross examination pointing out that the witnesses have made material improvements in as much as in their statement recorded during the course of the investigation they have not stated specifically before the Investigating Officer about these facts. The learned counsel submitted that the prosecution has failed to prove that the victim committed suicide or died suicidal death. He submitted that the trial Court has committed the error in holding the appellant guilty for death of victim.

6. As against that Mr. Lanjewar, the learned A.P.P. vehemently supported the factum of cruelty on account of non-fulfilment of demand of money has been established on the evidence on record that the victim has committed suicide. He further submitted that when the victim died, the victim had married 12 years

before and had three children of the appellant-Suresh and as such their married life was of happy, there was absolutely no reason for the victim to commit suicide. Parents of the victim, who have stated that the victim was subjected to ill-treatment as unlawful demand of the appellant was not satisfied. He therefore, urged that the appeal merits no consideration and as such same should be dismissed.

7. It is not disputed that Satyabhama was married to the appellant some 12 years before the date of occurrence. It is not disputed further that dead body of Satyabhama was found floating in the well water and it is a matter of record that the well in which her dead body was found was situated in the agricultural land of appellant. It is matter of record again and also has been stated by the witnesses that villagers and particularly women folk of that village go for answering the nature's call towards the agricultural land in the morning. The medical evidence about the cause of death of Satyabhama is not disputed. It appears from the judgment of the trial Court that, much emphasis is given on the factum of ante mortem injury found on the body of victim and the opinion given by the Medical Officer that the death was due to drowning in the well. The trial Court had considered the plea of the defence that the victim died accidental death due to fall in the well when she had gone to answer the call of nature. The trial Court after considering this plea, for the reasons stated in the judgment ruled out the possibility of deceased having died accidental death. So far as the injuries on the forehead is concerned, the trial Court has in its opinion concluded that the said injury could not have been caused due to fall into the well. In my opinion this finding and conclusion arrived at by the trial Court is basically erroneous. In this context the Medical Officer in her cross-examination candidly stated that while falling down from the high place if head of the person comes with a contact with iron rod and blunt object, the injury referred to above can be caused. So the Medical Officer has found possible the said injury being caused as a result of the victim having fallen into the well. There is absolutely no evidence of any nature to show that the victim herself jumped into the well in her bid to commit suicide. Therefore, there is reason to accept the possibility of the victim having fallen into the well by accident, sustaining injury on the forehead. Then in that case the said injury could also be ante-mortem in nature. Therefore, finding of the injury of ante mortem nature is not necessarily as a consequence of the injury being caused to the victim due to physical ill-treatment.

8. Even in that regard, there is absolutely no evidence to show that the victim was subjected to physical ill-treatment. It is clear that the witnesses -Pralhad, Anjanabai and Kisan have not specifically stated that the victim was subjected to cruelty when demand of the appellant was not satisfied. If we read the evidence of these witnesses, we find that none of them has claimed that the deceased Satyabhama complained that she was mentally and physically ill-treated by the appellant. What is worst is that the witness Anjanabai who happened to have visited the matrimonial home of the victim after there was demand as alleged for money and non-fulfilment of demand, though she met her daughter -

Satyabhama, it is not claimed by the witness in her evidence, nor even a word has been stated by her that during her visit to her matrimonial house, the victim Satyabhama told her that the appellant was causing ill-treatment to her much less physical. Therefore, there is absolutely no evidence to show that the injury which was on the forehead of the victim was as a result of assault or physical ill-treatment by the appellant and in addition to that the injury that was found on her person was not the cause of her death. If that is so then having regard to the opinion given by the Medical Officer about the cause of death and when there was possibility of the said injury being caused as a result of falling into the well, as stated by Medical Officer, in my opinion the said injury being ante-mortem in nature is of no consequence at all. The said injury, by no stretch of imagination or implication would suggest that the victim was subjected to ill-treatment.

9. We have also on record the fact that the Police Patil of the village accompanied by the original accused No. 2 Shivcharan, had reported accidental death of victim and it was A. P. I. Anil Thakre was inquiring with regard to the accidental death. In my opinion, in the background of medical evidence and in the absence of any evidence that the victim committed suicide, there is reason to say that the report that was made immediately by Police Patil and accused -Shivcharan informing police that victim died of accidental death as a result of falling into the well in the morning of 7-11-2001 is probable and true. It must be noted that the complaint Exhibit 32 lodged by witness Pralhad was subsequent to that. Therefore, it has to be held that the trial Court has committed an error in holding that the victim died suicidal death.

10. It is no doubt true that the witnesses -- Pralhad, his wife - Anjanabai and one Kisan (P.W. 3) stated in their evidence about the demand made by the appellant. It has also come in their evidence that as demanded once the amount of Rs. 10,000/- was paid of the appellant, as he needed the amount for construction of the house. Their evidence also shows that subsequent demand made by the appellant for more amount was not satisfied. But that by itself does not show that demand was refused. The reason is witness - Pralhad stated in his evidence that when the demand was made on the second occasion, as he was not having money or amount, he told the appellant that amount would be paid later on after the cotton crop is made available. The same thing has been stated by witness Anjanabai in her evidence. So it is not that the demand made by the appellant was totally rejected. It has come in the evidence of witness Anjanabai that when she visited the house of victim that time also it was told to the appellant that the amount would be given after the harvesting season of cotton crop. As stated earlier, nothing was stated by Anjanabai that her daughter Satyabhama, at that time complained of any ill-treatment. All that was stated was about the demand made by the appellant. Therefore, I have in earlier part of the judgment stated that all the witnesses were saying that demand of the appellant in his background accepting the fact that the earlier demand was made was fulfilled by giving amount of Rs. 10,000/-. It cannot be said to be unlawful demand. The reason for this is not far from reach. The witnesses have admitted in their

evidence that the appellant demanded the amount for construction of house and the amount was given to him as a hand loan. The witnesses have clarified that the appellant wanted money for construction of his house. There are instances of demanding amount by son-in-law even from his parents-in-law, when in fact needs amount for some purpose such as for purchasing property or for construction of house. This is not a case where since after the marriage there was demand without any cause by the appellant. It is admitted on the other hand by the witnesses that for about 12 years, there was neither any demand by the appellant of any amount, nor there was any ill-treatment to Satyabhamabai at the hands of the appellant. It is therefore, not disputed that the victim had very happy and contented married life, having blessed with three children for a period of 12 years, after her marriage with the appellant. It is not that the victim was not allowed to visit her parental house. Therefore, in all probability even accepting the fact that witness -Pralhad did not satisfy the second demand of amount made by the appellant, there could not have been any cause for the latter to ill-treat the victim. It has come in the evidence of witness - Anjanabai that at the time of her visit to the house of her daughter Satyabhama when she asked for sending with her, she was not sent. Probably the witness by implication wanted to suggest that this was the result of grudge in the mind of appellant for not fulfilling demand. But we have no reason to think so as the witness Anjanabai in her cross-examination stated that accused No. 6 - Jaivantabai was found suffering from heart disease when she visited the house of the accused 15 days prior to the death of Satyabhama and that she had gone to the house of accused, to see the health of accused No. 6 at that time and that she stayed there for about two days. During that time the farmers were plucking cotton in their fields. My emphasis is on the statement of this witness, where she stated that accused No. 1 told her that as Satyabhama was engaged in plucking the cotton, he would not send her with her. This is very significant and relevant in the background that the witness Anjanabai in her evidence has not uttered a word that Satyabhama complained to her at the time of her visit to her matrimonial house that there was ill-treatment to her and that to because of non-fulfilment of demand of amount made by the appellant.

11. The learned counsel for the appellant while taking me through the evidence of witness - Pralhad has pointed out that though he has stated about the demand, as also, refusal of demand and ill-treatment on account of that by the appellant to Satyabhama he has not stated about these facts in his statement recorded by police as also in his complaint Exhibit 32; he could not assign any reason as to why in his complaint recorded by Police - Exhibit 32 it is not mentioned that his daughter Satyabhama used to tell him that the accused persons were ill-treating her after the birth of her child Rahul, though he stated so. He could not assign any reason why it is not mentioned in the complaint that accused No. 1 Suresh was ill-treating Satyabhama on account of demand of Rs. 10,000/-. He also admitted that he cannot assign any reason why in that complaint Exhibit 32 it is not mentioned that he paid amount of Rs. 10,000/- to

the accused No. 1 in the presence of his son and one Dr. Pandurang Dhage. It is suffice to say that the witness Pralhad made improvement in his evidence by stating this fact. It is obvious when in his complaint Exhibit 32 nothing has been stated by him. In the nature of things, if really he had stated so, in the complaint Exhibit 32 all these facts would have certainly been recorded. It is admitted by witness - Pralhad that as his daughter - Satyabhama met with untimely death, he was annoyed against accused persons and that due to said annoyance he made complaint against the accused persons. So we get an answer for the allegations of cruelty and unlawful demand as claimed by witnesses, to whatever worth that may be in the evidence on record. The fact remains that the factum of unlawful demand and the victim being subjected to ill-treatment on account of non-fulfilment of demands, is not borne out on the evidence of the witnesses Pralhad, Anjanabai and Kisan. Therefore, it has to be said that the trial Court has committed an error in holding that the appellant subjected the victim to cruelty for unlawful demand, being not satisfied. I have already found that even accepting the fact that demand of amount of Rs. 10,000/- was made by the appellant, it cannot be said to be an unlawful demand and therefore, there is no justification even for holding that the victim was subjected to ill-treatment for so to say refusal by the witnesses Pralhad and Anjanabai to give amount to the appellant. The prosecution has utterly failed to prove that there was unlawful demand, by the appellant and that because the demand was not satisfied the victim was subjected to ill-treatment.

12. The finding of fact arrived at on appreciation of evidence in correct perspective by me is that there was no unlawful demand by the appellant and that the victim was not subjected to ill-treatment for non-fulfilment of the demand. The prosecution has failed to prove that the victim died suicidal death. On the evidence on record, the possibility of victim having died accidental death cannot be ruled out. The medical evidence, the opinion by Doctor and admission by the Doctor that the injury on the forehead can be caused by fall strengthens the possibility of her death, due to accidental as a result of falling in the well and that is much more so in the background that the prosecution has absolutely failed to prove that the victim died suicidal death. If that is so, then appellant cannot held responsible for the death of victim Satyabhamabai. The prosecution has, therefore, failed to bring home guilt to the accused - appellant for offence under, Section 306 and 498-A, Indian Penal Code. Consequently the conviction and sentence imposed by the trial Court cannot sustain. The appeal will have to be allowed and conviction and sentence passed will have to be set aside. Hence the order :

ORDER

13. The appeal is allowed. The order of conviction and sentence passed by the trial Court in S. T. No. 5/2002 dated 29-4-2002 is quashed and set aside. The appellant is found not guilty of the offence punishable u/s 306 and 498-A of Indian Penal Code. Therefore, he is acquitted. The appellant should be released

forthwith, if not required in any other offence. The fine paid if any be refunded to the appellant.