

(2015) 03 BOM CK 0001
In the Bombay High Court
Case No : Criminal Appeal No. 251 of 2001

Suryabhan

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

Evidence Act, 1872 — Section 32(1)

Penal Code, 1860 (IPC) — Section 107, 302, 306, 498-A

Citation : (2015) ALLMR(Cri) 2347

Hon'ble Judges : S.B. Shukre, J.

Bench : Single Bench

Advocate : R.M. Daga, for the Appellant; A.K. Bangadkar, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

S.B. Shukre, J.—This appeal is filed against the judgment and order dated 31st August, 2001 passed by 6th Additional Sessions Judge, Nagpur in Sessions Case No. 666/1998, thereby acquitting the appellant of the offence punishable under Section 306 of the Indian Penal Code and convicting him for an offence punishable under Section 498-A of the Indian Penal Code.

2. Briefly stated, facts of the case are as under :

(i) The marriage of the appellant with deceased Vijaya was solemnized in the year 1989. At that time, he was working in the Irrigation Department and posted to Ramtek. After two-three years of the marriage the behaviour of the appellant towards Vijaya changed. It is alleged that the appellant started ill-treating deceased Vijaya. The Office of the Irrigation Department transferred the services of the appellant from Ramtek to Pusad and while residing at Pusad the real ill-treatment of deceased Vijaya at the hands of appellant began. It has been alleged that the appellant used to give electric shocks to deceased Vijaya and the reason for the same was reluctance of deceased Vijaya, who was holding D.Ed qualification, to do some service. It appears that reluctance of deceased Vijaya to

put her educational qualification to its best use was the main reason for the dispute and it resulted into appellant subjecting deceased Vijaya to further ill-treatment. Deceased Vijaya used to narrate her ill-treatment at the hands of appellant to her mother and brothers. The ill-treatment of deceased Vijaya was continued even after appellant was transferred from Pusad to Morshi. At Morshi, it is alleged, appellant used to cauterize deceased Vijaya with burning cigarette. Thereafter, the appellant was transferred to Butibori and here also same ill-treatment to Vijaya at the hands of appellant continued. While at Butibori, deceased Vijaya gave birth to a male child, behaviour of the appellant towards her did not change. She had also resided at that time at Katol for about 7 or 8 months which was her parental place and thereafter, the appellant having been already transferred to Bela, took Vijaya to Bela for co-habiting with him. At Bela also ill-treatment of deceased Vijaya continued.

(ii) On 15.7.1998, deceased Vijaya set herself afire and also set on fire her small child. Both of them sustained almost 100% burn injuries. As a result, they died. The landlord of the house, occupied by the appellant and deceased Vijaya, informed the incident to the Police Station Bela and on the basis of his report an A. D. inquiry was initiated, necessary panchanamas were prepared and post mortem examination was conducted. About 7 days thereafter, Raju Gawande-brother of the deceased, lodged a report at Police Station Bela against the appellant alleging that the appellant was responsible for the death of Vijaya. Initially, offences punishable under Sections 302 and 498-A of the Indian Penal Code were registered against the appellant. After completion of the investigation, charge sheet came to be filed. On perusal of the charge sheet, learned Additional Sessions Judge formed an opinion that prima facie only offences punishable under Sections 306 and 498-A of the Indian Penal Code were made out and accordingly a charge for these offences was framed against the appellant. The appellant pleaded not guilty to the same and claimed to be tried. Accordingly, he was tried. On merits of the case, learned Additional Sessions Judge found that the offence of abetment of suicide punishable under Section 306 of the Indian Penal Code was not proved, but offence of cruelty punishable under Section 498-A of the Indian Penal Code was proved and, therefore, acquitting the appellant of the offence of abetment of suicide, the learned Additional Sessions Judge by his order passed on 31st August, 2001 convicted the appellant for an offence of commission of cruelty and sentenced him to suffer rigorous imprisonment for two years and to pay fine of Rs.1,000/-together with default sentence. Not satisfied with the same, the appellant is before this Court in this appeal.

3. Learned counsel for the appellant submits that the cruelty contemplated under Section 498-A of the Indian Penal Code is of two kinds as defined under Explanations (a) and (b) to Section 498-A of the Indian Penal Code and the charge in the instant case was framed under Explanation (a), which related to giving of illtreatment of such a nature as is likely to drive the woman to commit suicide or to cause grave injury to herself or danger to life, limb or health of herself. He submits that other cruelty falling in second part of definition, that is,

under Explanation (b) relates to harassment given with a view to compel the woman to meet any unlawful demand for any property or valuable security and in the instant case, neither the charge for cruelty falling under Explanation (b) was framed nor the evidence of prosecution witnesses disclosed commission of such harassment by the appellant. Learned counsel for the appellant submits that in the instant case the Additional Sessions Judge has found that the offence of abetment of suicide has not been proved and once the abetment of suicide has not been proved, the charge of cruelty of such a nature as is likely to drive the woman to commit suicide would also have held as not proved. He also submits that reliance placed by the learned Additional Sessions Judge on a letter allegedly written by the deceased on 30th June, 1990 (Exh.-36) in order to record a finding of cruelty is misplaced as seizure of this letter has not been proved satisfactorily and it appears that this letter has been planted later on in order to boost the prosecution case against the appellant. He also submits that in any case, the contents of the letter are not admissible in evidence because their handwriting has not been proved and also because of the fact that the contents do not disclose any such cause of death as can be said to have an intimate and proximate relation with the death of Vijaya. In support, he has placed his reliance upon the cases of *Inderpal vs. State of M.P.*, reported in (2001)10 SCC 736 and *Bhairon Singh Vs. State of Madhya Pradesh*, .

4. Learned Additional Public Prosecutor for the respondent/State opposing the argument of learned counsel for the appellant submits that the prosecution evidence is sufficient to prove the cruelty meted out to deceased Vijaya by the appellant. According to him, the handwriting of the letter vide Exh.-36 has been identified by PW 5-Pramilabai, mother of the deceased, and same has not been challenged or controverted in any manner by the appellant, as could be seen from her cross-examination. He further submits that when the seizure of the letter has not been questioned seriously by the appellant, now the appellant cannot be heard to say that the seizure of the letter has not been proved and that the contents of the letter have not been proved. He further submits that the evidence of PW 2-Raju Gawande as well as PW 5-Pramilabai on the point of cruelty is consistent and cogent and, therefore, sufficient for supporting the charge of cruelty against the appellant. He also submits that the letter vide Exh.-36 cannot be read in isolation and when the contents of this letter are read together with the evidence of PW 2 Raju Gawande and PW 5-Pramilabai, the only conclusion that can be drawn is that the prosecution has established the proximity of the events that are narrated in the letter written in June 1990 with the final event of commission of suicide by deceased Vijaya and as such, the contents of this letter are admissible under Section 32(1) of the Indian Evidence Act, 1872. Therefore, he further submits, no interference with the impugned judgment and order is warranted.

5. Upon going through the impugned judgment and order, the charge framed against the appellant and the prosecution evidence, I find that there is great substance in the argument of learned counsel for the appellant and no merit in

the argument of learned Additional Public Prosecutor for the respondent/State.

6. The charge which has been framed against the appellant is in relation to cruelty as defined under Explanation (a) to Section 498-A of the Indian Penal Code. According to the Explanation (a), cruelty should be of such a nature as is sufficient to drive a woman to commit suicide or to cause some injury to herself or to her life or limb. Explanation (b) contemplates different kind of cruelty. Under this Explanation, cruelty should have been committed with a view to compel or coerce the women to meet an unlawful demand of property or valuable security and it has got nothing to do with driving a woman to commit suicide or cause injury to herself.

7. Now, if we go through the impugned judgment and order, we would notice that the learned Additional Sessions Judge has recorded contradictory findings. Learned Additional Sessions Judge has found that deceased Vijaya committed suicide because she fell so much disgusted with life on account of consistent nature of cruelty being meted out to her by her husband, the appellant, and on the other hand, learned Additional Sessions Judge has found that whatever cruelty might have been given by the appellant to his deceased wife, same could not be viewed as having been given intentionally. Leaned Additional Sessions Judge while considering as to what constitutes abetment as contemplated under Section 306 of the Indian Penal code, referred to the definition of abetment as given under Section 107 of the Indian Penal Code. He has found that under Section 107 of the Indian Penal Code, in order to constitute an act to be an abetment of a thing, there has to be an instigation or engaging with one or more persons in a conspiracy or intentional aiding by any overt act or omission. According to the learned Additional Sessions Judge, the act of cruelty perpetrated by the appellant on deceased wife did not fall in any of these categories. This reasoning adopted by the learned Additional Sessions Judge, however, does not sound logical. Nevertheless, it has not been challenged by the State by filing an appeal against the order of acquittal of the appellant under Section 306 of the Indian Penal Code. Therefore, now it would have to be considered by this Court as to whether the reasoning so given by the learned Additional Sessions Judge is logical or illogical or sound or perverse so as to record guilt or innocence of the appellant vis-a-vis offence of cruelty punishable under Section 498-A of the Indian Penal Code.

8. If we consider the evidence of the important prosecution witnesses, who are PW 2-Raju Gawande, brother of the deceased, PW 4-Pravin Gavande, another brother of the deceased and PW 5-Pramilabai Gavande, mother of the deceased, we would find that their evidence on the aspect of giving of physical cruelty of such a nature as was sufficient to drive deceased Vijaya to commit suicide is not cogent and also to some extent is vague. Their evidence leaves one wondering about the exact nature of cruelty that was meted out by the appellant to the deceased consistently for a period of about 9 years of the existence of their marriage.

9. PW 2-Raju Gawande has stated that cruelty of Vijaya at the hands of appellant started from their joint residence at Pusad where the appellant used to give deceased Vijaya electric shocks. According to him, even at Morshi, the appellant used to cauterize deceased Vijaya. But, the nature of harassment allegedly given by the appellant to his wife since the time they came to reside at Butibori has not been elaborated by this witness. He admits that he has not stated before the Police anything about the appellant scorching deceased Vijaya by cigarette butts. When the appellant and deceased Vijaya were residing at Butibori, as per the version of PW 4-Pravin Gawande, deceased Vijaya was required to reside at Katol for about 7 and 8 months in connection with pregnancy and delivery. Thereafter, deceased Vijaya was taken by the appellant to Bela. PW 4-Pravin Gavande has not stated anything about giving of harassment by the appellant to Vijaya while at Bela and he straightaway states about the death of Vijaya being caused burn injuries sustained by her on 15.7.1998. PW 4-Pravin Gavande does not give any date or the year of the stay of Vijaya along with appellant at Butibori and at Bela. Same is true about her co-habiting with the appellant at Morshi and prior to that at Pusad. Therefore, from such evidence, it is difficult to ascertain as to whether or not there was ill-treatment of deceased Vijaya consistently at the hands of appellant or whether it had come to an end after deceased Vijaya and appellant came to reside at Butibori. It is also not known as to when the appellant and Vijaya had come to reside at Butibori.

10. It is pertinent to note that PW 2-Raju Gawande does not say anything about ill-treating deceased Vijaya because of her failure to meet illegal demand of the appellant for property or valuable security. It is only PW 4-Pravin Gavande, the other brother of the deceased who says so. According to him, the ill-treatment allegedly given by the appellant to deceased Vijaya was not only on account of reluctance of Vijaya to do the service, but also for the reason of her failure to meet the appellant's demand of cash. So far as ill-treatment on account of failure to bring cash on the demand of appellant is concerned, it is an improvement as according to the investigating officer PW 7-Vivek Saraf, it has not been stated by this witness at the time of recording of his police statement, although PW 4-Pravin Gavande says that he had narrated it before the Police. Because of this, a doubt arises about the truthfulness of PW 4-Pravin Gavande on the aspect of cruelty on account of failure to meet illegal demand of the appellant. The other witnesses PW 2-Raju Gawande as well as PW 5-Pramilabai are not stating anything about such nature of cruelty and, therefore, the evidence of PW 4-Pravin on the aspect of cruelty on account of failure to meet illegal demand cannot be accepted. As regards his evidence about giving of cruelty on account of reluctance of Vijaya to join service, I find that the evidence is of vague nature and does not give the details of the harassment being allegedly given by the appellant to his wife. He states that only on one occasion he had seen the appellant giving beating to Vijaya when he had intervened in the quarrel and pacified the appellant. But, he does not state the period of time or the year when this incident took place. Therefore, this incident cannot be said to be

having any connection with commission of suicide by deceased Vijaya. Thus, on the whole, evidence of PW 4-Pravin Gavande does not throw any light on the particular nature of cruelty being given to deceased Vijaya by the appellant.

11. The evidence of PW 5-Pramilabai Gavande does not vary much from the evidence of PW 2-Raju Gawande. In her evidence also, no period of time and no years have been stated when according to her, deceased Vijaya was subjected to cruelty by the appellant. She states that the appellant was harassing deceased Vijaya by demanding cash amount and also by giving electric shocks and burns with iron rod when appellant and Vijaya were residing at Pusad. But, these incidents, appear to have taken place, as seen from the evidence of PW 2-Raju Gawande as well as PW 5-Pramilabai Gavande herself, about one or two years after the marriage and that means the incidents, were of the year 1990 or 1991. After these incidents, PW 5-Pramilabai Gavande has not stated that similar cruelty was consistently meted out by the appellant to the deceased and, therefore, again it has to be said that the incidents which took place in the year 1990-91 would not be relevant for the event of suicide that took place about 7 or 8 years thereafter. That apart, according to PW 2-Raju Gawande the incident of giving of electric shocks and cauterizing had taken place not at Pusad but at Morshi. So, here also there is no consistency between the evidence of PW 2-Raju Gawande and PW 5-Pramilabai Gavande. Therefore, such evidence of P.W.-5 Pramilabai as well as P.W.-2 Raju Gawande can also not be relied upon to draw an inference that the appellant was consistently ill-treating deceased Vijaya in such a manner as would be sufficient to compel deceased Vijaya to commit suicide.

12. In the result, I find that the learned Additional Sessions Judge, has without considering the material aspects of the evidence appearing on record, erroneously found that deceased Vijaya committed suicide because of ill-treatment given to her by the appellant. Once we find that the ill-treatment that has been given to deceased Vijaya was not the cause of her death, it can also not be found that the appellant abetted commission of suicide. The cause of suicide appears to be different and the evidence available on record is not sufficient to point out, even by law of probability, the cause of suicide. But, that should not prevent this Court from endorsing the finding of innocence of appellant for offence of abetment of suicide, though for different reasons as stated earlier. Consequently, it also follows that there was no cruelty having been given by the appellant to deceased Vijaya as contemplated under Explanation (a) to Section 498-A of the Indian Penal Code with which the appellant was charged and, therefore, it cannot be said that prosecution has proved the commission of offence of the cruelty by the appellant.

13. As regards the letter dated 30.6.1990, which is at Exh.-36, I find great substance in the argument of learned counsel for the appellant that its contents cannot be relied upon and that possibility of producing this letter subsequently in order to provide filip to the prosecution case has not been ruled out. The seizure

memo vide Exh.-41 discloses that this letter vide Exh.-36 has been seized on 22nd July, 1998. However, application dated 12.8.1998, vide Exh.-43 seeking appellant's police custody remand discloses that the investigating officer had obtained his police custody by putting forward the reason that same was necessary for effecting seizure of the said letter. The investigating officer obtained police custody remand of the applicant on this ground not for just one or two days, but for 5 days in spite of the fact that this letter was already seized on 22nd July, 1998. The investigating officer, it can be said, had not only suppressed a material fact from the Court of justice but also successfully misled the Court of law. Such behaviour of the investigating officer is reprehensible and calls for appropriate inquiry and if necessary departmental action against the concerned investigating officer. The superior officers of the concerned investigating officer hopefully shall inquire into the matter and take such action against the officer found responsible as is permissible under the law. Such conduct of the investigating officer has vitiated the seizure of this letter and now it has to be said that possibility of planting of this letter subsequently in order to support the prosecution case has not been ruled out. If this is the case, no reliance whatsoever on the contents of the letter vide Exh.-36 can be placed, irrespective of the fact that its handwriting or its seizure has not been seriously disputed by the appellant.

14. Even otherwise, this letter (Exh.36) being of the year 1990 would not by itself be sufficient for recording a finding that it disclosed a cause which had proximate relation with commission of suicide by deceased Vijaya for the reason that no evidence about the continued cruelty allegedly given by the appellant to his deceased wife consistently during the period from July, 1990 till July 1998 has come on record. It appears from the impugned judgment and order that the learned Additional Sessions Judge has found the appellant as guilty of offence of commission of cruelty under Explanation (b) to Section 498-A of the Indian Penal Code, although there was no charge framed against the appellant. Even for finding presence of such kind of cruelty as contemplated under Explanation (b), no reliance with the aid of Section 32(1), Indian Evidence Act can be placed upon the contents of letter vide Exh.-36 for the reason that while dealing with the offence of cruelty as envisaged under Explanation (b), the cause of death is never an issue to be gone into and what is required to be found out is only harassment or ill-treatment on account of failure to meet the illegal demand for property or valuable security. This is the law settled by Hon''ble Apex court in the cases of Inderpal vs. State of M.P. and Bhairon Singh vs. State of Madhya Pradesh (supra). Observations of the Hon''ble Supreme Court appearing in para 7 of it's judgment rendered in the said case of Inderpal are relevant and therefore, are produced thus :

"7. Unless the statement of a dead person would fall within the purview of Section 32(1) of the Indian Evidence Act there is no other provision under which the same can be admitted in evidence. In order to make the statement of a dead person admissible in law (written or verbal) the statement must be as to the

cause of her death or as to any of the circumstance of the transactions which resulted in her death, in cases in which the cause of death comes into question. By no stretch of imagination can the statements of Damyanti contained in Exhibit P-7 or Exhibit P-8 and those quoted by the witnesses be connected with any circumstance of the transaction which resulted in her death. Even that apart, when we are dealing with an offence under Section 498-A IPC disjuncted from the offence under Section 306 IPC the question of her death is not an issue for consideration and on that premise also Section 32(1) of the Evidence Act will stand at bay so far as these materials are concerned." 15. However, the learned Additional Sessions Judge did not consider this important aspect of the matter and by relying upon the contents of letter vide Exh.-36 wrongly found the appellant to be guilty of the offence of commission of cruelty under Explanation (b) to Section 498-A of the Indian Penal Code. In the circumstances, I find that the impugned judgment and order cannot be sustained in law.

16. The appeal is, therefore, allowed.

The impugned judgment and order dated 31st August, 2001 passed by 6th Additional Sessions Judge, Nagpur are hereby quashed and set aside.

The appellant is acquitted of the offence punishable under Section 498-A of the Indian Penal code.

Fine amount paid by him be refunded to him.

His bail bonds stand discharged.