
(2015) 06 BOM CK 0295
In the Bombay High Court
Case No : Criminal Appeal No. 145 of 2003

The State of Maharashtra	Vs	APPELLANT
Arun and Others		RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 306, 34, 498A

Citation : (2015) ALLMR(Cri) 3640

Hon'ble Judges : M.T. Joshi, J.

Bench : Single Bench

Advocate : S.R. Palnitkar, A.P.P., for the Appellant; Anil M. Gaikwad, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.T. Joshi, J.—Heard both sides. Aggrieved by the recording of acquittal of the present respondents from the offences punishable under section 498A, 306 r/w. Section 34 of the I.P. Code, by the learned IInd Ad hoc Additional Sessions Judge, Ambajogai in Sessions Case No. 52 of 2000, the present appeal is preferred by the State.

2. Deceased Devkanya, the daughter of P.W. 2 Malanbai and P.W. 3 Vitthal had married with the present respondent No. 1 Arun about 15 months prior to her death due to burning on 31st March, 2000, due to the burn injuries received by her on the previous day i.e. 30th March, 2000. The postmortem examination note exhibit 29C would show that she had suffered 100 % superficial burns all over her body.

3. The prosecution case, in short is as under:--

"That, for an initial period of three months, the deceased was treated normally by respondent No. 1 Arun and his parents i.e. respondent No. 2 Natha (since deceased) and respondent No. 3 Sow. Mahanandabai. Thereafter, however, they started harassment and cruelty to deceased Devkanya as she was unable to

carry household works like cleaning utensils etc. She was also subjected to cruelty at the hands of the present respondents for fulfilling the demand of Rs. 10,000/-. She was even beaten on these counts on 18th March, 2000. The deceased went to her parents house at Beed alongwith respondent No. 1 Arun to attend marriage ceremony of her maternal uncle. At that time, she had disclosed to her parents about the illtreatment given to her. Therefore, her father i.e. P.W. 3 Vithal met respondent No. 1 and gave understanding to him in this regard. He promised that he would make the arrangement for money very soon. However, after returning back, respondent No. 1 again physically assaulted deceased Devkanya. In the situation, on 30th March, 2000 at about 12.00 in the noon, she set herself on fire, due to which she died."

4. The Investigating Officer carried the usual investigation. The panchanama of spot of occurrence and inquest panchanama were prepared. Necessary articles were seized. The postmortem note was collected. The statement of witnesses were recorded and ultimately, chargesheet came to be filed.

5. The defence, in short, is that there was no illtreatment to the deceased, however, merely on suspicion, the complaint was filed.

6. Before the learned Sessions Judge, in all eight witnesses were examined. Besides the relatives of the deceased, inter alia, P.W. 6 retired A.S.I. A.N. Kamble was examined supported by P.W. 5 - Dr. Raju Shinde, the Medical Officer. The dying declaration is at Exhibit 44.

7. It is to be noted that the deceased had suffered 100% burn injuries. She has died just 24 hours of receipt of those injuries. In these circumstances, the Medical Officer has certified at Exhibit 44 as "Patient is conscious at the time of statement". The statement is not in question and answer form. Besides this, P.W. 4 Datta Kajale i.e. the uncle of the deceased has admitted that when the statement was being recorded, at that time, he was present. The learned Sessions Judge has taken into account all these facts, adverted to his mind to the principle regarding dying declaration and refused to place reliance over the same.

8. As regards the oral testimony of four witnesses i.e. P.W. 1 Ashok Sontake, P.W. 2 Malanbai Kajale, P.W. 3 Vithal Kajale and P.W. 4 Datta Kajale, the learned Sessions Judge has appreciated their evidence and found that those are not trustworthy witnesses. Hence, the acquittal of the respondents came to be recorded.

9. Mr. S.R. Palnitkar, learned A.P.P. submitted that the dying declaration ought to have been relied by the learned Sessions Judge. Further, it should have been borne in mind that P.W. 1 Ashok who resides in the neighbourhood of the respondent and himself, had witnessed the incident of cruelty given to the deceased by the respondents. He further submitted that the learned Sessions Judge has unnecessarily given weightage to certain omissions and contradictions from the statements of other witnesses.

10. Mr. A.M. Gaikwad, learned counsel for the respondents, on the other hand, submitted that the already adverted facts regarding dying declaration would show that there was nothing to show that at the time of recording of the statement of the deceased, the deceased was mentally and physically conscious and was fit to make the statement. The Medical Officer P.W. 5 Dr. Shinde has accepted in his cross-examination that the certificate passed by him is not sufficient and against the established practice. Further, the presence of P.W. 4 Datta at the time of recording of the statement of deceased is admitted by the very same witness, P.W. 4 - Datta. He further submitted that the depositions of the rest of the witnesses have been rightly disbelieved by the learned Sessions Judge.

11. On the basis of above material on record and the submissions advanced on behalf of both sides, the following points arise for my determination:

"I) Whether the prosecution has proved that all the present respondents, in furtherance of their common intention, cruelly treated deceased Devkanya during her cohabitation for petty reasons and unlawful demand of Rs. 10,000/-, likely to drive her to commit suicide?

II) Whether the prosecution has proved that the present respondents have abetted the commission of suicide by deceased Devkanya?"

My finding to both the above points is in negative. The appeal is therefore dismissed for the reasons to follow.

REASONS

12. The facts as highlighted supra, regarding the dying declaration of deceased Devkanya itself would make it clear that it would be hazardous to place reliance on the statement made in the dying declaration (Exhibit 44). The deceased had suffered 100% burn injuries. She died within 24 hours of suffering of those injuries. At the time of recording dying declaration of the deceased, the Medical Officer, on examination of the deceased, has simply passed an endorsement at one place that the deceased was conscious at the time of making the statement. There is no need to repeat the requirement that not only the consciousness of the maker of the statement is essential but the maker should be in his/her fit state of mind and oriented at the time of making of the statement. The statement is not in question and answer form, more particularly, when the deceased had suffered 100% burn injuries. P.W. 4 - Datta i.e. uncle of the deceased was also present at the time of recording of the statement. The learned Sessions Judge therefore has not committed any mistake in discarding the same.

13. As regards oral evidence, it should be noted that P.W. 1 - Ashok Sontake is the neighbour of the respondent and deceased. In normal course, therefore, his deposition would be on higher footing. However, he has admitted in his cross-examination that he is not only the cousin uncle of respondent No. 1 but his mother is related to P.W. 2 - Malanbai and P.W. 3 - Vithal. P.W. 3 - Vithal,

however, refused to accept this relationship. The witness, therefore, cannot be called as an independent witness. Besides this, the learned Sessions Judge has detailed the improvements made by this witness than the statement by him before the Police. There is material contradiction as to physical assault to the deceased during the cohabitation. While before the Police, he made statement that only respondent No. 1 had physically assaulted the deceased, in the Court, he deposed that rest of the respondents i.e. even the parents of respondent No. 1 were beating the deceased. Further, some other omissions were taken into account by the learned Sessions Judge. The witness went to accept that he was already having strained relations with the respondents and they were not on talking terms with him. It is therefore difficult to accept that this witness is an independent witness.

14. As regards the parents of the deceased, the learned Sessions Judge took into consideration the statement of father i.e. P.W. 3 - Vithal Kajale was recorded twice by the Police. The material improvements made by these two witnesses were taken into account. Before the Court, P.W. 3 Vithal made a statement that demand of Rs. 10,000/- was for construction of house and for purchase of clothes. This is missing in the statement made by him before the Police. Further, certain improvements regarding meetings with respondent No. 1 and disclosure by his daughter about the cruelty, were also taken into consideration by the learned Sessions Judge.

15. As regards deposition of mother of the deceased i.e. P.W. 2 - Malanbai, the learned Sessions Judge has taken into consideration that she suppressed her relationship with P.W. 1 Ashok in cross-examination. Further, she made improvement to the statement as found in dying declaration exhibit 44, that the purpose of making demand of Rs. 10,000/- was construction of a house. She even made a statement that in the hospital, the deceased was repeatedly saying that had the demand of money been satisfied, respondents would not have set her on fire. It is material to note that P.W. 1 Ashok the neighbour though stated that he was allegedly present at the time of receipt of burn injuries by the deceased, he did not make any statement that in his presence, the deceased had made any such statement. Further, this case of statement in the hospital is missing from the statement before the Police.

16. As regards P.W. 4 - Datta Kajale, the uncle of the deceased, he has already made vast improvement on the line of statements of P.W. 2 - Malanbai and P.W. 3 Vithal, as discussed supra. Besides this, he was present at the time of recording of the dying declaration of the deceased.

17. P.W. 1 - Ashok has referred to the presence of defence witness - D.W. 1 - Dineshsingh Hajari at the house of respondents immediately after receipt of burn injuries by the deceased, who happens to be the neighbour of the respondents. This witness - Dineshsingh was also cited as prosecution witness but was not examined. The said witness has deposed that the deceased was being treated properly by her matrimonial relatives.

18. Be that as it may, the prosecution case is full of material omissions as detailed supra. The learned Sessions Judge, therefore has taken a reasonable and probable view of the material before him. In the circumstances, in the present appeal against acquittal, no interference is warranted by this Court. The appeal is therefore liable to be dismissed. In the result, the appeal is hereby dismissed. The bail bonds, if any, of the respondents shall stand cancelled.