
(2015) 03 BOM CK 0414
In the Bombay High Court
Case No : Criminal Appeal No. 276 of 2002

The State of Maharashtra	Vs	APPELLANT
Babaroo Balaji Shinde and Others		RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

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

Citation : (2015) 03 BOM CK 0414

Hon'ble Judges : A.I.S. Cheema, J.

Bench : Single Bench

Advocate : D.V. Tele, A.P.P., for the Appellant; A.M. Gaikwad, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.I.S. Cheema, J.—State has filed this appeal against acquittal of respondents - original accused No. 1 to 4 (hereinafter referred to as accused No. 1 to 4) for offence under Sections 498-A and 306 read with Section 34 of the Indian Penal Code, 1860 (I.P.C. for short). The respondents were tried in Sessions Case No. 35/2000 before Ad-hoc Additional District Judge, Nanded and by judgment dated 31.12.2001, they came to be acquitted.

2. Case of the prosecution in short is as under:--

"Complainant Dattaram Babaroo Pawar (P.W.6) filed F.I.R. Exh. 35 on 9.9.1999 at Sonkhed Police Station vide Crime No. 71/1999. He informed that he was resident of Kharbi, Taluka Loha. He had daughter Sangita, who was married to accused No. 1 Babaroo Balaji Shinde of Harbal, Taluka Loha, District Nanded. At the time of marriage, Rs. 20,000/- dowry and ring of 5 gm. Gold was given. Sangita was being looked after well, however, at the time of last Diwali, when he had brought Sangita home, she informed that the accused persons were telling her to bring Fan, T.V. and cash of Rs. 25,000/- for pipeline from her parents. He told her that he will talk to her parents-in-law and made her understand. Then

accused No. 1 Babarao had come after Diwali and taken her back. The F.I.R. mentions that, thereafter the complainant along with other villagers Pandurang Munjaji Pawar (P.W.2) Rangnath Vishwambhar Hanumant had gone to Harbal and told the parents-in-law and husband of his daughter that the dowry had been paid and nothing remains and so why they are asking more money. At that time, these accused stated that if the daughter has to live happily, then T.V., fan and cash of Rs. 25,000/- should be given. The F.I.R. then refers to festival of Panchami, that the complainant had gone to bring his daughter Sangita for Panchami and brought her to his place at Kharbi. At that time, his daughter Sangita told him that 2-3 times her husband (accused No. 1), father-in-law (accused No. 2), mother-in-law (accused No. 3) and sister-in-law (accused No. 4) had beaten her and for T.V., fan and money she was being ill-treated. At the time of Panchami, when accused No. 1 Babarao came to take back his wife Sangita, Bapurao Marufrao Pawar (P.W.3) of the village explained to the accused No. 1 and accused No. 1 promised that he will maintain Sangita well. The F.I.R. further states that, 8 days after Panchami, Babarao Hivant (P.W.4) came from Harbal and told complainant that Sangita was being troubled and beaten at the place of her in-laws and she has given message that the complainant should bring her. Thereafter the complainant along with Digambar Pawar (P.W.1) and one Shivshankar went to Harbal and explained to the accused persons. F.I.R. mentioned that, on 7.9.1999 at about 1.00 p.m., one Deoram Ganpati and Balaji Keshav came to Kharbi and asked him if his daughter had come, but he stated that she had not come. Out of suspicion, complainant, with villagers went to search his daughter. On 8.9.1999 at about 11.00 a.m., dead body of Sangita was found in the well which is in the field of accused persons. Thus, the complaint dated 9.9.1999 was filed claiming that Sangita was being ill-treated and was being treated with cruelty for articles of dowry and because of the cruelty she committed suicide in the well."

3. Before the F.I.R. Exh. 35 was registered, the Police Station, Sonkhed had received report of Police Patil of Harbal about accidental death of Sangita and A.D. 19/1999 had been registered. The dead body had been removed from the well and inquest panchanama Exh. 24 had been drawn on 8.9.1999. The spot panchanama was also drawn on the same day vide Exh. 25. The post mortem also had been done on 8.9.1999 which mentioned the cause of death as asphyxia due to drowning. On registration of the F.I.R., P.S.I. Dashrath Patil (P.W.8) carried out the investigation. Statements of witnesses were recorded. Viscera was sent to Chemical Analyser. The examination of viscera did not disclose any poison as per the C.A. Report (Exh. 44). The investigating officer P.W.8 Dashrath Patil completed the investigation and filed charge sheet.

4. Charge was framed against accused persons under Section 498-A read with Section 34 and Section 306 read with Section 34 of the Indian Penal Code. The accused persons pleaded not guilty. Their defence, as it appears from the cross-examination of witnesses and statements under Section 313 of the Code of Criminal Procedure is that of denial.

5. The prosecution brought on record evidence of 8 witnesses. Trial Court considered the oral and documentary evidence brought on record by the prosecution and for reasons recorded, acquitted the accused persons giving benefit of doubt.

6. Against the acquittal, present appeal has been filed by the State claiming that the evidence was not properly appreciated. There was evidence about demand of money and ill-treatment on that count. The evidence of other villagers brought on record by prosecution was wrongly disbelieved. Death had occurred within 1 1/2 year of marriage and Sangita was subjected to ill-treatment and thus, offence under Sections 498-A and 306 of the Indian Penal Code should have been held to have been established, it is claimed.

7. I have heard learned A.P.P. for State and learned counsel for respondents - original accused. The A.P.P. has taken me through the evidence which was brought on record and referring to the witnesses, submitted that there was evidence of the complainant, his wife as well as relatives as well as other villagers to show that at the time of Diwali when Sangita had come to the place of her parents she was complaining about demands being made by the accused persons. He submitted that, there was evidence to show that Sangita had informed about her condition to other villagers also and in spite of such evidence, the accused have been acquitted. It has been argued that, from the evidence of P.W.1 to P.W.7, the cruelty had been proved and the judgment of the trial Court is not maintainable.

8. Per contra, the learned counsel for respondents - accused submitted that the trial Court has discussed the evidence of witnesses in detail and came to the conclusion that there were contradictions and omissions, due to which the witnesses could not be relied on. He submitted that, in the 1 1/2 year of marriage, there was only one Diwali. The marriage took place somewhere in the summer of 1998 and Diwali was around October of 1998. It has been argued that, the A.D. report Exh. 44 given by Police Patil refers to accidental death. The victim was missing from 7.9.1999 and her body was found on 8.9.1999. The spot panchanama shows that those were rainy days and the well concerned was unbuilt with lot of water. Thus, according to him, chances of accidental death were also there and prosecution did not rule out accidental death. The complaint was made only after the death took place and after the completion of last rites the delayed F.I.R. was filed. The learned counsel submitted that, the evidence of complainant showed that he had given information to police even on 8.9.1999 regarding the marital condition of Sangita and the said report has been suppressed. According to the counsel, there are no particulars of exact cruelty. There is no evidence of any specific act attributed to any particular accused. There are only general allegations in the evidence and thus, the trial Court has rightly acquitted the accused persons.

9. The points for my consideration are:--

"(1) Whether the prosecution proved the charge as was brought against the respondents - accused ?

(2) Whether the judgment of acquittal as recorded by the trial Court needs to be interfered with ?"

10. It would be appropriate to look into the oral evidence brought on record by the prosecution, in brief, regarding cruelty.

"(A) P.W.1 Digambar Pawar is the uncle of deceased Sangita. It appears that, the marriage took place some time in the summer of 1998 and Sangita expired in about 1 1/2 year of the marriage. She expired on 7-8th September 1999. Before this, there was only one Diwali, which was on 19.10.1998. While other witnesses claimed that when Sangita came for Diwali after her marriage, P.W.1 Digambar Pawar deposed that for about one year after the marriage Sangita was residing happily in the married life. He, however, stated that when she came for Diwali, she disclosed to him, his brother Datta (P.W.6) and her mother Rukmini (P.W.5) that her in-laws were demanding Rs. 25,000/- for pipeline and that they were demanding fan and T.V. to be brought from her parents. As per this witness, the husband then came and took her back. He deposed that, his brother Dattarao along with P.W.2 Pandurang, Bhujang and Rangnath Hanumant went to village Harbal to convince the in-laws. This witness then claimed that at the time of Panchami, Sangita was brought and at this time, she repeated the demands which were being made and also added that she was being beaten and ill-treated. The accused No. 1 again came and took her back, according to this witness, assuring that she will be dealt happily. P.W.1 further claims that, his brother P.W.6 Dattarao, one Shivshankar and he then went to the relatives after Panchami and at that time, Sangita told that she was being severely ill-treated and harassed by her in-laws. The witness claims that they convinced the in-laws.

(B) Then there is evidence of P.W.2 Pandurang Munjaji Pawar, who claims that when Sangita came at the time of Diwali after her marriage, she had met him and disclosed about demands as above from her in-laws. This witness added that, Sangita disclosed that she was being harassed for the demand. The witness claims that, after Diwali, the accused No. 1 came and took back Sangita and 8 days thereafter this witness alongwith P.W.6 Dattaram and one Rangnath had gone to the place of accused and they were told that the dowry had been paid and so why there was more demand. This witness claimed that the accused No. 1 Babarao told them that if they want Sangita to live happily, then they must satisfy the demands.

(C) P.W.3 Bapurao Pawar is villager from Kharbi who claims that, Sangita was living happily for 6-8 months after marriage. Unlike other witnesses, he claimed that the first time Sangita came only at the time of Panchami and thereafter came at the time of Diwali. He claims that, at that time, she told him about the same demand as above from the accused persons. This witness claimed that, after Diwali when accused No. 1 came, he had convinced the accused No. 1 by

calling him home.

(D) P.W.4 Babarao Hivant is a villager from Kharbi who claims to have gone to the place of his aunt Sheshabai at village Harbal where the accused persons reside. According to this witness, when he had gone to the place of his aunt, he had met Sangita and to this witness also Sangita had stated about the ill-treatment and demand. According to this witness, Sangita told him to inform her father that she was being troubled. He claims that, he went and told this to P.W.6 Dattaram.

(E) Then there is evidence of P.W.5 Rukmibai Pawar, the mother of Sangita. She deposed that, for about one year after marriage, Sangita lived happily and then at the time of Diwali, when she had come, she told that the accused persons were demanding Rs. 25,000/- for pipeline, T.V. and fan. Her evidence also shows that, the accused No. 1 came after Diwali and took Sangita. This witness also disclosed that, thereafter her husband along with P.W.2 Pandurang and one Rangnath had gone to convince the accused persons. This P.W.5 deposed that, at the time of Panchami, Sangita was brought and she complained of assault by accused persons on three occasions for satisfying their demands. This witness deposed that, after Panchami, her husband had gone to convince the accused persons.

(F) Then, there is evidence of complainant Dattaram (P.W.6) claiming that, after the marriage, Sangita came at the time of Diwali and she told that the accused persons were demanding Rs. 25,000/- for pipeline. He claimed that he told her that he will convince them. After Diwali accused No. 1 came and took her. P.W.6 Dattaram Pawar claimed that he along with P.W.2. Pandurang Pawar and one Rangnath had then gone to Harbal and told to accused persons that dowry had already been paid and nothing was due. The evidence of complainant is that the accused told that if his daughter is to have happy married life then Rs. 25,000/- should be paid and T.V. and fan should also be supplied. Complainant further deposed that, at the time of Panchami he brought his daughter and she complained about accused persons assaulting her 2-3 times in order to get the articles and money. Complainant deposed that, on this occasion when accused No. 1 came to take back Sangita, P.W.3 Bapurao had convinced accused No. 1 regarding behaviour.

(G) Prosecution further examined P.W.7 Pandhari Tate, the maternal grandfather of Sangita. He deposed that, after marriage of Sangita till the incident of September 1999, there was only one Diwali. According to this witness, when Sangita came for Diwali, she told about in-laws harassing her for Rs. 25,000/- and T.V. and fan."

11. The above witnesses regarding claim of cruelty were subjected to cross-examination by the counsel for accused. The trial Court considered the evidence of these witnesses to find that some of them merely referred to Sangita claiming that demand was being made when she had come for Diwali and did not refer to

complaint of any harassment as such while some witnesses claimed that she told about harassment also. Trial Court noted that P.W.3 Bapurao had referred to Sangita coming for the first time only at the time of Panchami while others had claimed that she had come at the time of Diwali. Discussing the evidence, the trial Court observed that there were inconsistencies in the evidence of witnesses as to whether all the accused had demanded or some of them were making demands. Trial Court weighed the evidence of prosecution witnesses to find that if when Sangita came for Diwali, she had made complaints, none of the prosecution witnesses had stated that when accused No. 1 Babarao came to take her back, they had put any questions to him regarding the demands. According to the trial Court, the natural conduct of parents would have been to speak the son-in-law when he had come to take the daughter. However, this was not done and it is claimed that, subsequently the complainant went with other witnesses to the place of in-laws. The trial Court considered cross-examination of P.W.2 Pandurang Munjaji who had claimed that he had gone to the house of accused for explaining along with the complainant, but the details brought in cross-examination showed that it was doubtful that he had visited the house of Sangita after Diwali as claimed by the witness. Trial Court further discussed the evidence of witnesses to find discrepancies that while witnesses claimed that P.W.3 Bapurao had convinced accused No. 1 when he had come to take his wife at the time of Panchami, the witness himself claimed that after Diwali when accused No. 1 had come, he had convinced him by calling him at home. Trial Court, discussed the omissions brought on record in the cross-examination of witnesses and observed that the evidence of the witness was inconsistent, contradictory on material aspects and there are number of omissions. The judgment of the trial Court recorded the details of the omissions brought on record by the accused. Perusal of the judgment shows that, the evidence of these witnesses has been discussed in details and trial Court considered the various discrepancies in the evidence.

12. The cross-examination of complainant P.W.6 Dattaram and the evidence of the other witnesses discloses that on 7.9.1999, at their village they came to know that Sangita was missing. According to the complainant Dattaram, he suspected something unnatural and with villagers, went to Harbal. According to him, when he reached there, the house of the accused was locked and they were not in the village. He claimed that, he searched for his daughter and in the same night he returned back home. The evidence is that, on 8.9.1999 he again went to the village Harbal and went to the spot of the land of accused No. 2 Balaji. He claimed that they searched for the dead body of Sangita and brought the same up from the water of the well. From the evidence of P.W.8 P.S.I. Patil, the A.D. Report Exh. 44, dated 8.9.1999 has been proved. Exh. 44 mentioned that on 7.9.1999 at about 12.00 o'clock Sangita had gone for toilet, has been informed by Dattaram Babarao Pawar (P.W.6) and in view of such information, they had searched for her and she was not found. However, on 8.9.1999, when they had gone to the well, at the edge, the tin used for toilet was found and when it was

checked in the water of the well, the dead body was found. Exhibit 44 mentioned that, Sangita had gone for toilet and did not return and died by fall in the water. The spot panchanama Exh. 25 recorded that it was a well in the field of accused No. 2 Balaji, which had the radius of about 40 ft. and depth was 30 ft., and water was to the extent of 25 ft. The spot panchanama mentions that the well is not constructed and is more like a Khud. It was continuously raining at the spot and there was Chikhal i.e. slush.

13. Keeping above spot in view and the recovery of dead body of Sangita as well as the post mortem report Exh. 27, which mentioned that death was due to drowning, if I go back to the evidence of complainant P.W.6 Dattaram, he deposed that his villagers had accompanied him to Harbal on 7th as well as on 8th. His cross-examination shows that, on 8th, at about 11.00 a.m., the police had been to the spot of well and panchanama was prepared. He admitted that he was with the police for about four hours from 11.00 a.m. and the other villagers were also there. He deposed in the cross-examination that, police came to the spot on 8.9.1999 because of his report dated 7.9.1999. He then deposed that, he filed report on 8.9.1999. According to him, in the cross-examination, the report dated 8.9.1999 was relating to the death of Sangita. He admitted that when he filed report on 8th, he narrated to the police as to how was the married life of Sangita and how accused dealt her. In the further cross-examination, he stated that, his report dated 8.9.1999 was reduced into writing by police and the police had read over to him and he had signed the same. He claimed that when he filed such report on 8.9.1999, he was alone. He deposed that, the said report was given to police station. At that time, P.S.O. was present there. His evidence shows that, after funeral dated 8.9.1999 he went home. He further deposed that, on 9.9.1999, he again went to the police station voluntarily. The trial Court discussed all this evidence and found that although the F.I.R. filed on 9.9.1999 had been brought on record, the report submitted on 8.9.1999 had been suppressed. The trial Court further discussed the evidence and found that it is difficult to hold that Sangita committed suicide. It observed that, there was no evidence that soon before the incident Sangita was subjected to any untoward incident. It found that Sangita did die of drowning, but it observed that the location was slippery portion near the well, and the prosecution failed to prove beyond reasonable doubt that Sangita had committed suicide or that she had been subjected to cruelty.

14. I have considered the evidence independently. I have also considered the reasons recorded by the trial Court. For the given evidence, the view taken by trial Court is possible view of the evidence. As the trial Court has recorded judgment of acquittal, it would not be appropriate to interfere only because another view could be taken of the evidence. Prosecution failed to prove the charge. No perversity or material irregularity appears from the judgment of the trial Court. Thus, there is no substance in the appeal.

15. The appeal is dismissed.