
(2013) 01 BOM CK 0019
In the Bombay High Court
Case No : Criminal Appeal No. 381 of 2002

The State of Maharashtra

APPELLANT

Vs

Bhavrao Mango Patil and Others

RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3367

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : D.V. Tele, app, for the Appellant; V.J. Dixit, for Respondents No. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

T.V. Nalawade, J.—The appeal is filed against the judgment and order of Sessions Case No. 73/1998 which was pending in the Court of Additional Sessions Judge, Jalgaon. The respondents are acquitted of offences punishable u/s. 498A, 306 read with section 34 of the Indian Penal Code. Both the sides are heard. This Court has perused the original record.

2. In short, the facts leading to institution of the proceeding can be stated as follows.

Deceased Savita @ Shobha was sister of complainant Kaduba. Kaduba is resident of Kelwad Tq. Chikhali District Buldhana. As Shobha was deserted by her first husband, about one year prior to the date of incident she was given in marriage to accused No. 1 Bhavrao. Accused No. 2 is brother of accused No. 1, accused No. 3 is wife of accused No. 2 and accused No. 4 is mother of accused Nos. 1 and 2. The accused are residents of Nagar Deola Tq. Pachora District Jalgaon. All the accused were living in the same house in the joint family where the deceased started cohabiting with accused No. 1.

3. Accused No. 1 was working as conductor in M.S.R.T.C. and in connection with his duty, he was living at Nagar Deola. Other accused used to visit this place and

they were living there also. After some time of the marriage, the deceased started complaining that all the accused were harassing her and they were beating to her on petty counts. Attempts were made to convince the accused to behave well by relatives but their conduct did not improve. On 23/03/1997, accused No. 1 visited the village of complainant but he avoided to visit house of the complainant. The incident took place on 12/04/1997. In the house of accused No. 1, Shobha sustained burn injuries and she succumbed to the injuries. Shobha used to disclose that accused No. 1 was having illicit relations with accused No. 3 and due to that there was ill-treatment to her. Report came to be given on 13/04/1997. Crime came to be registered. The spot panchanama came to be prepared and some articles were taken over from the spot of incident. Kerosene was detected on the partly burnt clothes which were recovered from spot of offence. Shobha died due to 100% burn injuries. The charge sheet came to be filed for aforesaid offences.

4. To charge, all the accused pleaded not guilty. The prosecution examined seven witnesses. The trial Court has held that the prosecution has failed to prove that it is case of the suicide. The trial Court has not believed the prosecution witnesses.

5. The Id. A.P.P. submitted that the death took place within one year of the marriage due to 100% burns and from the spot panchanama inference can be drawn that it is case of suicide. It was submitted that serious allegations are made as against accused Nos. 1 and 3 and the trial court ought to have believed witnesses in view of nature of allegations. Ld. senior counsel for respondents submitted that there is no convincing evidence to prove that it was case of suicide and so other evidence which could have been considered u/s. 32 of the Evidence Act can not be used in this case.

6. It was second marriage of accused No. 1 and the first wife of accused was dead. He was having two daughters from first wife and the record shows that they were living in the same house where the incident took place. There is no evidence with the prosecution on the incident itself. No neighbour is examined to show that on that evening the neighbors heard something and they rushed to the house of the accused. From the record, it can be inferred that only accused No. 1 and his two daughters were living in that house with the deceased and other accused were not there at the relevant time. The spot panchanama is not duly proved. Though two panch witnesses have admitted their signature, they have not admitted contents of the panchanama. Even if that document is accepted as it is, inference could not have been drawn that the deceased wanted to commit suicide and she had poured kerosene on her person. In such a case, the evidence of immediate neighbours who generally rush to the spot after starting of the fire, is very important. They can say as to whether the door was closed from inside, whether any other person was present inside or whether the deceased had caught fire and had attempted to save herself by raising shouts etc.

7. Ld. Senior counsel for respondents placed reliance on the case *Inderpal v. State of M.P.*, (2001) 10 SCC 736 . In this case, the Apex Court has held that

unless statement falls u/s. 32(1) of the Evidence Act, the same can not be admitted in evidence. The observations show that if the prosecution is not able to show that it was suicide or homicidal death, so-called disclosure of the deceased can not fall u/s. 32(1) of the Evidence Act. In the present case also, when there is no sufficient evidence to prove that it was case of suicide, the evidence given by other witnesses of so called disclosures of the deceased can not become admissible u/s. 32(1) of the Evidence Act. The prosecution has relied on one post card allegedly written by the deceased. This document is not against the defence as in this document there is no whisper about ill-treatment or alleged illicit relations between accused No. 1 and accused No. 3. The case of the prosecution that there was such disclosure also does not appear to be probable as the deceased was living with accused No. 1 at other place with children of accused No. 1 from first wife. In these circumstances, this Court holds that there is no need to discuss the evidence given by the witnesses on so-called disclosure, which were allegedly made by the deceased to the witnesses. The view taken by the trial Court is possible view and interference is not possible in the decision of the trial Court. The appeal stands dismissed.