

(2018) 01 BOM CK 0112
In the Bombay High Court
Case No : 1098 of 2002

THE STATE OF MAHARASHTRA

APPELLANT

Vs

DATTATRAYA TUKARAM KADAM

RESPONDENT

Date of Decision : 20-01-2018

Acts Referred:

Indian Penal Code, 1860 — Section 498A, Section 306
Evidence Act, 1872 — Section 21

Citation : (2018) 01 BOM CK 0112

Hon'ble Judges : A. M. Badar

Bench : Single Bench

Advocate : Prashant Jadhav, Sandeep Waghmare

Final Decision : Dismissed

Judgement

1. By this appeal, the appellant/State is challenging the judgment and order dated 30th March 2002 passed by the learned 1st Ad-hoc Additional Sessions Judge, Satara, in Sessions Case No.127 of 2000, thereby convicting the respondent/accused of offences punishable under Sections 498A and 306 of the Indian Penal Code.

2. Facts in nutshell leading to the prosecution of the respondent/accused are thus :

(a) PW2 Saraswati Aangre is the First Informant in the instant case. She is a resident of Pune. Her daughter Sujata married respondent/accused on 28th April 1999. Thereafter, she started cohabiting with the respondent/accused at Wai

in Satara district. They were residing in the tenanted premises owned by PW4 Jaywant Mandhare. The respondent/accused was serving in the Life Insurance Company.

(b) It is case of the prosecution that the respondent/accused was suspecting the character of Sujata and torturing her mentally by stating that she has some affair at Pune and she looks at strangers. According to prosecution case, on two occasions, Sujata was aborted against her wish. Thus, according to the prosecution case, the respondent/accused used to subject his wife Sujata to cruelty by suspecting her character as well as by forcing her to abort on two occasions. Fed up with constant ill-treatment, on 20th March 2000, in the morning hours, Sujata committed suicide by jumping in the canal. Her dead body was then fished out of the canal. Report (Exhibit 30) of the accidental death of Sujata was lodged by the respondent/accused on 20th March 2000 itself.

(c) After receipt of intimation of death of Sujata, her parental relatives went to Wai. Her mother PW2 Saraswati Aangre lodged First Information Report (FIR) (Exhibit 24) against the respondent/accused on 20th March 2000 itself. The Investigating Officer then recorded statement of witnesses. Dead body of Sujata was sent for autopsy and on completion of routine investigation, charge-sheet for offences punishable under Sections 498A and 306 of the Indian Penal Code came to be filed against the respondent/accused.

(d) After framing charge, in order to bring home guilt to the respondent/accused, the prosecution has examined in all seven witnesses. In order to prove abetment by the

respondent/ accused to deceased Sujata by subjecting her to cruelty within one year of her marriage, the prosecution has placed reliance on evidence of PW1 Sanjay Aangre - brother, PW2 Saraswati Aangre - mother and PW3 Aatmaram Aangre - cousin uncle and PW5 Tukaram Hovale - maternal uncle of deceased Sujata. The prosecution has also examined landlord cum neighbour of the respondent/ accused and deceased Sujata namely, PW4 Jaywant Mandhare. Police Head Constable Jyotiram Bhosale is examined as PW6 to prove suicidal death, whereas the Investigating Officer Dipak Savant, Assistant Police Inspector, is examined as PW7.

(e) After hearing the parties, the learned trial court concluded that the prosecution has failed to prove that deceased Sujata was subjected to cruelty by the respondent/accused or he had abetted commission of suicide by Sujata by subjecting her to cruelty. Accordingly, by the impugned judgment and order, the learned Ad-hoc Additional Sessions Judge was pleased to acquit the respondent/accused.

3. I have heard the learned APP appearing for the appellant/State. He vehemently argued that by clear and cogent evidence of brother, mother and cousin uncle of deceased Sujata, the prosecution has established cruel treatment by the respondent/accused to deceased Sujata, who died within one year from her marriage with the respondent/accused, and therefore, offences alleged against the respondent/accused are proved. Per contra, the learned advocate appearing for the respondent/accused justified the impugned judgment and order.

4. I have carefully considered the rival submissions and also perused the record and proceedings including deposition of

witnesses and documentary evidence adduced by the prosecution.

5. Now let us examine whether Sujata Dattatraya Kadam died homicidal death on 20th March 2000. Sujata was residing with her husband i.e. the respondent/accused at the house of PW4 Jaywant Mandhare. The house was comprising of six rooms and the respondent/accused along with deceased Sujata was residing in one of these six rooms. Evidence of PW4 Jaywant Mandhare shows that on 20th March 2000, upon getting information in respect of death of Sujata, he had been to the bank of canal and found dead body of Sujata kept there.

6. Evidence of PW6 Jyotiram Bhosale, Police Head Constable, shows that on 20th March 2000, the respondent/accused came to the police station and lodged report Exhibit 30. The report Exhibit 30 lodged by the respondent/accused is to the effect that in the morning hours, he found Sujata missing and when he searched for her in the vicinity, he saw her dead body in the water of the canal. The respondent/accused reported to police that Sujata committed suicide and that is how A.D.Case No.16 of 2000 came to be registered.

7. The report at Exhibit 30 came to be lodged by the respondent/accused when there was no offence registered at the police station in respect of death of Sujata. It is neither a confession nor a statement recorded during the course of investigation. The report at Exhibit 30, as such, has relevance under Section 21 of the Evidence Act, as an admission.

8. The certificate regarding cause of death Exhibit 13 and postmortem report at Exhibit 14 shows that Sujata died because of asphyxia caused due to drowning. There was no reason for her to go to the canal in the morning hours and evidence on record does not suggest that she had accidental fall in the canal. In this view

of the matter, I find no infirmity with the finding of the learned trial court that Sujata died suicidal death on 20th March 2000.

9. Now let us examine whether evidence of prosecution establishes cruelty as defined by explanation to Section 498A of the Indian Penal Code and whether the prosecution can establish that by subjecting a married woman to cruelty, the respondent/accused had abetted her to commit suicide.

10. For establishing cruelty, the prosecution had relied on evidence of brother, mother and uncles of deceased Sujata. They are PW1 Sanjay Aangre - brother, PW2 Sarawati Aangre - mother, PW3 Aatmaram Aangre - cousin uncle and PW5 Tukaram Hovale - maternal uncle. At this stage, it needs to be kept in mind that in the offences of the present nature, allegations are very easily made and once made, it is very difficult to dislodge them. Mostly in such cases, prosecution witnesses are near and dear ones of the deceased. Therefore, if the evidence fails to inspire confidence, then it is advisable to look for corroboration from some independent source. Evidence of neighbour in such matters assumes great importance because they are eye witnesses to the matrimonial life of the couple.

11. In the case in hand, PW1 Sanjay Aangre, PW2 Saraswati Aangre, PW3 Aatmaram Aangre and PW5 Tukaram Hovale have deposed in unison that after marriage, the respondent/accused used to harass Sujata by suspecting her character. He used to say that Sujata was having some affair with somebody and was giving mental torture to her. PW5 Tukaram Hovale claimed that four months prior to the incident of suicidal death of Sujata, she had disclosed to him that the respondent/accused was ill-treating her by suspecting her character, but this witness has accepted the fact that he did not even persuade the

respondent/accused in the matter. In the like manner, PW1 Sanjay Aangre has also admitted in cross-examination that he had not disclosed to his mother PW2 Saraswati Aangre about narrations of Sujata regarding suspicion by her husband on her character. That apart, evidence of all these witnesses is too vague on this aspect. They have not spoken that deceased Sujata had declared them name of a specific person with whom, according to the respondent/accused, she was having some affair. What type of ill-treatment the respondent/accused used to give her on this pretext, is also not disclosed by any of these witnesses. Thus, allegations are general in nature regarding suspicion and the manner in which she used to be ill-treated by the respondent/accused because of this reason, is also not clarified by any of the witnesses.

12. The next allegation in order to establish cruelty is two forced abortions of deceased Sujata by the respondent/accused. On this aspect, cross-examination of PW2 Saraswati Aangre - mother, becomes relevant. In paragraph 7 of her cross-examination, PW2 Saraswati Aangre has stated thus :

"7 In July, 1999 Sujata was taken to the hospital of Dr.Saigaonkar at Wai for her per vagina bleeding. At that time the dilatation and evacuation was done by Dr.Saigaonkar. Then in October, 1999 Sujata was again pregnant. At that time also Sujata was taken to Dr.Purohit for P.V.bleeding. Dr.Purohit is our family doctor, therefore Sujata had suggested to go to Dr.Purohit. There again evacuation was done by Dr.Purohit. Thereafter, Sujata never remained pregnant till her death. It is not true that Dr.Purohit had told that Sujata will not retain, if conceived."

13. PW3 Aatmaram Aangre, who is cousin uncle of deceased Sujata, has stated in his cross-examination that the first evacuation of Sujata was done by Dr.Saigaonkar at Wai. She again remained pregnant and then she was taken to Dr.Purohit. At that place, evacuation was done. This witness has candidly

accepted the fact that he has not stated to police while recording his statement that deceased Sujata had disclosed to him that her abortions were done against her will.

14. The prosecution has placed on record medical certificates at Exhibits 16 and 17 in respect of medical termination of pregnancy of deceased Sujata. These certificates reveal that initially on 9th July 1999, Sujata was found to be a patient of incomplete abortion and she was bleeding per vagina. Therefore, evacuation was done under general anesthesia by Dr.Saigaonkar. Another certificate reveals that on 24th October 1999, Sujata was admitted to hospital of Dr.Purohit as a patient of vaginal bleeding, pain in hypogastrium as well as fever. The certificate at Exhibit 17 shows that evacuation was done for inevitable abortion due to pelvic infection. This evidence adduced by the prosecution indicates that there were no forced abortions on deceased Sujata done against her will or consent by the respondent/accused. Thus, the very substratum of the prosecution case is shaken from the evidence adduced by the prosecution itself.

15. The term "cruelty" implies harsh and harmful conduct with certain intensity and persistence. It covers act causing both physical and mental agony as well as torture or tyranny. Harassment though not defined in Section 498A of the Indian Penal Code, amounts to subjecting a person with unbearable, continuous or repeated unprovoked vexatious attacks causing harm or pain. Section 498A of the Indian Penal Code does not come into play in every case of harassment and / or cruelty. The prosecution is required to prove willful conduct of such a nature as is likely to propel or compel to commit suicide or to cause grave injury or danger to her life, limb or health. In the case in hand, allegations coming on record from the mouth of near and dear

ones of the deceased are not of such a nature which could drive Sujata to commit suicide. They are not of sufficient gravity. No grave or sudden provocation to deceased Sujata to end her life can be found from the evidence of the prosecution. To crown this all, evidence of PW4 Jaywant Mandhare, who is next door neighbour, as well as landlord of the deceased goes to show that everything was well in matrimonial life of deceased Sujata. Thus, I am unable to find out any instigation, provocation, incitement or encouragement by the respondent/accused to deceased Sujata to end her life by subjecting her to cruelty as defined by explanation to Section 498A of the Indian Penal Code.

16. No infirmity, as such, can be found in the impugned judgment and order of acquittal of the respondent/accused recorded by the learned trial court.

17. In the result, the appeal is devoid of merits and the same is dismissed.