
(2015) 02 BOM CK 0355
In the Bombay High Court
Case No : Criminal Appeal No. 459 of 2001

The State of Maharashtra

APPELLANT

Vs

Madhav and Others

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 306, 323, 34, 498-A

Citation : (2015) 02 BOM CK 0355

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

Bench : Single Bench

Advocate : R.K. Ladda, A.P.P., for the Appellant; Vijay Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.I.S. Cheema, J.—This is appeal against acquittal of respondents - original accused (hereinafter referred as "accused") under Sections 498-A , 306 read with Section 34 of the Indian Penal Code (I.P.C. for short). Respondent No. 2 Kaushalya died during pendency of the appeal and the appeal abated against her.

2. Respondents - accused were tried before Ad-hoc Assistant Sessions Judge, Parbhani in Sessions Trial No. 83/2001 and came to be acquitted on 3.7.2001. Against the acquittal, present appeal was filed by State which was admitted.

3. In short, the case of prosecution is as follows:

"(a) On 2.4.2000, while victim Parvatabai was residing with the accused persons at Brahmangaon, Taluka Parbhani, she poured kerosene on herself and burnt herself. She was admitted to the Civil Hospital, Parbhani. Her dying declaration (Exh. 23) came to be recorded by Head Constable Vasantrao Jadhav (P.W.9) on 3.4.2000. She informed that, she was married to accused No. 1 Madhav two years back and has a daughter. She was treated well for 2-3 months. Last Diwali, when she went to her parent's place, she told them about her trouble that her in-laws were alleging that she does not know work; cannot cook; she is black; they

do not like her; she has white spots; she should bring Rs. 5000/- and one tola gold or else they will not maintain her. She claimed that she had trouble from the accused persons and she was being beaten, abused and kept on starvation. Whenever she was going to place of her parents, she was telling this to them. On 2.4.2000, at about 5.30 p.m. for reason that daughter Pooja brought small container, the three accused, in conspiracy, beat her. As for no reason she was being abused and mentally and physically ill-treated, getting tired, out of anger she burnt herself. Thus, she had complaint against the accused persons and was filing the same.

(b) Dying declaration with above contents was recorded on 3.4.2000 at about 8.00 - 8.30 a.m. and endorsed by Dr. Hamid Karim (P.W.5). Crime was registered at 32/2000 by Police Station, Parbhani under Sections 498-A , 323 , 34 of the Indian Penal Code.

(c) Earlier, in the night at 11.40 - 11.55 p.m. of 2.4.2000, dying declaration Exh. 25 had been recorded by Special Executive Magistrate P.W.6 Shaikh Khurshid, endorsed by Dr. Balasaheb Masare (P.W.10). In that dying declaration also the victim had alleged that the accused persons beat her and out of anger she burnt herself.

(d) After registration of the crime, spot panchanama was recorded and statements of witnesses were also recorded. Parvatabai expired on 8.4.2000 and her post mortem was got done. She had 95% burns. She died due to cardio respiratory arrest due to 95% burns and septicemia. Police completed the investigation and charge sheet came to be filed.

Matter was committed to the Court of Sessions as above. The charge was framed against the three accused under Sections 498-A and 306 read with Section 34 of the Indian Penal Code. Accused pleaded not guilty. Their defence, as it appears, from cross-examination of witnesses, is that of denial. Prosecution brought on record evidence of 10 witnesses. Trial Court considered the oral and documentary evidence brought on record by the State and after considering the arguments, acquitted the accused persons."

4. I have heard learned A.P.P. for the State and counsel for respondents No. 1 and 3 - the accused. According to learned A.P.P., prosecution had brought on record evidence of P.W.1 Ashroba Chavan, the father, P.W.2 Bhagwan Chavan, the cousin brother of victim Parvatabai as well as P.W.4 Baburao Kaldade, person residing near the house of accused to prove that the victim was being given ill-treatment amounting to cruelty and in spite of such evidence, the accused persons were acquitted. Learned A.P.P. submitted that, there were two dying declarations. The first short dying declaration Exh. 25 was recorded by Special Executive Magistrate Shaikh Khurshid (P.W.6), which was endorsed by the doctor P.W.10 Dr. Balasaheb Masare. The second dying declaration was recorded in the morning by the Head Constable Vasantrao Jadhav (P.W.9) which also was endorsed by the doctor P.W.5 Dr. Hamid. According to the A.P.P., in both the

dying declarations the victim had informed that she was being ill-treated by the accused persons and thus, she had burnt herself. The A.P.P. argued that, the trial Court wrongly found that there was difference in the two dying declarations Exh. 23 and Exh. 25. According to her, P.W.4 Baburao Kaldate was wrongly disbelieved on the ground that although he was knowing about the ill-treatment to the victim, he had not complained to the Police Patil or others. A.P.P. argued that, the trial Court did not hold that the incident was accidental. According to the A.P.P., the accused persons should have been convicted. She submitted that, the first dying declaration Exh. 25 was not in details and so, Exh. 23 had to be recorded. The death occurred within seven years of marriage and there was evidence of ill-treatment, which included demands for money and the victim was taunted. She relied on the judgment of *Najjam Farouqi Vs. State*, to submit that conviction can be based even on dying declaration without seeking corroboration.

5. Per contra, the learned counsel for respondents - accused submitted that the trial Court has discussed the evidence that there was no material that the victim, when her dying declarations were recorded, on the two occasions, was in fit state of mind to give her statements. According to him, the doctor merely recording that the patient was conscious, which is not enough. The victim had 95% burns and her condition was serious and she could not have made long statement like Exh. 23 which is apparently in the language police writes. The persons recording dying declarations did not record even their own satisfaction that the patient was in a fit condition to make statement. He referred to the evidence of P.W.2 Bhagwan that the victim was living happily with the accused persons. She also had a daughter. According to him, the evidence that the victim was being starved by way of ill-treatment has no substance as the post mortem report Exh. 15 shows that she was well nourished. The medical evidence shows that both the palms had 100% burns, but still dying declaration Exh. 23 surprisingly shows clear ridges in the thumb impression. As regards cruelty, the counsel submitted that the mediators who are said to have been there, were not examined. The counsel relied on the judgment in the matter of *Nallabothu Ramulu @ Seetharamaiah and Others Vs. State of Andhra Pradesh*, to submit that, if the view taken by the trial Court is a possible view and there has been acquittal, the same should not be disturbed.

6. Point for consideration is:

"Whether offence under Sections 498-A , 306 read with Section 34 of the Indian Penal Code was proved as claimed by the prosecution."

7. Regarding the acts of cruelty, there is evidence of P.W.1 Ashroba, the father of P.W.2 Bhagwan Chavan, the cousin brother and P.W.4 Baburao Kaldate, nearby resident to be considered. P.W.1 Ashroba deposed that the marriage of Parvatabai with accused No. 1 took place four years before. The victim in her dying declaration Exh. 23 stated that the marriage had taken place two years before the incident. P.W.1 Ashroba claimed that his daughter was treated well for 5-6 months. At the time of Diwali, she had come and stated that the accused No.

1 to 3 have started ill-treating her; they were saying that she is black complexion and has white spots; that she is unable to do household work; that they were demanding Rs. 5000/- and gold ring and that she was being beaten and starved. In this regard, P.W.2 Bhagwan, the cousin brother stated that when the victim came at the time of Diwali, he came to know that she was being ill-treated and that she stated that the accused had beaten her and they had stated that they disliked her and that she was unable to prepare meals. P.W.4 Baburao Kaldate, who claims to be the neighbour, claimed that, after marriage, accused persons gave good treatment to Parvatabai for first three months and thereafter they had started quarreling with her and were ill-treating her. He claimed that the accused were telling her that she has black complexion and leucoderma and that she should bring Rs. 5000/- from her parents. He deposed that, on two occasions he attempted to give understanding to the accused but they were not in mood to listen. P.W.4 added that whenever Parvatabai had been to him, she stated that the accused were ill-treating her.

8. The trial Court discussed the above evidence and these witnesses (in para 11 of its judgment). The trial Court discussed the evidence of P.W.1 that the marriage of Parvatabai was fixed with the accused No. 1 after negotiations and after they had seen each other. The trial Court thus discarded the reasons given that the accused were taunting that Parvatabai was black complexion and that she had leucoderma. The evidence that Parvatabai was being starved was discarded by the trial Court referring to the post mortem report Exh. 15 which was admitted by accused, which recorded that the dead body was of a healthy and well nourished person. P.W.1 deposed that his daughter had stayed at his house for 2-3 months and thereafter, after mediation of some persons he had sent his daughter again to the accused for cohabitation. The trial Court discussed this evidence to observe that the said mediators had not been examined. Trial Court has then discussed the evidence of P.W.2 Bhagwan Chavan who admitted in cross-examination that Parvatabai had a daughter and she was living happily with the accused persons. Thus, the trial Court reasoned that the claim of ill-treatment was required to be discarded. The evidence of the neighbour P.W.4 Baburao was also examined that he did not depose as to which were the two earlier occasions when he had met the accused to make them understand. The trial Court discarded the evidence of P.W.4 on the basis that rustic lady like Parvatabai would not tell such things of her house to a man who was unknown. The evidence of P.W.4 is that, whenever P.W.1 Ashroba visited their village, Ashroba used to meet him. This evidence was discarded by the trial Court on the basis that Ashroba has not stated anything about this. The claim of P.W.4 of having knowledge about the accused persons was discarded on the basis that the witness did not have knowledge about the settlement of the marriage.

The trial Court has not discussed, but the evidence of P.W.4 also contains material omission. Although P.W.4 Baburao claimed that accused were quarreling with Parvatabai and were ill-treating her and taunting and making demands (as referred above), he did not claim that he had personally seen such incidents or

details of the incidents regarding time or place. He deposed that, whenever Parvatabai had been to him, she stated about ill-treatment from accused to him. In the cross-examination of P.W.4, he claimed that he had told this to the police. However, P.W.8 P.S.I. Vijaykumar denied that any such statement was made by this witness to him.

9. P.W.1 Ashroba, although he claimed that the three accused persons were harassing his daughter, and even claimed that he had gone to the house of accused to explain that he did not have the financial capacity, still in the cross-examination, pleaded ignorance and stated that he did not know whether accused No. 3 with her husband was residing in the field of one Deshmukh at Akhada since last 12 years. If the evidence of P.W.2 Bhagwan is perused, he admitted in cross-examination that it was true that the husband of accused No. 3 Sangita was doing labour work at the field of one Deshmukh as a yearly servant. P.W.4 Baburao deposed in cross-examination that it was true that accused No. 3 Sangita and her husband were doing agricultural labour work on yearly basis in the field of Deshmukh Parlikar. Thus, it appears that accused No. 3 was residing with her husband who was working on yearly basis at the field of one Deshmukh. Even regarding accused No. 2 Kaushalya (now deceased), P.W.1 Ashroba first denied that accused No. 1 and 2 were residing separately. However, then he accepted that, after some period, the accused No. 1 and 2 had started to reside separately. Thus, although accused No. 2 and 3 were residing separate, the evidence led by prosecution from these witnesses was as if the victim was residing with all the three accused and they were harassing her, as claimed.

10. The trial Court discussed the oral evidence of these witnesses regarding cruelty and held that the same was not cogent or reliable.

11. As regards dying declarations, P.W.6 Special Executive Magistrate Shaikh Khurshid claimed that, Constable from Nanalpeth Police Station gave letter to him for recording the dying declaration of the victim. He claimed that he went to the hospital and went to the doctor and with the doctor, went to the patient. According to him, the doctor stated that the patient was conscious and he recorded the dying declaration Exh. 25 between 11.40 - 11.55 p.m. on 2.4.2000. According to him, the victim stated that her mother-in-law, sister-in-law and husband had beaten her and so she had set herself on fire. The witness proved Exh. 25. If the evidence of P.W.10 Dr. Balasaheb is seen, he claimed that, P.W.6 Shaikh Khurshid had come to him and he had gone to Ward and examined Parvatabai and recorded a note on the case papers and also on the paper brought by Shaikh Khurshid for recording the statement that patient is conscious. He deposed that, Shaikh Khurshid recorded the statement and then obtained thumb impression of the victim and he also endorsed below the statement and signed it. If Exh. 25, original dying declaration is perused, this dying declaration (which is first in time) has on the upper left hand side column, a mere endorsement of this doctor P.W.10 Balasaheb that "Pt. is conscious." He has then signed and put his stamp at 11.40 p.m. On the lower side of the page

in the left hand side column, there is yet another endorsement by the same doctor "Statement completed". With signature he has put the time 11.55 p.m. It is a short statement with the title itself claiming that the same to be dying declaration mentioning the name of the victim and recording that in the day at about 5.00 o'clock, her mother-in-law, sister-in-law and husband all three beat her and out of anger she burnt herself. The thumb impression taken is faint on this dying declaration.

12. P.W.8 P.S.I. Vijaymumar Thakurwad admitted in cross-examination that this dying declaration Exh. 25 had reached the Police Station at about 1.00 p.m. on 3.4.2000. However, on this, no offence was registered and in the morning at about 8.00 a.m., Head Constable Vasant Rao Jadhav (P.W.9) went to Dr. Hamid P.W.5. P.W.5 deposed that, the Police Constable came to him, as statement of patient was to be recorded. His evidence is that, the patient was fully conscious from starting point of the statement till completion and that she was in fit state of condition to give the statement. Dr. Hamid deposed that he endorsed the note on the statement about the patient to be in fit state of condition and about her consciousness. Statement of P.W.9 Head Constable Vasant Rao Jadhav, however, is that, he went to the hospital and recorded the statement of Parvatabai and he obtained the signature of doctor on the statement "after" recording the statement. If the original Exh. 23 is perused, it has endorsement of doctor at only one place in the left hand side margin on the front side that, "Pt. is conscious, oriented to give statement in my presence." P.W.5 Dr. Hamid has put his signature below the endorsement with time as 8.30 a.m. (which is ending time). Thus, although the evidence of P.W.5 Dr. Hamid is that, patient was fully conscious from starting point of recording statement till completion and she was in fit state of condition to give statement and he had endorsed accordingly on the statement, the endorsement on the document Exh. 23 is not accordingly. P.W.9, the Head Constable, did not depose that after recording the dying declaration Exh. 23 the same was read over to the victim.

13. The trial Court discussed the above two dying declarations in the light of various judgments which were brought before it and posed a question to itself whether the dying declarations were reliable or not (in para 8 of the judgment). The trial Court discussed the evidence of doctor with reference to Exh. 25 and found that there was no endorsement that patient was in fit state of mind to make declaration. It also found that, P.W.6 Shaikh Khurshid had not stated anything that Parvatabai was in fit state of mind at the time of dying declaration. It also found that, P.W.10 Dr. Balasaheb himself admitted that it was not necessary that all patients who are conscious may be able and fit to give statement. The trial Court discussed the medical evidence which shows that when Parvatabai was admitted in the hospital, she was in irritable state of mind due to pains and that her general condition was irritable till 11.40 p.m. Thus, the trial Court observed that, it was doubtful if Parvatabai was in fit mental condition when Exh. 25 was recorded. Trial Court discussed the medical evidence that since the time Parvatabai was admitted in hospital, her statement of mind was

irritated and her condition went on deteriorating. According to the trial Court, because of this, in Exh. 23 and Exh. 25, the doctors have omitted the certificate about the mental fitness although they recorded that the patient was conscious. Considering evidence regarding both the dying declarations, the trial Court found that they were not free from doubts and infirmities and thus, discarded both the dying declarations.

14. The evidence of P.W.3 Dr. Pandit who carried out the post mortem report, shows that both the hands of the victim were completely burnt i.e. 100%. He stated that, the hands and both palms were completely burnt. Although the dying declaration Exh. 25 has a thumb mark which is not at all clear, Exh. 23 recorded by the Head Constable has thumb mark with clear ridges. Exh. 23 is a typical F.I.R. recorded by police and is apparently in the language of the police. I find, the trial Court has rightly doubted these dying declarations.

15. In the matter of Nallabothu (supra), relied on by the learned counsel for the respondents - accused, the Hon''ble Supreme Court has reiterated the principle that if two views are reasonably possible, appellate Court should not disturb order of acquittal because it feels that some other view is possible.

16. While discussing the evidence available in the record as above, I have simultaneously considered the views expressed by the trial Court on the evidence. After going through the evidence and the reasonings recorded by the trial Court, the view expressed by the trial Court for discarding the evidence is reasonably possible. There is nothing to show that the judgment of the trial Court suffers from any perversity. In this view of the matter, interference in the acquittal recorded by the trial Court is not called for. The prosecution has failed to establish the offence as brought against the accused persons. There is no substance in the criminal appeal.

The criminal appeal stands dismissed.