

(2017) 08 BOM CK 0020
In the Bombay High Court
Case No : 848 of 2003

The State of Maharashtra

APPELLANT

Vs

Makbool Bandagi Mulani, & Ors.

RESPONDENT

Date of Decision : 28-08-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 34](#), [Section 498A](#), [Section 306](#)

Citation : (2017) 08 BOM CK 0020

Hon'ble Judges : Shalini Phansalkar-Joshi

Bench : SINGLE BENCH

Advocate : Geeta Mulekar, Shailesh Chavan, Milind Deshmukh

Final Decision : Dismissed

Judgement

1. In this appeal, which is preferred by the State, an exception is taken to the acquittal of respondents, for the offence punishable under Sections 498A and 306 read with 34 of the Indian Penal Code. The said acquittal was recorded by the learned Additional Sessions Judge, Baramati, by his judgment dated 1.4.2003, delivered in Sessions Case No.15 of 1999.

2. Brief facts of the appeal can be stated as follows :- The marriage of deceased Ruksana was solemnized with respondent No.1 on 29.11.1996 Respondent No.2 is the mother of respondent No.1. Respondent Nos. 3 and 4 are the brothers, respondent No.5 is the married sister and respondent No.6 is the daughter of respondent No.5. After the marriage, Ruksana was residing jointly with respondents. It is alleged that she was treated properly only for five months. Thereafter, there was demand of Rs.5,000/- to purchase sewing machine. Her father could give only Rs.2,500/-. Respondents were not satisfied therewith and hence they again demanded an amount of Rs.20,000/- for purchase of tempo. Ruksana's father again could give an amount of Rs.10,000/-only. Respondents,

therefore, subjected Ruksana to harassment and ill-treatment and as a result, as per prosecution case, Ruksana committed suicide by pouring kerosene on herself and setting her ablaze on 14.11.1990 at about 7.00 p.m. She was immediately taken to Budhrani Hospital. However, she succumbed to burn injuries on the next date on 15.11.1998. Complaint came to be lodged by her father in respect of her death on 19.11.1998 at Walchandnagar Police Station. On his complaint, offence came to be registered against respondents and after completion of due investigation, charge sheet was filed in the court of Judicial Magistrate first Class, Indapur, District: Pune.

3. After committal of the case, the Sessions Court framed charge against respondents vide Exh.9. Respondents pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined in all six witnesses. P.W.1 Hamid is the father of deceased. P.W.2 is the mother of deceased, P.W.3 and P.W.4 are the brothers and P.W.5 is the sister-in-law of the deceased. P.W.6 is the Investigating Officer PSI Andhale. On appreciation of their evidence, learned trial Court was pleased to hold that there were interse contradictions and inconsistencies in the evidence of the prosecution witnesses. Moreover, there was delay of five days in lodging the complaint and hence it was held that the evidence on record is not cogent, convincing and reliable, either to prove the demand or to prove the cruelty to coerce her to commit suicide. Trial Court also found that the evidence on record was not of a conclusive nature to prove that cause of her death was suicidal in nature. Accordingly trial Court has acquitted the respondents, giving them the benefit of doubt.

5. This judgment of the trial court is challenged in the present appeal by learned APP by submitting that the evidence on record clearly goes to show that Ruksana has sustained 92% burn injuries and these injuries were all over her body, including face, head and neck. Such injuries, according to learned APP cannot be possible in case of accidental burns and hence it is submitted that learned trial court has committed error in not appreciating the evidence on record properly. According to learned APP, if it was a case of accidental burns, then Ruksana would have made some efforts to save herself. However, there is no evidence on record to that effect.

6. As regards delay in lodging of complaint, it is submitted by learned APP that sufficient explanation for the same is offered by P.W.1 Hamid in the complaint and also in his evidence before the court. As per his explanation, as he assumed that police had made enquiry with him in the Hospital at Pune, the police had already taken cognizance, hence he need not go to Walchandnagar Police station to lodge complaint. When Jejuri police came to enquire, he went to Walchandnagar Police Station to register offence. Thus, according to learned APP, there is sufficient evidence to prove the charge of cruelty and ill-treatment and to-negate case of defence that it was case of accidental burns. Hence in the submission of learned APP, the view adopted by the trial Court, in acquitting respondents is perverse and interference of this Court is warranted to set aside

the acquittal of respondents.

7. Per contra, learned counsel for the respondents has supported the impugned judgment and order of the trial Court by adopting the reasons which are given by the trial Court in its judgment.

8. In the instant case, admittedly the death of Ruksana has taken place within 2 years from the date of her marriage. Her marriage has taken place on 29.11.1996 and she has succumbed to burn injuries on 15.11.1998. It is also not in dispute that the cause of her death was shock due to burn injuries. The only question, therefore, for consideration is whether there is sufficient evidence to draw presumption as laid down under Section 113(A) of the Evidence Act, to prove that she was subjected to cruelty and harassment and the cruelty and harassment was of such a nature as was likely to drive her to commit suicide or cause burn injuries to herself. As per prosecution case, which is tried to be proved through evidence of parents of deceased, there was such a cruelty and harassment to meet unlawful demand of the cash.

9. To prove this demand and cruelty, prosecution has relied upon evidence of her father P.W.1 Hanif, who has deposed that after the marriage Ruksana was treated properly only for five months. Thereafter respondents started giving her troubles. She had informed him that her husband i.e. respondent No.1 was demanding cash amount of Rs.5,000/- for purchasing sewing machine. He gave Rs.2,500/- to her and sent her back to the house of respondents. But respondents were not satisfied, they again demanded Rs.20,000/- for purchase of tempo, at that time he gave Rs.10,000/- at the hands of his son P.W.3 Firoz. However, demand of the money did not stop and her harassment continued. During this period, she has also given birth to a son and stayed in his house for about 2 1/2 months. Thereafter again demand was made of Rs.20,000/- to take a room on rent. According to him, at that time, his son P.W.3 Firoz gave that amount to the respondent. However, on the very next day, he received telephonic message that Ruksana was admitted in Civil Hospital at Baramati with burn injuries, and then she was shifted to Budhrani Hospital, Pune. Thereafter about 10 days, he went to police station to lodge complaint.

10. In his cross-examination he has admitted that he has not gone to the police station on his own accord, but when police came to his house, he went to lodge complaint. In his cross examination he has also admitted that in the complaint he has not stated that he gave Rs.10,000/- to P.W.3 Firoz to give it to respondent No.1. He has also not stated in the complaint that Ruksana told him that respondent No.1 was demanding Rs.20,000/- to take a room on rent. According to his evidence, after the marriage, Ruksana, has completed her graduation in Arts.

11. Then there is evidence of P.W.2 Haimabi, the mother of Ruksana, who has also deposed about demand of Rs.5,000/- for purchase of sewing machine. Her husband gave respondent No.1 an amount of Rs.2,500/- at the hands of their

son Firoz. She has then deposed about further demand of Rs.20,000/- for purchase of tempo and her husband gave Rs.10,000/-. Even then there was harassment to her daughter.

12. The evidence of P.W.3 Firoz is only on the point of that he had given amount of Rs.2,500/- to respondent No.1. According to his evidence, Ruksana never complained to him or never talked with him about demand of money or harassment or cruelty. He has further deposed that Ruksana never talked to his parents also in his presence about the torture and demand.

13. P.W.4 Javed, the brother of Ruksana, has deposed about giving of some amount to respondent No.1 and respondent No.1 asking him to give message to his father to send more amount. He has also not deposed anything about harassment or ill-treatment to Ruksana at the hands of respondent No.1.

14. Similarly P.W.5 Mumtaj the wife of P. W. 4 Javed has also not stated anything about harassment or ill-treatment to Ruksana. She has categorically stated that Ruksana never told her of any torture to her and in her presence Ruksana never told her husband or did not talk with her husband about such torture or ill-treatment. It is pertinent to note that this witness along with her husband P.W.4 Javed had gone to the house of Ruksana on 14.11.1998 that is on the very day of incident. But according to her evidence at that time Ruksana has not stated anything about ill-treatment or harassment.

15. Thus, there may be some evidence about the demand of money, but as regards harassment, ill-treatment or cruelty at the hands of respondents, to meet this demand, there is no consistent, cogent or corroborating evidence. Apart from the absence of evidence of any independent witness, even the evidence of family members is not corroborating to each other.

16. It is pertinent to note in this context that P.W.1 Hanif has also stated in his cross-examination that his brother-in-law Alamgir narrated the contents of the complaint to P.S.O. and he had simply signed on the said complaint.

17. There is delay of five days in lodging complaint. Ruksana was admitted in the Hospital for burn injuries on 14.11.1998 and she succumbed to the burn injuries on 15.11.1998. During this period, no effort was made to record her dying declaration. Even the F.I.R. was not lodged immediately, but it was lodged only 19.11.1998. The explanation offered that P.W.1 assumed that police had taken action as police had made enquiry with him at Pune, does not appear to be convincing, especially in the light of his admission that his brother-in-law Alamgir has given the contents of F.I.R. and he has merely signed it. Ruksana's brothers, P.W.3 Firoz, P.W.4 Javed and sister-inlaw P.W.5 Mumtaj are not saying anything about disclosure of the harassment or ill-treatment by Ruksana to them or in their presence to their parents.

18. Even as regards the cause of death, the medical case papers and postmortem report show that history was given of accidental burns due to

bursting of stove. At the spot, the stove, which has turned blackish on account of burst was also found and seized. There may be some substance in the submission advanced by learned APP that the extent of injuries and the fact that they were on all over body including back and face, may not support the case of accidental burns, but there is no evidence, as rightly observed by trial Court, that it was a case of suicidal burns.

19. The letters which are produced on record by the respondents in their statement recorded under Section 313 of Code of Criminal Procedure, go to show that Ruksana was happily married. Admittedly she has completed her graduation after marriage. The letters also show that respondents were taking care of her. The contents of letters reveal that at the instance of her husband she was intending to complete B.Ed also. Therefore, apparently there does not appear to be any reason for her to commit suicide. In the letter written by Investigating Officer produced at Exh.38 dated 30.11.1998 also the Investigating Officer P.W.6. PSI Andhare, has stated that it was a case of accidental burns. Hence, as rightly observed by trial Court, it becomes difficult to accept the case of suicidal burns. The possibility of burns can be accidental as well as suicidal and here the evidence on record does not rule the possibility of accidental burns. Even the Investigating Officer, has also proceeded on that possibility by writing letter Exh.38. Therefore, in such situation when two inferences are possible, as the inference which is favourable to the respondents/accused needs to be drawn, the trial Court has drawn such inference. The view adopted by the trial Court which is, thus, plausible and possible view, it cannot be disturbed in the appeal against acquittal.

20. The law is well settled that unless the view adopted by the trial Court is perverse meaning thereby it is not at all possible for any reasonable prudent man to adopt such view, and such view is not based on the evidence on record, then only appellate court should be justified to interfere in the judgment against acquittal. The reasons for the same are two-fold; first reason is that the presumption of innocence which is lying in favour of the accused is further strengthened by his acquittal by the trial Court and the second reason is that the trial Court has an added advantage of observing the demeanor of the witnesses at the time of trial while recording their evidence which benefit the appellate Court is not having and therefore, if the view adopted by the trial Court is plausible and possible view, the Appellate Court should be slow in interfering with that view, in an appeal against acquittal.

21. Here, in this case no doubt the death of Ruksana was definitely an unfortunate and tragic one, but as the prosecution has failed to prove beyond reasonable doubt that the cause of her death is suicidal one, and it was on account of the demand and cruelty meted out to her by the respondents, the benefit of doubt extended to them by the trial Court cannot be taken away in this appeal. Hence the appeal stands dismissed.