
(2013) 01 BOM CK 0248
In the Bombay High Court
Case No : Criminal Appeal No. 257 of 2002

The State of Maharashtra

APPELLANT

Vs

Narayan and Others

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 4252

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

Bench : Single Bench

Advocate : V.D. Rakh, app, for the Appellant; P.M. Shinde h/f. Mr. N.L. Jadhav, for the Respondent

Judgement

T.V. Nalawade, J.—The appeal is filed against judgment and order of Sessions Case No. 10/1998, which was pending in the Court of Additional Sessions Judge, Nilanga, District Latur. The respondents are acquitted of the offence punishable u/s 498A, 306 and 34 of Indian Penal Code. Both the sides are heard. This Court has perused the original record.

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

Deceased Prabhawati was a daughter of complainant Dnyanoba Shinde, who is resident of Ganjur, Tahsil Chakur. The accused persons hail from village Takli, Tahsil and District Latur. About two and half years prior to the date of incident Prabhawati was given in marriage to accused No. 1. Accused Nos. 2 and 3 are real brothers of accused No. 1 and accused No. 4 is father of accused No. 1. After the marriage Prabhawati started cohabiting with accused No. 1 in Takli, where all the accused were living together.

3. The trouble started when accused No. 4 purchased three acres of agricultural land for the family. For purchasing the land, he demanded Rs. 50,000/- from the family of complainant. Complainant could give Rs. 35,000/-. The accused were not satisfied with this amount and so the ill-treatment was started to the

deceased. The accused were expected to return the amount, but the accused refused to return the amount and to see that the amount is not demanded back, they started harassing the deceased. Deceased used to disclose about the ill-treatment to her parents and others. Lastly, complainant left the deceased to the matrimonial house after celebration of "Padva" festival and he told the accused that he was not in hurry to get back the amount and the accused were at liberty to return the amount as per their convenience. At the relevant time, deceased was having a son, aged about 10 months.

4. The incident took place on 8.5.1997. In the noon time, in the field of accused, Prabhawati died. Report in respect of death was given by the family of accused to the police and A.D. came to be registered. Inquest came to be prepared and the dead body was came to be referred to the P.M. examination. Viscera was preserved for final opinion. After completion of funeral, the complaint came to be given on 10.5.1997 and the crime came to be registered. C.A. report showed that deceased had consumed poison Endosulfine. The chargesheet came to be filed for aforesaid offences.

5. To the charge, all the accused pleaded not guilty. Prosecution examined nine witnesses. During trial, the complainant produced two documents like (i) inland letter allegedly sent by deceased and (ii) one chit allegedly written by the deceased. The Trial Court has acquitted the accused by holding that there is smell of concoction to the story given by the witnesses. Two documents, which could have been used as dying declarations, are disbelieved by the Trial Court.

6. It was submitted by learned APP that the death took place within two and half years of the marriage, the deceased committed suicide by consuming poison, there were some injuries on the person of deceased, there are two chits written by the deceased and there is a substantive evidence to show that there was illegal demand of money. It was submitted that the Trial Court could have easily drawn presumption u/s 113A of Evidence Act and could have convicted all the accused. Learned advocate for respondent submitted that everything has been exaggerated. He submitted that that F.I.R. was given late and everything appears to be afterthought. He submitted that the view taken by the Trial Court is a possible view and there is no possibility of interference in the decision given by the Trial Court.

7. Dnyanoba, complainant (PW 1) has given evidence that after one year of the marriage, there was the demand of Rs. 50,000/- and he gave Rs. 35,000/- to meet the demand. His evidence does not show that he knows as to when the land was purchased. In examination in chief, he has not referred the necessity for which the amount was demanded by the accused. He has tried to say that amount of Rs. 5,000/- was given in next sowing season. Thus, it cannot be said that the amount was demanded for purchasing agricultural land. It was necessary for prosecution to give particulars about the sale transaction and the period when the amount was required. The entire case of prosecution is based on this illegal demand. However, PW No. 1 has deposed that to see that there is no

trouble to the deceased, he had informed them that they may give the amount as per their convenience. In that case, there was no reason for the accused to give harassment to the deceased.

8. The evidence of Dnyanoba (PW 1) to the effect that when the amount was not returned, he had taken his daughter back to parents house shows that he has exaggerated everything. The cross examination shows that the customary practices were followed by accused. Other witnesses have admitted that on many occasions deceased used to visit the house of the parents. For the purpose of delivery, the deceased had stayed in the house of parents for a period of two months. She had lastly celebrated "Gudi Padva" festival in the house of parents and the alleged incident took place about one month after "Padva" festival. These circumstances create doubt about the case of prosecution that there was harassment, as accused wanted to grab the amount which was allegedly given by the complainant to them. There is one more circumstance. It appears that brother of deceased has been working as a police constable and if at all some help was given, the complainant's family would not have insisted much for return of the amount.

9. The record shows that after examining all the witnesses, two documents came to be produced. One document is inland letter allegedly sent by deceased and other is a chit, allegedly written by the deceased. The evidence on record shows that these two documents were available with complainant before filing of the chargesheet, but they were not produced before the police. Police collected Transfer Certificate in respect of the deceased to show that the deceased was educated up to 10th standard. In spite of these circumstances, the hand writing of the deceased was not sent for comparison with these two documents viz. Exhs. 74 and 75. There is the opinion of Hand Writing Expert to show that Exhs. 74 and 75 were written by the same person, but it is not sufficient to prove that these documents were written by the deceased. The complainant is illiterate person and so it was not possible to him to identify the hand writing of the deceased. Even in the Court the educated persons from the family of the complainant have not come forward to give evidence in respect of these two documents. Inland letter shows that there is no stamp of the post office from where the letter was posted. The evidence shows that there is no post office at Takli and so there was no question of posting the letter at Takli. All these circumstances have created a probability that the side of the complainant tried to create some record after the incident against the accused. This conduct needs to be kept in mind at the time of appreciation of the evidence given by all the witnesses of the prosecution.

10. The evidence on the record shows that the family of the complainant knew about the incident right from 8th. When there is a police constable in the family of the complainant, no report was given on 8th or 9th and the report came to be given on 10th, that too, by sending a letter to Superintendent of Police, Latur. The funeral of Prabhawati took place in the village of the accused. All these

circumstances show that the things are afterthought.

11. Even if the evidence of complainant PW 1 and his report at Exh. 52 is considered as they are, they show that the allegations about the nature of ill-treatment are very vague. The allegations are made that accused No. 2 and 3 used to tease her and they used to give abuses to her. There are only male members in the family of the accused and in spite of that, such allegations are made against brothers of husband of deceased and father in law of the deceased. The other witnesses like sister in law of deceased has exaggerated the things. She has tried to say that the deceased used to disclose that the accused were threatening her to finish her. This witness is the wife of police constable. Her evidence shows that she had met the deceased on 30-35 occasions after the marriage, but she was unable to visit the Takli village of the accused. Nobody from village Takli is examined as witness. Saraswati (PW 3) is said to be a friend of deceased. Her evidence is very vague. She has tried to say that some amount was borrowed by husband of deceased and the amount was not repaid and there was harassment to the deceased. She has also exaggerated the things by saying that accused were threatening her that they would perform second marriage of the husband and they would finish the deceased. The evidence of Prakash (PW 4), brother of deceased, is similar to the evidence of PW 1. Some contradictions in relation to his previous statement are brought on the record and they are with regard to the reason for which the amount was paid. The defence has suggested to the witnesses that the deceased was under some medical treatment and Dr. Mamta Bora was giving her treatment. The witnesses have avoided to admit that there was some medical treatment being given to the deceased. The evidence of Samindar (PW 5), mother of deceased is similar in nature.

12. The deceased has left behind her a son aged about 10 months. The aforesaid circumstances show that the deceased used to visit regularly the house of her parents and she was never prevented from doing so by the accused. The allegations with regard to the nature of ill-treatment are very vague. The allegation of demand of money does not appear to be true. The two documents allegedly written by the deceased do not appear to be genuine. The F.I.R. was given very late. Due to all these circumstances, it is difficult to believe the prosecution witnesses. The aforesaid evidence is not sufficient to prove the offence punishable u/s 498A of I.P.C. Though the Trial Court has not given finding that it is a case of suicide, such inference can be drawn as the insecticide indosulfine was detected in viscera. But, only due to this reason, the inference cannot be drawn that the deceased committed suicide due to ill-treatment alleged against the accused. The Trial Court has discussed all the circumstances. The view taken by the Trial Court is a possible view. This Court holds that interference in the decision of the Trial Court is not possible. Hence, the appeal stands dismissed.