

(2017) 05 BOM CK 0034
In the Bombay High Court
Case No : 12 of 2003

The State of Maharashtra

APPELLANT

Vs

Ramesh Damodar More, & Anr.

RESPONDENT

Date of Decision : 11-05-2017

Acts Referred:

Indian Penal Code, 1860, Section 34, Section 498A, Section 306 - Acts done by several persons in furtherance of common intention - Husband or relative of husband of a woma

Citation : (2017) 05 BOM CK 0034

Hon'ble Judges : P.N.Deshmukh

Bench : SINGLE BENCH

Advocate : Deepak Thakare, P.H. Gaikwad

Final Decision : Dismissed

Judgement

1. This Appeal is preferred by the State of Maharashtra against judgment in Sessions Case No. 35 of 2002 passed by IInd Adhoc Additional Sessions Judge, Raigad, at Alibag thereby acquitting both the Respondents for the offence punishable under Section 306 read with 34 of Indian Penal Code.

2. In brief case of the prosecution is that both Respondents being referred as accused since provided ill-treatment to the deceased Priya, wife of brother of accused No.1 Ramesh at her matrimonial house. On 19th November 2001 at around 9.30 a.m. she committed suicide by drowning into the well.

3. After the incident of commission of suicide by Priya, intimation of incident was given by Dwarkanath Janu Patil, PW No.3, Police Patil of village Lonare as per Exhibit 24 on the strength of this AD was registered and crime No. 50 of 2001 and during the course of investigation spot panchnama and inquest panchnama came to be drawn and body was sent for post-mortem. Statements of witnesses were recorded and statement of mother of deceased also recorded. The matters was sent to Senior Public Prosecutor for opinion before registration of crime. On

obtaining further opinion from Sr. P.P. Mother of complainant was called in Police Station and her statement was recorded. On the strength of which offence came to be registered vide C.R No. 1 of 2002 and was further investigated. On completion of investigation charge- sheet came to be filed for the offence punishable under Section 306 read with 34 of the Indian Penal Code before the competent Court of Magistrate.

4. In due course of time case came to be committed to learned Sessions Court for trial. Charge is framed against accused to which accused pleaded not guilty and claimed to be tried. To establish the charge against the accused, the prosecution has examined in all five witnesses and commenced its evidence by examining Bharati, PW No.1, complainant, the mother of deceased, Bhaskar, PW No.2 the father of deceased Dwarkanath Patil, PW No.3, Police Patil of village Lonare, Vaman, PW No.4, Head Constable, Investigating Officer, who had investigated AD No.50 of 2001 and concluded evidence by examining Mukund Bhosle, PW No.5, API. Prosecution has proved Spot Panchnama Exhibit 14, Inquest Panchnama Exhibit 15, cause of death certificate Exhibit 16, postmortem report Exhibit 17 and FIR Exhibit 24. Accused did not examine any witness on their behalf nor examining themselves on oath.

5. Learned Trial Judge considered the evidence as above acquitted both the accused. Hence this Appeal.

6. Heard learned APP for the State. None present for the Respondents-Accused. It is submitted by the learned APP that from the evidence of Bharti, the complainant it has come on record that immediately prior to the incident of suicide committed by Priya by drowning into the well, she was subjected to ill-treatment and thus was abetted by both the accused to commit suicide. Prosecution has, therefore, heavily relied upon evidence of PW No.1, the mother of deceased and has submitted that since she is also an eyewitness to incident of quarrel which has taken place between accused and deceased immediately prior to her committing suicide. Prosecution has established charges levelled against the accused and had therefore, submitted that Appeal be allowed.

7. In the background of submissions advanced as aforesaid, I have perused the entire evidence on record with the assistance of learned APP and has also gone through documents.

8. From the evidence of PW No.1 it has come on record that deceased was residing with her husband, who is elder brother of accused No.1 Ramesh in same house but separately since three to four years prior to incident. It has further come in her evidence that about one and half years prior to incident when deceased had visited her parental home at Pen, as she was scolded by accused No.2 Jyoti and therefore, she as well as her husband, son and her daughter went to the house of deceased situated at Lonare. At that time she enquired accused No.2 about reason to scold Priya when quarrel took place between them. She has stated that at that time due to intervention of parents of accused No.2 Jyoti, the

quarrel passified. She also stated that at that time due to intervention of Police Patil of village Lonare, as assurance was given to thereafter not to provide ill-treatment to deceased, she returned back and did not lodge complaint.

9. PW No.1 Bharti has further stated that one and half years thereafter on 16th November 2001 deceased had come to her parents home at Pen. However on the next day she himself brought her deceased daughter to her matrimonial home at Lonare along with her children. On that night since Priya was not keeping good health. She was referred to Doctor Sabu on that night. It is further the case of the complainant that on 19th November 2001 at 9.00 a.m. when she was to return back to her house at Pen, both the accused quarreled with deceased and had manhandled her and in that course of said transaction accused No.1 Ramesh had stated to deceased to go and commit suicide and die and thus Priya rushed to the well situated to the back side of the house and committed suicide by drowning.

10. In view of evidence of complainant as aforesaid it is material to point out that deceased was residing with her husband who is brother of accused No.1 Ramesh separately though in the same house since three to four years prior to incident. Further evidence of complainant is about earlier incident which took place about more than one year before when quarrel had taken place between deceased and accused No.2 Jyoti and was passified due to intervention of parents of accused No.2. Admittedly no reports in this respect of any of these earlier incidents are lodged.

11. As per further evidence of Bharti, Priya had visited her house on 16th November 2001 and on the following day she took Priya to her matrimonial home and on 19th November 2001 when she was about to leave house to come back to Pen quarrel took place between accused and deceased when accused No.1 stated to deceased that she should commit suicide and die. Considering this evidence as aforesaid same appears to be material improvement as PW No.1 Bharti has admitted that though she has stated as aforesaid to Police she is unable to put forth any reason as to why same is not recorded in her statement. This omission therefore goes to the root of the case thereby dislodging case of prosecution of accused No.1 saying to deceased to commit suicide and die. Further evidence of PW No.1 complainant is also not worthy to be relied upon when she admitted that there was some dispute between Priya and her husband prior to incident and he has also issued legal notice to her and has admitted that after the marriage of accused, they were residing separately from deceased and her husband. Though PW No.1 Bharti, the mother of deceased had denied that Priya was suffering from fits and she was continuously under treatment of Dr Sabu. From evidence of PW No.4 Head Constable Mr Mhatre who has investigated accidental death has admitted that during the course of investigation it revealed to him that deceased was epileptic patient and on the day of incident she had an attack of epileptic in her house.

12. Having admitted as aforesaid, it cannot be said that deceased committed

suicide due to any ill-treatment / abatement alleged to have been caused to her by the accused as there is every possibility of deceased committing suicide due to her ill-health.

13. Evidence of PW No.2 Bhaskar, father of the deceased is also similar when he has stated above incident of alleged ill-treatment provided to deceased Priya about one and half years before and has further deposed about the indulgence by parents of accused No.2 Jyoti due to which matter was at that time settled and thus no report was lodged. He has thereafter deposed about the incident dated 16th November 2001 when Priya had come to her parents home and had complained about ill-treatment provided to her and his wife had reached her to her house on 17th November 2001. He has further stated that on 19th November 2001, at about 9.30 a.m. Puja, the daughter of deceased telephonically intimated about quarrel which has arrived between accused, deceased and her mother and therefore states that he started to go to Lonare and on reaching there in noon learnt about suicide committed by Priya. It is material to note that Puja who is daughter of deceased and who is stated to have informed PW No.2 Bhaskar about the quarrel alleged to have occurred on 19th November 2001 is not examined. Even otherwise evidence of PW No.2 Bhaskar also appears to be with material omissions when he claims to have stated in the police statement about incident of quarrel which took place one and half years before and further claims to have stated in his statement of indulgence by Police Patil and due to his intervention quarrel was passified and has further claims to have stated in his statement recorded by police that Puja, the daughter of deceased has telephonically informed about quarrel which was in progress at 9.30 a.m. on 19th November 2001, has shown his inability as to why all these facts are not mentioned in his statement. The omissions are found to be duly proved. In that view of the matter evidence of PW No.2 also is not convincing at all having full of material omission going to the root of the case and as such do not establish involvement of accused for the charge levelled against them.

14. Learned Trial Judge has thus rightly disbelieved evidence of PW No.1 and PW No.2 Bhaskar the parents of deceased who are interested witnesses and their evidence even otherwise do not inspire confidence.

15. Admittedly there are no other witness whose evidence needs to be considered. In fact from the evidence of Bhaskar it has come on record that on the day of incident, he reached to the matrimonial home of deceased where PW No.1 Bharati informed that there was quarrel between deceased and accused in which she was manhandled and therefore, she committed suicide. In spite of that neither of these witnesses being parents of deceased thought necessary to lodge a report with police. In fact it has also come in the evidence of Bhaskar that in his presence police were drawing panchnama after taking out dead body from the well. However in the cross examination Bhaskar has admitted that on the day of incident itself they wanted to lodge report however police told to lodge report after the funeral and was thus lodged on 21st November 2001 by his wife PW

No.1 Bharti. Similarly in the evidence of PW No.1 Bharti proved her report Exhibit 20 dated 21st November 2001. Prior to that on the basis of report lodged by PW No.3 Dwarkanath Patil, Police Patil, AD report Exhibit 24 was registered and was investigated by PW No.4 Waman Mhatre who further drawn spot panchnama, inquest panchnama and after recording statement of complainant sent case paper for obtaining Senior Public Prosecutor's opinion. Further investigation is carried out by PW No.5 Mukund Bhosle, API who has stated that after receipt of opinion from the office of Government Pleader, sought by Head Constable Mr Mhatre, on 2nd January 2002 he called PW No.1 Bharti and had recorded her statement and registered offence against the accused. Above piece of evidence thus also goes to establish that as there was no material to register offence against the accused persons, no offence was registered immediately but such a long delay is caused to register offence on obtaining a legal opinion.

16. In that view of the matter since case of prosecution of quarrel between deceased and accused immediately prior to incident of deceased causing suicide is itself not reliable to be acted upon. It cannot be said that accused in any manner had abated the deceased to commit suicide. By now law on the point of offence punishable under Section 306 of Indian Penal Code is well established. For invoking the provisions of Section 306 of Indian Penal Code it is necessary for prosecution to establish that deceased committed suicide as a result of cruelty provided to her within the meaning of Section 498A of Indian Penal Code and that the act of commission of suicide is abated by the accused. In the case in hand on considering evidence as aforesaid there is no material to establish that accused abated commission of suicide much less immediately prior to deceased committing suicide.

17. Hence the Appeal is liable to be dismissed as according to the settled law while considering appeal against acquittal when two views are possible on the basis of evidence on record, one in favour of accused taken by the Trial Court should not be disturbed by the Appellate Court unless there are compelling circumstances such as non consideration of evidence on record by the Trial Judge. Even otherwise the scope of interference of Appellate Court in an Appeal is by now well established that unless view taken by the Trial Judge is either impossible or perverse, it is not permissible to interfere therein. Upon perusal of the impugned judgment and material placed on record it is found that accused came to be acquitted by the Trial Court by passing well reasoned order.

18. In that view of the matter since prosecution has failed to establish charge levelled against the accused persons beyond reasonable doubt. Appeal is liable to be dismissed.

19. Hence Appeal is dismissed.