

(2003) 01 BOM CK 0036
In the Bombay High Court
Case No : Criminal Appeal No. 575 of 1987

The State of Maharashtra

APPELLANT

Vs

Tanaji Shamrao Shalke

RESPONDENT

Date of Decision : 17-01-2003

Acts Referred:

Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2003) 2 ALD(Cri) 66 : (2003) BomCR(Cri) 1367 : (2004) 1 RCR(Criminal) 514

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : A.S. Gadkari, app, for the Appellant; T.S. Ingale, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This appeal takes exception to the judgment and order passed by the Additional Sessions Judge, Sangli, dated January 21, 1987 in Sessions Case No. 26 of 1986, whereby the Respondent-original accused was acquitted of the charge of having committed offence punishable under Sections 498A and 306 of the Indian Penal Code.

2. Briefly stated, the prosecution cases is that the Respondent treated his wife deceased-Kamal with cruelty, who committed suicide within 3 years from the marriage thereby induced, abetted and facilitated her to commit suicide on 20th November 1985 at village Tambhave Dhandbag, Taluka Islampur, Dist. Sangli. The accused is resident of village Tambhave Dhandbag in Taluka Islampur and is an agriculturist by occupation. The deceased kamal hailed from Bombay and was the daughter of P.W.-2 Shakuntla. The incident in question occurred on 20th November 1985 within around 2/3 years of the marriage between accused-Tanaji and deceased-Kamal. The charge framed against the accused reads thus:

"That you being the husband of deceased Sou. Kamal Tanaji Shalke of lambaye Dhandbhag subjected her to cruelty i.e. to wit, you harassed her from the date of

marriage which took place 3 years ago till the date of incident i.e. on 20.11.85 with a view to coerce her, and that she should coerce her relation to meet your unlawful demand of amount and clothes or valuable security and due to on account of their failure to meet such demands subjected her to cruelty and that by your wilful conduct of beating her and threatening her to take her life and such other acts of grave nature as were likely to drive her to commit suicide and you thereby committed an offence punishable u/s 498-A of I.P.C. and within my cognizance.

And I further charge you, that you from the date of marriage till the incident i.e. on 20.11.85 at Iambave Dhandbhag harassed and treated the said Kamal with cruelty and you thereby induced and abetted her and thereby facilitated her to commit suicide, and in pursuance of the said abetment said Kamal did commit suicide on 20.11.85 at or about 2 p.m. by pouring cook oil on her clothes and by setting fire as a result of which she succumbed to death on 30.11.85 and you thereby committed a offence punishable u/s 306 of I.P.C. and within my cognizance."

3. The prosecution examined P.W.-1 Taluka Executive Magistrate, who had recorded the statement of the deceased-Kamal on 20.11.1985, when she was admitted to hospital after the attempt of committing suicide. This statement has been proved by P.W.-1 and is brought on record as Exh.11. Besides, the Prosecution examined P.W.-2 Shakuntla, the mother of the deceased-Kamal. The case as unfolded on the basis of the statement. Exh.11 recorded by P.W.-1 is that the deceased-Kamal made grievance that 2/3 days prior to the date of incident her husband had pressed her throat and slapped her because she did not remove grass from firewood. The deceased further stated before him that on 20th November 1985, accused threatened her that he would cut her neck by knife as she failed to cover the pot containing cow milk and on account of which some ash had fallen in the mil. It is further stated that on account of the said threat given by the accused she became crazy and attempted to end her life by pouring kerosene on her body and setting herself on fire in the super cane crop in the nearby land. In the process she suffered (SIC) burn injuries. In her statement she revealed that on account of torture and torment meted out to her due to her inefficiency in performing agricultural work she decided to end her life. On the basis of said statement. P.W.-3 registered the offence on the same day. On the next day, i.e. on 21st November, 1985 P.W.3 visited the scene of offence and attached article such as Kerosene bottle, burned saree, burned petticoat and sickle from the spot, for which panchnama was drawn at Exh.6 It has come in evidence that deceased-Kamal succumbed to the injuries on 30th November 1985. It is only thereafter, P.W.-3 the Investigating Officer proceeded to record the statements of the father, mother and maternal cousin of the deceased on December 3, 1985. As seen from the complaint Exh. 14, he has recorded statements of persons who were stated to be on the scene of offence, namely, Akkatai Bhagwan Lokhande and Hirabai Shamrao Fasale as well as brother in law and sister in law, namely, Bhimrao Shamrao Shelke and Chandra Shalke.

However, those persons have not been examined during the trial. No reason is forthcoming for their non examination. The Prosecution, as aforestated, has examined P.W.-1 Taluka Executive Magistrate who has deposed the fact that he had recorded the statement of the deceased-Kamal on 20th November 1985 as per the information given by her to him in the presence of Medical Officer Yadav. For establishing the allegation of cruelty, the Prosecution has relied on the evidence of P.W.-2, who is the mother of the deceased. In her examination-in-chief she alleges that till one year after the marriage the couple had cordial relations, but after one year accused started beating his wife and started tormenting her. She has further deposed that the deceased used to tell her about the treatment meted out to her by the accused and also told her not to disclose the said fact. She has further deposed that 6 months prior to the death of Kamal, the accused was demanding money and valuable securities such as clothes. She further deposed that the accused was ill-treating her wife and she had noticed wheel marks on the back of the deceased 6 months prior to her death. The accused had denied the charge and claimed to be tried. At the conclusion of the trial, the Sessions Court by judgment dated January 21, 1987 recorded the order of acquittal in favour of the accused on both the counts, holding that the Prosecution had failed to bring home the guilt. The trial court has mainly discarded the evidence of P.W.-2 as in its view the same was "hearsay" evidence and, therefore, inadmissible in law. In so far the statement recorded by P.W.-1, purported to be the Dying Declaration, Exh. 11, the court has observed that the question regarding the cause of death was not in issue and, therefore, the said statement would be inadmissible, having regard to the provisions of Section 32 of the Evidence Act. Having discarded the said statement as well as the evidence of P.W.-2 as hearsay, the trial court found that there was no other legal evidence to record the finding of guilt against the accused of the alleged offence. Accordingly, the trial court proceeded to record acquittal in favour of the accused, which decision is the subject matter of the challenge in the present appeal.

4. Ld. A.P.P. contends that the approach of the trial court in discarding the oral evidence of P.W.-2 is inappropriate. According to him, the evidence of P.W.-2 cannot be said to be hearsay evidence but was in the nature of direct evidence and was, therefore, admissible. He further contends that the trial court has also committed error in discarding the dying declaration as inadmissible. he contends that the statement narrated by the deceased before P.W.1 was disclosed by the P.W.-1 before the court as having been revealed to him by the deceased herself, therefore, was relevant evidence and in the nature of direct evidence with regard to the said fact. According to him, therefore, there was legal evidence to proceed against the accused. He has further submitted that the evidence as has come on record was more than sufficient to record the finding of guilt against the accused on both the counts.

5. On the other hand, Ld. Counsel for the accused contends that assuming that the view taken by the trial court that the evidence of P.W.-2 is hearsay evidence

and inadmissible is inappropriate, even then having regard to the nature of evidence which has come on record, by no stretch of imagination finding of guilt can be recorded against the accused either u/s 498-A or 306 of Indian Penal Code. He submits that since this is an appeal against the acquittal, the court, no doubt, could re-appreciate the evidence but then the court should be slow in interfering with the order of acquittal unless it is possible to rule that the decision of the trial court is manifestly wrong or would cause miscarriage of justice.

6. Having considered the rival submissions, since Mr. Ingale for the accused has fairly submitted that it is not possible to hold that the evidence of P.W.-2 is in the nature of hearsay, it is not necessary for me to burden my judgment with that aspect, which had weighed with the trial court. However, it cannot be disputed that the trial court has not analysed or evaluated the evidence of P.W.-2 having found the same was in the nature of hearsay. Therefore, it will be now necessary for this court, for the first time, to undertake the exercise of evaluating the evidence of P.W.-2. Before doing so, I would like to revert back to the said statement recorded by P.W.-1, Exh.11, which is stated to be the Dying Declaration. In the said declaration only allegation made by the deceased as can be discerned, reads thus:

".....Prior to 2-3 days my husband pressed my throat and slapped me on the count, because, I did not remove the grass from near fuel wood, and bet me.

Today morning on 20.11.1985, I did not but cover on the cow-milk and so ash fell in the milk and my husband said me that he would cut my neck by knife. On account of such talking. I became crazy and at noon time, about 2.00 p.m., I went to the land near my house in the sugar cane crop, I poured kerosene on my person and set myself on fire by matches .

....My husband admitted me in the Krishna Hospital Karad, bringing me by Taxi. On account of torture and torment to me by the husband and on account of non-efficiency in agricultural work I got poured Kerosene on my person and set myself on fire. I have no suspicion or doubt to anybody. I have no use to alive hence I set myself on fire. Due to cruelty of my husband I myself set on fire....."

7. The statement so recorded has been proved by P.W.-1, the Taluka Executive Magistrate. P.W.-1 was cross examined but there is nothing in the cross examination so as to discard his version that the statement of the deceased was recorded by him when she was conscious and was in a fit state of mind. Even the trial court on analysing the evidence has recorded a finding in paragraph 12 of the judgment in that behalf. There is no infirmity in the said finding recorded by the trial court.

8. However, the question is whether the contents of said statement can be said to be sufficient so as to record finding of guilt against the accused within the meaning of Section 498-A of the Act? Before dealing with that aspect, I would now advert to the evidence of P.W.-2. The P.W.-2 in the examination-in-chief in para 2 thereof has admitted that after the marriage for almost one year relations

between the deceased and the accused was cordial. This witness, however, has made following allegations, which is the only material brought on record against the accused, which reads thus:

"After the year, accused started giving beating to his wife Kamal and started to torment her. Deceased Kamal used to tell me about the treatment meted to her by the accused and was also telling me not to disclose to my house. Six month prior to her death, deceased had come to our house. The accused was demanding money and wanted valuable securities such as clothes. Also the accused was ill-treating his wife Kamal. When deceased Kamal had come, to our house, six months prior to her death. I had seen wheel marks on her back."

P.W.-2 has been cross-examination. Suggestion has been put to her that that the deceased was eccentric and hot tampered woman and she did not approve her marriage with the accused. During the cross-examination, above referred allegation made by the P.W.-2 in the examination-in-chief has been suggested to be false by the defence, which, however, has been denied by P.W.-2. During the cross-examination suggestion was also given that the but in which couple was living got fire end the accused meted out ill-treatment to the deceased-Kamal on account of the burning of the hut. What is relevant to note is that this witness has admitted that she did not complain to the police against the accused. It is already noticed that the incident in question occurred on November 20, 1985 on which date the F.I.R. came to be filed. However, statement of P.W.-2 was recorded on December 3, 1985, only after the death of Kamal on November 30, 1985. Even after gap of more than 14 days the witness has not complained to the police against the accused. Besides P.W.-2, the other witnesses examined by the Prosecution is P.W.-3, the Investigating Officer. However, that evidence cannot establish the allegation made against the accused for having committed the alleged offence. In substance, the only evidence that has come on record is of P.W.-2 and the statement recorded by P.W.-1. The relevant portion of both these evidence is already reproduced above. Even on close reading of the said statements, it is not possible to suggest that the accused by his willful conduct, which is of such a nature as was likely to drive the deceased to commit suicide. Ld. Counsel for the Respondent-accused has rightly placed reliance on the decision of the Apex Court reported in Smt. Raj Rani Vs. State (Delhi Administration), . In paragraph 5 of that decision the Apex Court has observed that it is not enough that the deceased felt those words hurting, it must be subjected to judicial scrutiny and the court must be in a position to hold that those words were sufficiently hurting enough as to amount to "cruelty" falling within the parameters fixed in Section 498-A of the Indian Penal Code. Taking the prosecution case as it is, it only reveals that the accused had, on the date of incident, threatened the deceased that he would cut her neck by knife. Besides, the evidence would further reveal that 2/3 days prior to the date of incident the accused had possed the throat of the deceased and slapped her. Both these incidents took place because of the quarrel between the husband and wife on account of her inability to handle the domestic work properly. That by itself, as

rightly contended on behalf of the accused, cannot be suggestive of the fact that it was of such a nature so as to drive the wife to commit suicide. There is absolutely no legal evidence much less corroborated by independent witness to show that such ill-treatment was meted out to the deceased by the accused repeatedly. The record indicates that the Investigating Officer had examined some of the persons who were found to be on the scene of offence, but those persons have not been examined and no reason is forthcoming. Ld. Counsel for the accused has also rightly placed reliance on the decision of the Apex Court reported in (2001) 9 SCC 518 Ramesh Kumar v. State of Chhattisgarh, is particular in para 8, wherein it is observed that leasing by the accused of the deceased, ill-treating her for her mistakes which could have been pardonable. Strong reliance has been placed on the above enunciation to contend that the Prosecution evidence even if accepted as it is, would only indicate that the accused ill-treated the deceased on account of her mistakes in discharge of her domestic work properly. Besides, the suggestion has, also been put during the cross-examination to P.W.-2 that the deceased the eccentric and hot tempered woman. No doubt, that suggestion has been denied by P.W.-2. It is, therefore, probable that the deceased must have re-acted in a fit of anger or emotions and the alleged conduct of the accused was not one intending the consequences to flow therefrom. If that is so, it necessarily follows that the Prosecution has failed to bring home the guilt and the allegation of cruelty against the accused within the meaning of Section 498-A or for that matter Section 306 of the I.P.C. It needs to be mentioned that the allegation regarding demand of property or valuable security has not been corroborated at all. Moreover, even the Ld. APP was not able to point out any material that would persuade this court to record finding of guilt against the accused on that basis. In the circumstances, the only question that needs to be examined in the present case and as discussed above is whether the alleged conduct of the accused was of such a nature as was likely to drive the deceased to commit suicide? To my mind, the general nature of allegations which have come on record cannot be the basis to draw an inference against the accused, and therefore, it is not possible to conclude that the Prosecution has established beyond reasonable doubt that the accused subjected the deceased to cruelty within the meaning of Sections 306 or 498-A of the I.P.C.

9. According to the Ld.APP to Dying Declaration was clearly indicative of the fact that the deceased was subjected to repeated torture and fomentation by the accused and the deceased has, therefore, disclosed that she wanted to commit suicide because of that cruelty meted out to her. Once again, it is not possible to accept this submission because the nature of allegation about ill-treatment as has come in the statement is too routine, which can be very commonly observed in the families such as the accused and the deceased, who were small time agriculturists and living in a hashed but in remote village. Those instances of ill-treatment were obviously on account of the mistakes committed by the deceased in her domestic activities and agricultural work. If, the deceased was ill-treated for such lapses, it cannot be inferred that the ill-treatment was of such a nature

that it would likely to drive the wife to commit suicide so as to attract the rigours of Section 306 or 498-A of the I.P.C.

10. In my view, therefore, it will not be possible to upset the ultimate conclusion reached by the trial court in recording the order of acquittal in favour of the accused on both the counts, in as much as it is well settled that the offence u/s 498-A and one u/s 306 are independent and constitute different offences. There is no material on record even remotely to suggest that that there was instigation, Ld. Counsel for the accused has rightly relied on the decision in Rameshkumar (Supra) to buttress his contention that there is no legal evidence to assume that the accused had indulged in instigation and, therefore, abetted in the commission of suicide by his wife. Understood thus, this appeal is devoid of merits and the same, therefore, deserves to be dismissed.

11. Accordingly, this appeal is dismissed.