
(2013) 04 BOM CK 0132

In the Bombay High Court

Case No : Criminal Appeal No. 789 of 2006

Vilas Vikramsingh Deshmukh and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 498A

Citation : (2013) 4 ABR 485 : (2013) ALLMR(Cri) 3145 : (2014) 3 BomCR(Cri) 341 : (2014) 1 DMC 447

Hon'ble Judges : V.K. Tahilramani, J;P.D. Kode, J

Bench : Division Bench

Advocate : Statej Sanjay Jadhav, for the Appellant; P.S. Hingorani, APP, for State, for the Respondent

Final Decision : Partly Allowed

Judgement

V.K. Tahilramani, J.—The present appeal is directed against the judgment and order dated 26.07.2006 passed by the Additional Sessions Judge, Pandharpur in Sessions Case No. 54 of 2005. By the said judgment and order, the learned Sessions Judge convicted and sentenced the appellants as follow:-

The learned Sessions Judge also directed that the substantive sentences of imprisonment shall run concurrently.

For the sake of convenience, we shall refer to the appellants as they were referred to before the trial Court as mentioned in above table.

The prosecution case briefly stated, is as under:

(a) PW 6 Mangal is the first informant in the present case. She had four daughters. One of them was Archana (deceased). Archana was married about four years prior to the incident to accused No. 1 Vilas. After marriage, the husband and in laws of Archana used to ill treat Archana. Accused No. 3 Jaimala is the mother of Vilas and accused No. 4 Rajani is wife of original Accused No. 2

Vishwas-the brother of accused No. 1. Accused No. 2 Vishwas has been acquitted in the present case.

(b) On 29.03.2005 at about 11.45 a.m., accused No. 3 Jaimala and accused No. 4 Rajani poured kerosene from a chimney on Archana and set Archana on fire. Archana was taken to the hospital. In the hospital, dying declaration of Archana came to be recorded on 30.03.2005 at 01.15 a.m. by PW 2 S.E.M. Mr. Arun. The said dying declaration is at Exh. 19. In the said dying declaration, Archana has stated that accused No. 3 Jaimala and accused No. 4 Rajani i.e. her mother-in-law and sister-in-law came into room and stated that they would kill her. Then her sister in law Rajani poured kerosene from a chimney which was in the room on Archana and her mother-in-law Jaimala set her on fire. Thereafter, second dying declaration of Archana came to be recorded in the hospital on 30.03.2005 at 7.15 a.m. by PW 9 S.J.M. Mr. Mangoli. The said dying declaration is at Exh. 39. In this dying declaration, Archana has stated that her mother-in-law Jaimala and her sister-in-law Rajani poured kerosene from a chimney on her and her mother-in-law Jaimala set her on fire. Archana died on 30.03.2005 at 08.30 a.m. F.I.R. was lodged by PW 6 Mangal i.e. the mother of Archana on 30.03.2005 at 06.45 p.m. Thereafter, investigation commenced. Dead body of Archana was sent for postmortem. The postmortem note shows that Archana died due to shock due to 50% burns. After completion of investigation, charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

2. Charge came to be framed against accused No. 1 Vilas, accused No. 3 Jaimala, accused No. 4 Rajani and original accused No. 2 Vishwas under Sections 498-A and 302 of IPC. All the accused pleaded not guilty to the said charge and claimed to be tried. Their defence is that of total denial and false implication. Their further defence is that Archana died on account of accidental burns sustained due to pallu of her saree falling on the stove. After going through the evidence adduced in this case, the learned Sessions Judge acquitted accused No. 2 Vishwas of all the offences including the offence u/s 302 of IPC. However, the learned Sessions Judge convicted and sentenced the appellants as stated in paragraph 1 above, hence, this appeal.

3. During pendency of this appeal, Appellant No. 2 Jaimala i.e. original accused No. 3 expired, hence, appeal against her is disposed of as abated. We have heard the learned Advocate for the appellants and the learned APP for the State. Learned Advocate for the appellants submit that as far as appellant No. 1 Vilas is concerned, he was only convicted u/s 498-A of IPC. He further submits that he is not challenging the conviction of appellant No. 1 but he will only make submissions on the point of sentence awarded to appellant No. 1 Vilas. In view of this submission, now this appeal is being heard on merits only in respect of accused No. 4 Rajani. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that no reliable

evidence has been brought on record in relation to accused No. 4 Rajani to connect her with the offence of setting Archana on fire.

4. In order to sustain the conviction of accused No. 4 Rajani u/s 302 of IPC, the prosecution has relied on two dying declarations i.e. Exh. 19 and Exh. 39. Dying declaration Exh. 19 is recorded by PW 2 S.E.M. Mr. Arun and Dying declaration Exh. 39 is recorded by PW 9 S.J.M. Mr. Mangoli. In the dying declaration Exh. 19 recorded by PW 2 S.E.M. Mr. Arun, Archana has stated that her sister-in-law Rajani poured kerosene on her and her mother-in-law Jaimala set her on fire. In the second dying declaration Exh. 39 recorded by PW 9 S.J.M. Mr. Mangoli, Archana has stated that both i.e. mother in law Jaimala and sister in law Rajani poured kerosene from a chimney and her mother-in-law Jaimala set her on fire. Thus, there is discrepancy between the two dying declarations in relation to who actually poured kerosene on Archana, whether it was her sister-in-law Rajani who poured kerosene on Archana or whether it was her mother-in-law Jaimala and sister-in-law Rajani who poured kerosene on her. There is one another reason why we are not inclined to place reliance on the dying declaration Exh. 19 recorded by PW 2 S.E.M. Mr. Arun. The reason is that after the dying declaration Exh. 19 was recorded, PW 2 S.E.M. Mr. Arun found that the patient was uneasy. So he called the Doctor and asked the Doctor to examine Archana. After examining Archana, the Doctor told PW 2 S.E.M. Mr. Arun that the patient was not in a position to sign. Thus, it is seen that this dying declaration was not read over to Archana nor was it signed by Archana nor was there any thumb impression of Archana on the dying declaration. In such case, we are unable to place any reliance on this dying declaration.

5. No doubt, in the dying declaration Exh. 39, Archana has stated to PW 9 S.J.M. Mr. Mangoli that her mother-in-law Jaimala and sister-in-law Rajani poured kerosene on her and her mother-in-law Jaimala set her on fire, however, we are not inclined to place reliance on this dying declaration also. The reason for not placing any reliance on this dying declaration is that when the first dying declaration Exh. 19 was recorded, PW 2 S.E.M. Mr. Arun has categorically stated that one woman relative of the patient was there when he recorded the statement of the patient. Thereafter, the dying declaration Exh. 39 came to be recorded. The fact that a lady relative of Archana was present when her first dying declaration was recorded shows that there was scope for tutoring, however, that is not the only aspect due to which we are not inclined to rely on this dying declaration. From the evidence of PW 11 Dr. Kale, it is seen that when Archana was brought to the hospital, she gave history to the Doctor. She gave history to the Doctor that she sustained burn injuries on account of her pallu falling on the fire while she was cooking. This history is mentioned in the case papers which is at Exh. 61. We would also like to advert to the evidence of PW 3 Mr. Dhanaji who had taken Archana in his vehicle to the hospital. This witness has stated that when he asked the deceased how she sustained burns, she told him that the pallu of her saree fell on the fire and she sustained burns. PW 1 Dr. Benare also examined Archana. He has stated that history was narrated by the

patient. The said history is at Exh. 75. In the case papers Exh. 75, it is stated that the history was given that the patient sustained burns while cooking.

6. DW 1 Dr. Dodmani was working as a casualty medical officer at Civil Hospital, Solapur. He has stated that he asked history to the patient and the patient has stated that she sustained burns while cooking in kitchen as pallu of her saree caught fire. He noted this history in the case papers which is at Exh. 61. Thus, the evidence of PW 1 Dr. Benare, PW 11 Dr. Kale, PW 3 Mr. Dhanaji and DW 1 Dr. Dodmani shows that when Archana was admitted in the hospital, first in point of time, she told all the Doctors that she sustained burns as the pallu of her saree caught fire when she was cooking. Thereafter, the dying declarations Exh. 19 and Exh. 39 have been recorded. We have already expressed in earlier paragraphs as to why we are not inclined to place any reliance on the dying declaration Exh. 19. As far as Exh. 39 is concerned, it was recorded much after Archana had given history to the Doctors that she had sustained burn injuries while cooking. No explanation has been given by Archana or brought on record by the prosecution as to why Archana had given such a version of accidental burns initially. Archana has not stated anywhere that she was threatened by any person, hence, she gave false history nor any other reason has been given by her for giving such history. From the evidence on record, it appears that the true state of facts is that due to accident, Archana caught fire while cooking and thereafter she has implicated the accused persons on account of grudge or on account of tutoring.

7. The fact that Archana sustained accidental burn injuries while cooking and was not set on fire, is further fortified by the fact that spot panchnama Exh. 26 shows that the chimney was full of kerosene. The spot panchnama further shows that no residues of kerosene were found at the spot. In addition, it is seen that the major part of the burn injuries are sustained on the lower limbs i.e. out of 50% burn injuries, 29% were found on the lower limbs whereas no burn injuries were found on the head, face and neck. The upper limbs had also sustained just 9% burn injuries. This supports the defence put up that Archana sustained burn injuries accidentally while cooking. If as per the case of the prosecution, the accused Rajani had poured kerosene on Archana and thereafter, Archana was set on fire, then in such case, there would be more burn injuries on the upper part of the body than on the lower part of the body. However, as stated earlier by us, the chimney from which the kerosene was allegedly poured on Archana was found full of kerosene. This falsifies the prosecution case.

8. The prosecution has also relied on oral dying declarations made by Archana to PW 4 Asha and PW 7 Vandana wherein according to the prosecution, both the witnesses have stated that accused Nos. 3 and 4 i.e. Jaimala and Rajani poured kerosene on Archana and set her on fire. It is pertinent to note that though these witnesses claimed that Archana told them that she was set on fire, however, they have not made any attempt to go to the police and lodge F.I.R. The incident took place on 29.03.2005 at 11.45 a.m. Archana died on 30.03.2005 at 08.30 a.m., however, F.I.R. has been registered on 30.03.2005 at 06.45 p.m. This delay in

lodging the F.I.R. also raises doubt about the prosecution case. Obviously, the statements of the witnesses who have deposed about the oral dying declarations, were recorded after registration of F.I.R. In such case, there is delay in recording the statements of the witnesses and looking to the facts and circumstances of this case, we are not inclined to place any reliance on the evidence of these witnesses who have implicated accused Nos. 3 and 4 i.e. Jaimala and Rajani. As far as conviction u/s 498-A is concerned, no witness has stated about any specific incident of cruelty at the instance of accused No. 4 Rajani. Though, PW 4 Asha, the maternal aunt of Archana has stated that all the four accused demanded amount of Rs. one lac, however, thereafter, she has not stated that Archana was ill treated or treated with cruelty as the demand was not met. None of the witnesses have stated about any specific act of cruelty by accused No. 4 Rajani. In this view of the matter, we are of the opinion that the offence u/s 498-A of IPC is also not made out against accused No. 4 Rajani. Thus, in view of above discussion, we proceed to pass the following order:-

ORDER

- i. The appeal is partly allowed.
- ii. Conviction of appellant No. 1 i.e. accused No. 1 Vilas u/s 498-A of IPC is confirmed, however, sentence imposed on accused No. 1 Vilas is reduced from 3 years to 1 year R.I. The fine amount is increased from Rs. 1000/- to Rs. 5000/- I.D.S.I. for three months.
- iii. Appeal in respect of appellant No. 2 i.e. accused No. 3 Jaimala is disposed of as abated.
- iv. The conviction and sentence of appellant No. 3 i.e. accused No. 4 Rajani under Sections 498-A and 302 of IPC is set aside. The appellant Rajani is hereby acquitted of the said offences and shall be released forthwith, if not required in any other case.