
(2008) 01 BOM CK 0058
In the Bombay High Court
Case No : Criminal Appeal No. 36 of 2007

Vithal Ziblati Sonone

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 15-01-2008

Acts Referred:

Evidence Act, 1872 — Section 113A
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2008) 110 BOMLR 434

Hon'ble Judges : K.J. Rohee, J

Bench : Single Bench

Advocate : A.S. Manohar, for the Appellant; Y.B. Mandpe, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

K.J. Rohee, J.—The appellant has challenged his conviction for the offences punishable u/s 498A and 306 of IPC and sentence of rigorous imprisonment for 1 year and fine of Rs. 500/-for the former offence and rigorous imprisonment for 5 years and fine of Rs. 500/-for the latter offence imposed by the Adhoc Additional Sessions Judge-1, Wardha in Sessions Trial No. 83/2006 decided on 2.2.2007.

2. The marriage between the appellant and Rekha (deceased) had taken place about 7 years before the incident. Rekha delivered a daughter. Since beginning the appellant was not doing any work. He used to consume liquor daily and used to raise quarrel with his wife Rekha. He also used to beat her often. On 20.2.2006 the appellant consumed liquor for the entire day and beat his wife Rekha. She could not tolerate the ill-treatment meted out to her by the appellant. Hence at about 5 p.m. she poured kerosene on her person and set herself on fire. She was immediately taken to Sub District Hospital, Arvi where PSI Mohammad Yunus (PW5) recorded her dying declaration on the basis of which Crime No. 56/2006 u/s 498A of IPC was registered against the appellant. Thereafter Rekha was shifted to Irvin Hospital, Amravati. There Shri Shinde,

Special Judicial Magistrate (PW1) recorded her dying declaration. While under treatment, Rekha died on 31.3.2006. The post mortem report revealed that Rekha sustained 54 % burn injuries and that the cause of her death was burn injuries leading to septicemia shock. After completion of investigation, charge sheet was filed against the appellant on 29.5.2006 for the offences punishable under Sections 498A and 306 of IPC.

3. The defence of the appellant is of simple denial.

4. In order to bring home the guilt to the appellant, the prosecution examined PSI Mohammad Yunus, Police Station, Arvi (PW5) who recorded the first dying declaration (Exh.38) of Rekha; Dr. Sanjivani Wandile, Medical Officer, Sub District Hospital, Arvi (PW7) who certified about the fitness of Rekha to give dying declaration (Exh.38); Shri Shinde, Special Judicial Magistrate, Amravati (PW1) who recorded second dying declaration (Exh.18); Dr. Vidya Wathodkar, Medical Officer, General Hospital, Amravati (PW6) who certified about the fitness of Rekha to give dying declaration (Exh.18); PW3 Bhanudas Kisan Wahare (Rekha.s younger brother); PW2 Gajanan Kisan Narnawre (brother-in-law of Rekha) and PW4 ASI Deshpande who conducted investigation.

5. PW3 Bhanudas Kisan Wahare (younger brother of deceased Rekha) as well as PW2 Gajanan Kisanrao Narnawre (brother-in-law of deceased Rekha) did not support the prosecution version that Rekha was being ill-treated by the appellant. PW5 PSI Mohammad Yunus proved her dying declaration (Exh.38) and PW1 Shri Shinde, Special Judicial Magistrate proved her second dying declaration (Exh.18). In both the dying declarations, Rekha stated that her husband (the appellant) was not doing any work, he used to drink and used to beat her often. On 20.2.2006 the appellant was drinking for the entire day and beat her throughout the day. She could not bear the beating and hence in the evening she set herself on fire. Relying on these dying declarations, the learned trial Judge held that the prosecution has proved that the appellant subjected his wife Rekha to cruelty and abetted commission of suicide by her. Accordingly the learned trial Judge convicted the appellant for both the offences and sentenced him as stated earlier.

6. I have heard Shri A.S. Manohar, Advocate for the appellant and Shri Y.B. Mandpe, APP for the respondent/State. I have also gone through the record and proceedings of the trial with their assistance.

7. The only ground that was urged by Shri Manohar, the learned Counsel for the appellant against the conviction of the appellant is that there is no evidence at all to hold that the appellant is guilty of the offence punishable u/s 306 of IPC. Shri Manohar submitted that even assuming the prosecution case to be true, no offence u/s 306 of IPC is made out.

8. According to Shri Manohar in order to constitute an offence u/s 306 of IPC there should be an intention on the part of the person who is alleged to have committed cruelty with the deceased that she should commit suicide. Shri

Manohar submitted that from the evidence adduced in the present case no such inference can be drawn and as such the trial Court has erred in convicting the appellant for the offence punishable u/s 306 of IPC. In support of his submission, Shri Manohar relied on the following cases:

I) Sushil Kumar Sharma Vs. Union of India (UOI) and Others, in which it is pointed out that:

the basic difference between the two Sections i.e. Section 306 and Section 498A is that of intention. Under the latter, cruelty committed by the husband or his relations drag the woman concerned to commit suicide, while under the former provision suicide is abetted and intended.

II. Shankar Mangal Lokhande v. the State of Maharashtra 2000 ALL MR (Cri) 10 in which it is interpreted as under:

The two terms "instigates", and "intentionally aids", used in Section 107 of IPC would necessary require mens rea on the part of the accused in order to hold him guilty for the offence of abetment of suicide u/s 306 of IPC. Neither the learned APP was able to show any evidence on record in that behalf nor one could find one from the record of the case. As is clear from the dying declarations made by the deceased, she took this step of commission of suicide as she was fed up of her life due to the frequent physical assaults by her husband. Neither by any words or his action or conduct the appellant is alleged to have instigated, aided or abetted the deceased for commission of suicide. The trial Judge simply seems to have inferred the abetment of suicide on the basis of the evidence on record about the frequent physical assaults made by the appellant on the person of the deceased. That is not sufficient to make good the charge for offence of the abetment of suicide u/s 306 of IPC.

III. Cyriac s/o Devassai and Anr. v. Sub-Inspector of Police Kaduthuruthy and Anr. 2006 ALL MR (Cri) 27 in which it is held as under:

(A). To constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other, by goading or urging forward.

But, apart from such physical act or omission, one more factor has to be established to constitute "instigation" That is a mental act. While a person instigates another by the act of goading or urging forward., such person must also have, the intention to provoke, incite, urge or encourage doing of an act by the other. Such intention to provoke, incite, urge or encourage doing of an act by the other is an essential factor in "instigation". A person can be said to have instigated another, if such person, with intention to provoke, incite, urge or encourage the latter to do an act, has goaded or urged forward the other person.

13. In order to prove that the accused abetted commission of suicide of a person, prosecution has to establish the following factors:

(1) that the accused kept on irritating or annoying the deceased by words, deed or wilful omission or conduct which may even be a wilful silence until the deceased reacted; or, that the accused strongly advised or persuaded the deceased to do something; or pushed or forced the deceased by deed, words, or wilful omission or conduct which may even be a wilful silence to make the deceased to move forward more quickly in a forward direction;

(2) that the accused had the intention to provoke, incite, urge or encourage the deceased to commit suicide, while acting in the manner stated above..

18. An indirect influence or an oblique impact which the acts or utterances of the accused caused or created in the mind of the deceased and which drove him to suicide will not be sufficient to constitute offence of abetment of suicide. A fatal impulse or an ill- fated thought of the deceased, however, unfortunate and touchy it may be, cannot unfortunately, touch the issue. Those cannot fray the fabric of the provision contained in Section 306 IPC. In short, it is not what the deceased "felt" but what the accused "intended" by his act which is more important in this context..

9. On the basis of the above interpretation of the relevant provisions, Shri Manohar submitted that in the present case there is no evidence at all to show that the appellant ever intended that his wife Rekha should commit suicide. Because of the constant beating the deceased might have felt that she should commit suicide. This won.t amount to an offence punishable u/s 306 of IPC.

10. Shri Y.B. Mandpe on the other hand submitted that in order to prove the guilt u/s 306 of IPC what is required is the direct and reasonable nexus of commission of suicide with act of cruelty. The Court has to consider whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide. In this respect Shri Mandpe relied on Sahebrao and Another Vs. State of Maharashtra, in which it was held that:

Conviction u/s 498A and 306 of IPC is proper where there is direct and reasonable nexus of commission of suicide with the act of cruelty....

In the said case Ramesh Kumar Vs. State of Chhattisgarh, was referred to wherein it was held:

...Sections 498A and 306 of IPC are independent and constitute different offences. Though depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence u/s 498A and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide....

11. Shri Manohar submitted that in Sahebrao.s case presumption as to abetment of suicide by a married woman u/s 113A of the Evidence Act was involved and in that context the Court held that the accused created such difficult and hostile environment that his wife was compelled to commit suicide. However, in the

present case, the presumption u/s 113A of the Evidence Act does not arise in as much as the alleged suicide was not committed within a period of 7 years from the date of her marriage.

12. I am not impressed by this submission. It is true that the presumption u/s 113A of the Evidence Act is not attracted in the present case as it has not been established that the suicide was committed within a period of 7 years from the date of marriage of Rekha with the appellant. However, it has been fully established through both the dying declarations Exh.38 and 18 which are consistent with each other that the appellant was doing no work, he was dependent on the earning of his wife Rekha, he used to drink and used to beat his wife Rekha and because of this she was fed up with the harassment, she could not endure it any more and hence she committed suicide. In fact no other option except to commit suicide was left of Rekha. Thus there was direct and reasonable nexus of commission of suicide by Rekha with the act of cruelty of her husband namely the appellant. As such offence u/s 498A as well as Section 306 of IPC are attracted to the present case. I find that the learned trial Court has properly considered the evidence on record and has properly appreciated the same. I find no reason to interfere with his findings. There is no merit in the appeal. Hence the order:

The appeal is dismissed.