

(2015) 02 BOM CK 0279

In the Bombay High Court

Case No : Criminal appeal No. 312 of 1999

Vitthal Rayaji Gadekar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 03-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 306, 498A, 498-A

Citation : (2015) 02 BOM CK 0279

Hon'ble Judges : A.R. Joshi, J

Bench : Single Bench

Advocate : A.V. Bhide, Counsel, for the Appellant; Meena Hiwase, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.R. Joshi, J—Heard rival arguments on this appeal preferred by the appellant-sole accused challenging the judgment and order of conviction dated 13/10/1999 passed by 2nd Additional Sessions Judge, Washim.

2. The present appellant-accused was convicted in Sessions Case No. 18 of 1997 and was sentenced for the charges punishable under Sections 306 and 498-A of Indian Penal Code. For the offence punishable under Section 306 of I.P.C., the appellant is sentenced to suffer R.I. for five years and to pay fine of Rs. 1,000/-, in default to suffer R.I. for 2 months and for the offence punishable under Section 498-A of I.P.C., he is sentenced to suffer R.I. for two years and to pay fine of Rs. 500/- and in default to suffer R.I. for one month. Both these substantive sentences were directed to run concurrently. Reportedly, the fine amount was already paid by the appellant-accused.

3. Being aggrieved by the said judgment and order of conviction, the appellant-accused has preferred this appeal on various grounds including the grounds that the trial Court had erred in appreciating the evidence of P.W. Nos. 2, 3 and 4, though they are the close relatives of the victim-Jaya. Secondly, it is argued that

the trial Court had erred in coming to the conclusion that it was suicidal death and that the suicide had been abetted by the accused. Thirdly, it is submitted that the substantive evidence of the defence witness No. 1 has not been properly appreciated by the trial Court and has been discarded without giving any cognate explanation. During the arguments, the learned counsel for the appellant had taken shelter of the authority in the case of Rajkumar Vs. State of M.P., (2014) AIRSCW 1795 : (2014) CriLJ 1943 : (2014) 3 JT 587 : (2014) 2 RCR(Criminal) 45 : (2014) 3 SCALE 42 : (2014) 5 SCC 353 on the aspect of appreciation of the evidence of a child witness. No doubt, the observations of the Hon"ble Supreme Court are of much help and there cannot be dispute regarding the care and protection to be taken while appreciating the evidence of a child witness. However, needless to mention that each and every case is required to be dealt with on the backdrop of the facts of each case.

4. Now coming back the case of prosecution as transpired from the Police charge-sheet and the evidence led before the trial Court, it can be summarized, as under:-

The present appellant and the victim married with each other in May, 1994 and for about a year there were cordial relations between the couple. However, thereafter the dispute started on some demands made by the appellant for purchase of some articles like television, fan, tape recorder, etc. The appellant was asking the money for these articles to his wife, the victim Jaya and when she used to visit her parents at Hingoli, she used to tell such conduct of the appellant-her husband, as also she used to tell her parents regarding the ill-treatment given to her by her husband. At one occasion, victim Jaya had been to her parents and that time she had injury on her head and swelling on her eye. On this count, the matter was reported to the Police and criminal case was lodged against the present appellant for the offence punishable under Section 498-A of Indian Penal Code. This lodging of the complaint is an admitted position, so also the settlement between the parties is also an admitted position, inasmuch as the settlement between the couple occurred on 16/06/1996 and after the settlement, within few days, the victim came back to the house of the appellant her husband and started cohabiting. In between, the couple had one male child. However, subsequently, again the ill-treatment and harassment of the victim continued at the hands of the present appellant-accused and finally the episode of the victim woman ending her life by setting her on fire, occurred at about 10.00 a.m. on 19/12/1996. It is an admitted position that the victim woman was found in 100% burn condition in her matrimonial house on the relevant date and time and apparently according to the appellant-accused by that time he was on his duty as a teacher in a nearby school, which is about 200 meters away from house. According to the accused, noticing the hue and cry from the side of his house, he rushed to his house along with the headmaster of the school where he was working. Other teachers also rushed to the house of the accused-appellant. This was the condition of the victim woman, as she was already in 100% burn condition and in fact died instantly. In fact, the further conduct of the appellant

accused is of much significance and that can be discussed later while discussing the substantive evidence of the prosecution witnesses and analyzing the defence raised by the appellant-accused.

5. It is also the case of prosecution that about few days prior on the said incident of 19/12/1996, younger brother of the victim woman had been to her house, so also he had been to her house on the day of the incident. According to him, he had witnessed the quarrel in the morning of 19/12/1996 during which, according to the said witness, present appellant-accused had throttled his wife and tried to kill her and also assaulted her and due to this, said victim woman, the sister of said boy, fell on the ground. Noticing this situation, the said boy rushed to his house at Hingoli and informed his parents. Said boy's P.W. No. 4 and was 11 years old at the time of the incident. According to the case of prosecution, after P.W. No. 4 informed his parents as to what he had seen in the house of his sister i.e. victim woman, said parents also received the information from two persons, who had been to their house on motorcycle. These two persons told that his daughter Jaya was burnt. Immediately they rushed to the house of appellant-accused in a jeep and saw that their daughter victim woman Jaya had sustained 100% burn injury and was dead. The dead body of the victim woman was sent to Washim Hospital for postmortem, which was performed on the next date, i.e. on 20/12/1996. Thereafter, the dead body was taken charge by the parents and the cremation was done and admittedly during such last rites of the victim woman, the present appellant-accused, her husband, was not present. It must be mentioned that this conduct on the part of the appellant was much emphasized by the trial Court while dealing with his defence on preponderance of probabilities. A complaint was lodged by father of the victim i.e. by P.W. No. 2 Vitthal Gaikwad on 21/12/1996 and on registration of FIR, which is at Exhibit-22, offences punishable under Section 498A and 306 of I.P.C. were applied against the present appellant-accused and he was arrested in the morning of 22/12/1996. At this juncture, it must be mentioned that it was the answer by the accused to his conduct of not remaining present for the last rites of his wife, as he was in Police custody and detained by the Police. However, factually, he was arrested only after the lodging of the FIR and the FIR was registered in the night of 21/12/1996 and appellant-accused was arrested on 22/12/1996.

6. During the trial, total five prosecution witnesses were examined. The important prosecution witnesses are P.W. Nos. 2, 3 and 4, i.e. Vitthal-father of the victim, Parvati-mother of the victim and Ravi-brother of the victim. Substantive evidence of P.W. Nos. 2 and 3 is in consonance with each other on the aspect as to the ill-treatment caused to the victim by the appellant-accused and also consistent as to lodging of the earlier complaint for the offence punishable under Section 498-A of I.P.C. and settlement of the complaint. Substantive evidence of P.W. No. 4 Ravi, to the effect as mentioned earlier, is that he had visited his sister's place few days prior to the incident and also on the day of the incident and had witnessed the episode of appellant-accused throttling his wife and assaulting her in the morning on the day of the incident,

i.e. on 19/12/1996. Last prosecution witness is investigating officer, who had concluded the investigation and filed the charge-sheet. Whereas, first prosecution witness is panch for the spot panchnama and also for the inquest panchnama.

7. So far as the first probable defence of accidental death is concerned, the factual position is required to be construed. Firstly, that the victim woman had sustained 100% burns, secondly, that even almost all parts of the body, except the sole of the toes, had burn injuries including even the genitals, thirdly, the stove which was seized from the house of the accused along with the kerosene can containing 2 liters of kerosene, was the wick stove and not of the type in which the kerosene is coming with a blow and force. This above referred three factual positions completely ruled out the possibility of accidental death due to bursting of stove while preparing the food. During the arguments, it is strenuously argued by the learned counsel for the appellant that at the time of the incident, the victim was alone in the house along with her small child of one and half year old and by that time, the appellant was in his school on his usual job. It is further argued that after noticing the hue and cry from the side of his house, the appellant-accused left the school along with other teachers and headmaster and reached his house. It is a defence of the appellant-accused that he tried to extinguish the fire and tried to save the life of his wife. As apparently, according to the appellant-accused, it was an accidental burning, even on preponderance of probabilities, this defence cannot be accepted mainly considering the factual position mentioned earlier and mainly considering the 100% burns sustained by the victim. This is more so when apart from the answer taken from P.W. No. 1 panch witness during his cross-examination that accused tried to save his wife, there is nothing even to accept the defence on preponderance of probabilities. On this aspect, it is seen that panch witness P.W. No. 1 was cross-examined and he was put the suggestion that accused had tried to extinguish the fire and this suggestion has been affirmatively answered by the said panch witness. In fact, P.W. No. 1 was a panch witness to the scene of offence and to the inquest panchnama and there was nothing from the prosecution to suggest that he was also the witness of viewing the burning of the woman and alleged attempt on the part of the appellant-accused to rescue his wife and to extinguish the fire. But still if this answer is accepted given by the panch witness, accepting the theory of the accused, as he had tried to extinguish the fire, this answer require some corroboration by way of further conduct of the appellant-accused or at least any material to be brought before the Court by the accused that he had sustained some injuries while attempting to extinguish the fire. But this has not been done by the accused. Moreover, it is a factual position that he had not attended the Police Station and informed the Police regarding alleged accidental death of his wife due to 100% burns. On this aspect, it must be mentioned that according to the case of prosecution, immediately on the incident of burning of the victim, an ADR report was lodged by the Police Patil of the said village. The said Police Patil after knowing the said incident of burning of

the woman, satisfied himself as to the correctness by visiting the house of the accused and then went to the Police Station and lodged his report. As such, it is an admitted position that appellant-accused had not himself informed the Police. If the defence of the appellant is to be accepted that he tried to extinguish the fire and it was the accidental death of his wife, then the natural conduct would be as such that the appellant would have rushed to the Police and informed the Police accordingly and then subsequently he would have attended the funeral rites of his wife. But the conduct of the appellant is otherwise and has been observed by the trial Court in detail in the impugned judgment and order.

8. So far as the defence witness is concerned, it must be mentioned that said defence witness was the Headmaster during the relevant time when the appellant was working in a school as a teacher and according to the defence witness, earlier on the day of the said incident i.e. on 19/12/1996 at about 10.00 a.m. he had been to the house of the appellant-accused and had a tea prepared by the victim, i.e. wife of the appellant. Thereafter, said defence witness and the appellant went to the school and resume their duty and at about 10.45 a.m. they noticed the hue and cry from the side of the house of the accused and rushed to the spot. In fact, this was also the case of the appellant-accused. The substantive evidence of said defence witness is silent on the point as to the appellant-accused trying to extinguish the fire to save the life of his wife. There is no mention to that effect in the examination-in-chief of said defence witness that there was such attempt made by the accused to save the life of his wife and to extinguish the fire. On the contrary, he had mentioned that when he along with the appellant and other teachers reached the spot, they saw that the wife of the appellant was in 100% burnt condition and was dead.

9. So far as the application of Section 498-A and also of Section 306 is concerned, in the opinion of this Court, a substantive evidence of P.W. Nos. 2, 3 and 4 is of much significance mainly on the aspect as to the cruel treatment given to the victim woman by the appellant. Even earlier lodging of the complaint for the offence punishable under Section 498-A of I.P.C. and then compromise between the parties is also a circumstance which strengthen the case of prosecution. More so, the conduct on the part of the appellant-accused as discussed earlier, is sufficient to discard his theory of defence and his defence cannot be accepted even on preponderance of probabilities and this has been rightly done by the trial Court while analyzing the evidence of prosecution witnesses.

10. In the result, in the opinion of this Court, there is nothing to interfere with the impugned judgment and order and hence, there is no merit in the present appeal and the same is accordingly dismissed and disposed of.