

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 341 OF 2001

Bapu S/o Dagu Alhat,
aged 27 years,
Occupation : agricultural labour,
R/o Bhatana, Taluka Vaijapur,
District Aurangabad

.. Appellant
(Orig. Accused
No.1)

Vs.

The State of Maharashtra

.. Respondent

Mr. Joydeep Chatterji, Advocate for the appellant
Smt. B.B. Gunjal, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.

RESERVED ON : 24/07/2015
PRONOUNCED ON : 30/07/2015

JUDGMENT:

Heard both sides.

2. Aggrieved by recording of the conviction by the learned II Additional Adhoc Sessions Judge, Aurangabad vide judgment and order dated 13/8/2001 passed in Sessions Case No. 77 of 2000, for the offences punishable under section 498-A and 306 of the Indian Penal Code, with consequential award of sentences of

rigorous imprisonment for 1 year and 2 years respectively, with direction to pay fine amount, the present appeal is preferred by the original accused no.1 - Bapu Alhat i.e. the husband of the deceased Minabai. His relatives i.e. accused no.2 - Dagdu Alhat- father and accused no.3 - Bhamabai alias W/o Dagdu Kachrabai Alhat - mother were acquitted by the learned Additional Sessions Judge.

3. The prosecution case in short, is as under:-

. That deceased Minabai had married the appellant on 19/5/1998 and started residing with him at village Bhatana, Tq. Vaijapur. She was initially treated well for a period of six months in the joint family. Thereafter, however, all the accused sent back the deceased to her father's house i.e. P.W. 1 - Pandurang Tupe at Khultabad, Dist. Aurangabad with demand of Rs.5000/-. The complainant father however returned her back with a promise that in future, if the money would be arranged, he would pay the same. Thereafter, the deceased remained pregnant and visited the parental house on two occasions. At that time, she complained to

her parental relatives that all the accused used to make unlawful demand of money and also used to complain of other daily behaviour. Over the same, they used to beat her. Therefore, the father sent his brother and sister-in-law to the appellant and his family members and upon reconciliation, the deceased was again sent back to the appellant.

. During the previous dispute, when the deceased started residing with her parental relatives, at that time, the appellant even sent a notice through the Advocate to the deceased, however, due to reconciliation, she started residing together.

. The ill-treatment however continued and on 12/8/1999, an amount of Rs.1000/- was paid to the appellant. However, at that time, the appellant threatened that in case the balance amount is not brought, the deceased would face the music. In the circumstances, on 18/8/1999, the deceased has died due to drowning in a water tank and, therefore, the complaint came to be filed.

4. The appellant had already filed accidental death report to the Police Station, Vaijapur. Post mortem examination was conducted at Rural Hospital, Vaijapur. It was found that deceased died due to drowning. Further investigation was carried. The statements of the witnesses were recorded by the Investigating Officer. Necessary panchanamas were carried and the chargesheet was filed.

5. Before the learned Additional Sessions Judge, three relatives of the deceased i.e. P.W.1 – Pandurang Tupe, the father of the deceased, P.W.2 – Ramu Tupe, uncle and P.W.3 – Kadubai Tupe, the mother of the deceased were examined. P.W. 4 – Head Constable – Ashok Salve deposed regarding the accidental death report filed by the appellant while P.W. 5 – P.S.I. – Chandrakant Dilpak has conducted the investigation.

6. According to the appellant, in-fact, the deceased did not want to cohabit with the appellant. She, therefore, started residing with her parental relatives just after 5-6 months of the marriage.

Therefore, in the month of January, 1999, the appellant even was required to sent a notice through the lawyer, calling upon her to cohabit with him. Thereafter, there was a settlement. The deceased however had fits of epilepsy and was under prolonged treatment for the same. In the circumstances, she must have met with the accident because of drowning in the tank, however, because of the earlier history, as detailed supra, a false complaint came to be filed against the appellant and the other accused.

7. Learned Additional Sessions Judge however came to the conclusion that merely because the witnesses are related to the deceased, cannot be a ground to discard their evidence. Further, the argument that P.W.1 - Pandurang Tupe and his brothers, being in Government employment, they had exerted pressure on the Police to file the prosecution, was not accepted and, therefore, relying on the oral testimony of the three witnesses, the conviction and sentence as regards the present appellant only came to be recorded. Hence, the present appeal.

8. Mr. Joydeep Chatterji, learned counsel for the appellant submits before me that the very fact of immediate report of accidental death of the deceased by the appellant, would throw light on the conduct of the appellant, as against the allegations of P.W.1/father, in his examination-in-chief, suggesting murder of the deceased, was required to be considered by the learned Additional Sessions Judge. He further submits that at the spot, clothes as well as the bucket was found, which would support the defence case, that the deceased has gone to the water tank for the purposes of washing of the clothes and has died due to accident.

. He further submits that not only there is contradiction between evidence of these three relatives regarding the alleged starting of the ill-treatment but even there is material improvement made by each of these witnesses from their earlier versions made before the Police. Further, the Investigating Officer has admitted in his cross-examination that he has recorded statement of some of the witnesses which would show that it was merely an accident and there was no ill-treatment to the

deceased. However, the prosecution did not examine those witnesses. Further, pointing out towards the fact that, it was the appellant himself who was anxious to have the resumption of the cohabitation and had issued notice to the deceased for resumption, the learned Additional Sessions Judge ought to have extended benefit of doubt and ought to have acquitted the appellant.

9. On the other hand, the learned A.P.P. submits that the reasoning forwarded by the learned Additional Sessions Judge is proper and needs no interference.

10. On the basis of this material, following points arise for my determination :-

I) Whether the deceased has committed suicidal death on 18/08/1999 at 12.00 in the noon at village Bhatana ?

II) Whether the prosecution has proved that the present appellant had subjected deceased Minabai to physical and mental cruelty for demand of Rs.5,000/- during her co-habitation with him ?

III) Whether the prosecution has proved

that the present appellant abetted the commission of suicide of the deceased on 18/8/1999 at about 12.00 hours at village Bhatana ?

My findings to point nos. (I) to (III) are in the negative. The appeal is therefore allowed and the appellant is acquitted of the offences punishable under section 498-A and 306 of the Indian Penal Code for the reasons to follow.

R E A S O N S

11. As regards the issue of the commission of suicide, the panchanama of spot of occurrence at Exhibit 7, proved by the prosecution would show that the water tank is situated near village Bhatana. Near the water tank, one steel bucket alongwith the soiled clothes was spotted. The accidental death report was admittedly filed by the present appellant. The death, as per the post-mortem examination note at Exhibit 9, had occurred due to the cardio-respiratory failure due to drowning.

12. Though, Pandurang Tupe - father/complainant, in his examination-in-chief has suggested that it was a case of murder of the deceased, the same will have to be overlooked for the reason that it is not charge of the prosecution. This statement on the other hand, had affected the credibility of his other statements and the statements of his relatives. In that view of the matter, the prosecution failed to prove that it was a case of commission of suicide by the deceased.

13. As regards the allegations of ill-treatment, P.W.1-the father during cross-examination even pleaded ignorance, as to whether the appellant had earlier sent a notice to his deceased daughter through Advocate at Vaijapur, as against the recital in the F.I.R. filed by him at Exhibit 11.

. While according to him, the deceased was treated properly for a period of six months, mother of deceased - P.W. 3 - Kadubai, in examination-in-chief itself deposed that as soon as the cohabitation started, the appellant and his relatives started assaulting the

deceased for the sake of money. Her version regarding the immediate ill-treatment to the deceased, is an improvement over the statement recorded by the Police, which has been brought on record during her cross-examination. She further admitted that the appellant had issued a notice to her deceased daughter for resumption of cohabitation then.

. In this scenario, P.W. 2 – Ramu Tupe, uncle of the deceased has deposed that after 8-15 days of the marriage, the ill-treatment was started. He further deposed that P.W. 1 – Pandurang Tupe paid an amount of Rs.1,000/- to the appellant in his presence. During cross-examination, however, he had to admit that at the time of said payment, he was not present.

14. P.W. 5 – P.S.I. Chandrakant Dilpak has admitted that during the investigation, he had interrogated the witnesses, whose names were disclosed by the complainant in his complaint. These witnesses however stated before him that the deceased was not ill-treated by the appellant or his relatives.

15. If all these facts are taken into consideration, the reasoning of the learned Additional Sessions Judge that the statements of these witnesses cannot be thrown away only because they are the interested witnesses, would hold no water. It is to be noted that the appellant had issued a notice to the deceased for resumption of cohabitation. Thereafter, the settlement took place and deceased has died in unnatural circumstances. Therefore, the near and dear ones of the deceased were bound to have grudge against the present appellant and his relatives. In those circumstances, the learned Additional Sessions Judge was required to make scrutiny of the oral evidence of those witnesses. Scrutiny of the evidence, as detailed supra, would show that benefit of doubt was required to be extended to the present appellant also. In the result, the following order:-

16. Criminal Appeal is hereby allowed.

17. The judgment and order dated 13/8/2001 passed by the learned II Additional Adhoc Sessions Judge,

Aurangabad, in Sessions Case No. 77 of 2000, convicting and sentencing the present appellant for the offences punishable under section 498-A and 306 of the Indian Penal Code, is hereby set aside.

18. Instead, the appellant is acquitted of the offences punishable under section 498-A and 306 of the Indian Penal Code.

19. Bail bonds of the appellant shall stand cancelled.

20. Fine amount, if any, deposited by the appellant be refunded to him, after a period of sixty (60) days from the date of this judgment.

21. Criminal Appeal stands disposed of accordingly.

[M.T. JOSHI]
JUDGE

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