

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 382 OF 2001

Ramrao S/o Sakharam Pawar,
Aged 48 years, Occu.: Service,
As Lecturer in Deogiri College
at Aurangabad R/o. Vikrant
Apartments, Flat No.3,
Vikrant Colony, Station Road,
Aurangabad

.. Appellant
(Orig. Accused)

Versus

The State of Maharashtra
Through Police Station,
Kranti Chowk,
Aurangabad

.. Respondent
(Orig. Complainant)

Mr. R.S. Deshmukh, Advocate for the appellant
Mrs. R.K. Ladda, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.
DATE : 03/09/2015

ORAL JUDGMENT :

Heard both sides.

2. Aggrieved by the recording of the conviction of the present appellant by the learned IInd Additional Adhoc Sessions Judge, Aurangabad vide judgment and order dated 18/9/2001 passed in Sessions Case No. 218

of 1998 for the offences punishable under section 498-A and 306 of the Indian Penal Code and consequently sentencing him to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.1000/-, in default rigorous imprisonment for 6 months for the offence punishable under section 498-A of the Indian Penal Code and to suffer rigorous imprisonment for 7 years and to pay fine of Rs.5000/-, in default rigorous imprisonment for 1 year for the offence punishable under section 306 of the Indian Penal Code, the present appeal is preferred.

3. The complaint filed by P.W.1 – Yashwant, the father of the deceased would show that the deceased – Mangal was married to the present appellant on 26/3/1996. During the relevant period, the appellant was working as a Professor in a College. He had two issues from his earlier wife. At the time of his marriage, the appellant was 46 years old while the deceased – Mangal was 22 years old. After the marriage, both resided happily merely for a period of one month to 1-1/2 month. Thereafter, however, the appellant started suspecting the character of the

deceased. He always used to confine the deceased in the house by locking the same from outside as and when he was required to go outside. He always used to beat her without any reason. During the co-habitation, deceased Mangal had even given birth to one son, still, there was no improvement in the conduct of the appellant. On 2-3 occasions, he had beaten the deceased and left her at the complainant's house. After persuasion and counseling from the elders, the deceased used to be again taken back at her matrimonial home, however, the ill-treatment continued.

4. In the month of April, 1998, the marriage of P.W. 2 - Bhaskar, one of the son of the complainant, had taken place. Appellant had grievance that no proper gifts were offered to him in this marriage.

. In the circumstances, on 18/5/1998, the incident has occurred. The complainant came to know that the deceased as well as her 14 months old son had suffered burn injuries in the said incident. Therefore, in the night of 19/5/1998 in the morning at 1.15 am, he reached the Government Hospital at

Aurangabad. He made enquiry with Mangal, who was taking treatment at that time. She told him that at about 9.00 pm on 18/5/1998, the present appellant has again started taking suspicion over the fidelity of the deceased. The mother of the appellant tried to intervene by saying that the appellant should not unnecessarily have suspicion about the character of the deceased. Upon that, the appellant even started quarreling with his mother. The deceased therefore tried to advise the appellant that he should not insult his own mother and even challenged that in case he would make certain insulting statement against his own mother, she would set herself on fire. Thereupon, the appellant started abusing not only the deceased but also his own mother. In the said incident, the deceased went to the adjoining room alongwith the son, poured kerosene on her person and set herself on fire. In the circumstances, the mother and son suffered injuries and ultimately she died on the next day i.e. 19/5/1998 at about 6.00 am. Her son also died. In the circumstances, the FIR came to be filed and crime came to be registered at 10.30 am.

5. Before this complaint could be filed, enquiry into the suffering of the burn injuries by the deceased and her son had already taken place. It was found that the appellant as well as his mother had suffered burn injuries while trying to put off the fire. P.W. 7 P.S.I. Nilesh Bagul has conducted the enquiry into the accidental death case. Thereupon, after registration of the crime, he continued with the investigation for some days. The Medical Officer P.W. 9 Dr. Sharad Kale had recorded the history given by the deceased as suffering of the burn injuries. The Medical-Legal intimation sent by the Duty Constable at Exhibit 32 to the Police Station also showed that there was history of suffering accidental burn injuries in the night between 12.10 am to 12.35 am. Executive Magistrate P.W. 6 Dr. Shashikant Bomble had recorded the dying declaration of the deceased at Exhibit 21.

6. Dying declaration at Exhibit 21 would show that at the time of the incident, the appellant was making certain arrogant remarks against his mother. In the said incident, the deceased told the appellant that

in case he continues insulting his own mother, she herself would set her on fire. Thereafter, she went in the adjoining room and poured kerosene on her person and set herself on fire. Her son was with her. Thereafter appellant and his mother tried to put off the fire and brought deceased to the Government Hospital. She further stated that she had no ill-treatment from the in-laws or from the present appellant. However, in view of the complaint and the statement of the brothers of the deceased on the line of the complaint, the crime came to be registered.

7. P.W. 7 - Nilesh Bagul continued with the investigation upto 6/6/1998. Thereafter, P.W. 8 P.S.I. - Haribhau Kolhe took over the investigation. He recorded some more statements including statement of the brothers of the deceased, namely, Bhaskar and Ashok. The post-mortem notes were collected. The property was sent for chemical analysis and the chargesheet was filed.

8. The case would show that not only the deceased but her 14 months old son has died in the said

incident. Post-mortem notes would show that deceased Mangal had suffered 96% burn injuries and, therefore, she has died within a period of 12 hours from the suffering of the burn injuries.

9. Before the learned IInd Additional Adhoc Sessions Judge, Aurangabad the complainant and his two sons i.e. PW 1, PW 2 and PW 3 deposed on the line of the prosecution case. All of them deposed that the deceased had made oral statement to them in the hospital as detailed in the FIR as reproduced earlier. The learned Additional Sessions Judge believed the statements of these witnesses. He found support from the dying declaration detailed earlier and was not impressed by the history recorded by the Medical Officer. In the circumstances, the conviction and sentences, as detailed supra, came to be recorded. Hence, the present appeal.

10. Mr. R.S. Deshmukh, learned counsel for the appellant submits that cross-examination of the brothers of the deceased, namely, P.W. 2 – Bhaskar and P.W. 3 – Ashok would show that they reached the

Government Hospital in the night between 10.00 pm to 11.00 pm. The medical papers as well as the statement of P.W. 9 Dr. Sharad Kale, who treated the deceased in the Government Hospital would show that the deceased was brought in the burn ward at 11.00 pm and at 11.30 pm, the Executive Magistrate has reached there and after her examination by the Medical Officer, the dying declaration was recorded.

. In the circumstances, he submits that when before recording of the dying declaration, brothers of the deceased had met her, there could not have been any chance of exercising any influence by the present appellant over the deceased. He further submits that assuming for a moment that the history given by the Medical Officer or medico-legal information sent to the Duty Constable by the Hospital should be brushed aside, still, the dying declaration recorded by the Executive Magistrate at Exhibit - 21 after the brothers of the deceased met her, could not have been brushed aside by the learned Additional Sessions Judge.

. He further points towards the anomalies in the prosecution case like the statement of P.W. 2 – Bhaskar made to the earlier Investigating Officer did not contain any allegations regarding the oral dying declaration. Further, according to him, the statement that the appellant used to confine the deceased in the matrimonial house, is illogical in the face of admitted facts that old mother and appellant's 2 sons from earlier marriage were residing therein. He submits that the learned Additional Sessions Judge, finding that not only the deceased but even her 14 months old infant child has died in the incident, has brushed aside these anomalies and wrongly convicted the appellant.

11. On the other hand, learned A.P.P. submits that the evidence of the relatives of the deceased would clearly show that there was continuous ill-treatment to the deceased during the co-habitation of the couple. All these witnesses could not have enmity to involve the appellant, in a false case had there been no ill-treatment to the deceased and in the circumstances, he submits that the appeal be dismissed.

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

(I) Whether the prosecution has proved that for a period between 26/3/1996 till death of deceased on 18/5/1998, the present appellant, being the husband of the deceased had subjected her to cruelty on the suspicion of her character ?

(II) Whether the prosecution has further proved that the appellant has abetted the commission of suicide by deceased - Mangal ?

My findings to both the above points are in the negative. The appeal is therefore allowed and the order of the learned IInd Additional Adhoc Sessions Judge, Aurangabad is set aside for the reasons to follow.

R E A S O N S

13. The facts on record would show that at the time of marriage, while appellant was 46 years old, the deceased was 22 years old. The appellant already had two sons from his earlier divorced wife. The record of the case and more particularly, the dying declaration as well as the complaint would clarify that the present appellant at the time of incident, not only had verbal brawl with his deceased wife but also with his mother and the incident has occurred as the deceased tried to insist on the appellant that he should not at least insult his own mother. This statement in the FIR as well as in the dying declaration detailed above would make it clear the rather strange behaviour of the present appellant.

14. The matter however should have rest thereat. It appears that certain strangeness in the nature of the appellant, was a cause for exaggeration by the near and dear ones of the deceased. We have already found that before the

dying declaration could be recorded by the Executive Magistrate, both of her brothers, who were residing in HUDCO area of Aurangabad, had reached the Government Hospital, one after another. They reached at the time of her admission in the burn ward. They deposed that at that time, they met the deceased. This would be the natural behaviour, as upon visiting the hospital, they would meet their sister, who had suffered the burn injuries. The statement, allegedly made by the deceased at that time however had been a cause for these brothers i.e. P.W. 2 and P.W. 3 to give the earlier history between the spouse.

15. The dying declaration recorded by the Executive Magistrate after meeting of her brothers, however, was specific that only due to the singular incident of the fateful night, the lady who was sensitive enough to get enraged by the insult of her mother-in-law by her husband, set herself on fire. She was specific in making the statement that earlier to this, there was no trouble from the appellant or his mother. In the light of this

dying declaration, the complaint as well as the statement of the brothers of the deceased would not stand or atleast this material would be enough to extend reasonable benefit of doubt to the appellant.

. It is to be noted that to the earlier Investigating Officer i.e. P.W. 7 – Nilesh Bagul, no statement was made by the brothers about any earlier ill-treatment to the deceased.

16. In that view of the matter, in my view, the reasoning forwarded by the IInd Additional Adhoc learned Sessions Judge, Aurangabad cannot stand. In the result, the following order:-

17. Criminal Appeal is hereby allowed.

18. The conviction of the present appellant recorded by the learned IInd Additional Sessions Judge, Aurangabad vide judgment and order dated 18/9/2001 passed in Sessions Case No. 218 of 1998, for the offences punishable under section 498-A and 306 of the Indian Penal Code and the consequential sentences, are hereby set aside.

. Instead, the appellant is acquitted of all the offences.

19. Bail bond of the appellant shall stand cancelled.

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

21. Disposal of the property on the directions issued by the learned IInd Additional Adhoc Sessions Judge, Aurangabad.

[M.T. JOSHI]
JUDGE

arp/