

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.407 OF 2001

Motilal s/o. Keshav Jadhav,
Age 37 years, occ.r/o. Pahurpeth,
Tq. Jamner, Dist. Jalgaon ..Appellant

Versus

The State of Maharashtra ..Respondent

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Mr.A.N.Nagargoje, advocate for appellant

Mr.V.P.Kadam, APP for respondent - State

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CORAM : M.T. JOSHI, J.
JUDGMENT RESERVED ON : AUGUST 21, 2015
JUDGMENT PRONOUNCED ON : SEPTEMBER 9, 2015

JUDGMENT :

Heard both sides.

2] Aggrieved by the judgment and order dated 1st October, 2001 passed in Sessions Case No.232 of 1995 by learned IInd Ad-hoc Addl. Sessions Judge, Jalgaon, thereby convicting the appellant for the offences punishable under Section 306 and 498-A of

Indian Penal Code and the consequential sentences to suffer rigorous imprisonment for five years and one years, respectively, with direction to pay fine, the original accused no.1 has preferred present appeal.

. In fact, the relatives of the appellant i.e. original accused nos.2 to 4 were also charged of commission of the said offences in furtherance of their common intention with present appellant. They were, however, acquitted by learned Sessions Judge.

3] In nutshell, the prosecution case, is as under:-

. Appellant – Motilal Jadhav was married to deceased – Geeta about six years prior to her commission of suicide by consuming poison on 20th April, 1995. During the period of six years,

however, except initial period of one year, present appellant along with his relatives always used to suspect that the deceased had illicit relation with her own father i.e. PW 2 – Sukhdeo Ubale. The deceased had also begotten a son during the cohabitation. All the accused and more particularly, the appellant, however, always used to say that the said child was begotten from PW 2 – Sukhdeo himself. Over said suspicion, there was always illtreatment and beating to the deceased. Even the appellant, once, dug a pit in his own house and threatened that he would bury said child in the pit, as it was a product of the said illicit relationship. For a period of one year, the deceased was required to stay with her parents.

. Ultimately, the father of deceased had shown readiness to get divorce from present appellant without seeking any maintenance for his daughter, however, when the parties went for execution of

the divorce deed, at that time, present appellant became ready to give an undertaking that he would not illtreat the deceased in future and in view of the said undertaking, the cohabitation was resumed. However, there was no improvement in his behavior. By blackmailing the deceased he even got back said undertaking executed by him, from the parents of the deceased and thereafter, the illtreatment had continued. The photocopy of the said undertaking was preserved by PW 2 – Sukhdeo. In the situation, ultimately, the deceased committed suicide and hence, on the basis of the complaint filed by the mother of deceased, investigation was carried.

4] Before the trial could begin, the complainant i.e. mother of the deceased had died. Therefore, exhibition of FIR was proved by PW 6 – Raghunath Navle, A.P.I. Who recorded the said FIR at Exhibit 40.

5] Necessary investigation regarding preparation of panchnama of the spot of occurrence, inquest panchnama, collection of post mortem notes, was carried. Statements of the relevant witnesses were recorded.

6] Before learned Sessions Judge, in all, six witnesses were examined. Besides the Medical Officer, the Investigating Officer and the panch witnesses, substantive evidence was in the nature of deposition of three witnesses, who have deposed about the facts of illtreatment either witnessed by them or reported to them by the deceased and the facts regarding the developments took place at the time of seeking divorce and execution of the undertaking by the appellant etc. These witnesses are PW 2 – Sukhdeo, father of deceased; PW 4 – Shankar Mali, a witness from the village of the appellant himself; and PW 5 – Suryabhan Ukhade, uncle of the deceased.

7] Learned Sessions Judge found that all these witnesses did not utter a single word as regards rest of the accused i.e. relatives of the appellant and therefore, they came to be acquitted. According to learned Sessions Judge, however, the charges against the present appellant are duly proved and hence, the conviction and sentence came to be recorded against the appellant.

8] Mr.Nagargoje, learned counsel for the appellant, submitted before me that the FIR filed by mother of the deceased was not proved. Statement of PW 2 – Sukhdeo, father of the deceased, would reveal that his statement was recorded by the police after a period of one week. Further, his statement would show that he has relied upon the statement made by his wife i.e. deceased's mother and therefore, his statements would be hearsay. He further pointed to the

admitted fact that after death of the deceased, both the children begotten from the marriage are residing with the present appellant, in the face of the allegations that present appellant had a suspicion that one of the children i.e. son, was not begotten from him, but from father of the deceased i.e. PW 2 – Sukhdeo.

9] As regards PW 4 – Shankar Mali, he submitted that though he claimed to be an attesting witness to the undertaking and to the statement of the present appellant, so also, to the oral dying declaration made to him by the deceased, his cross-examination would show that he was having connection with village Dhamangaon-Badhe i.e. village of maternal home of the deceased. He had admittedly affection towards the deceased and has made material omissions and imprisonments in his deposition.

10] So far as PW 5 – Suryabhan, maternal uncle of deceased is concerned, Mr.Nagargoje, learned counsel submitted, that this witness also has made material omissions before the Court. Further, the prosecution case itself would suggest that while father of the deceased had offered to have divorce between the couple even without payment of permanent alimony, it was the appellant himself who executed the undertaking and again resumed the cohabitation.

11] Mr.Nagargoje, in the alternative, submitted that the nexus between the alleged cruelty and commission of suicide, is not proved. In the situation, he wanted that present appeal may be allowed.

12] On the other hand, learned A.P.P. for the respondent – State, reiterated the reasons forwarded by learned Sessions Judge and submitted

that no interference in the judgment and order passed by learned Sessions Judge, is warranted.

13] On the basis of this material, following points arise for my determination :-

(I) Whether the prosecution has proved that the deceased has met with a suicidal death ?

(II) Whether the prosecution has proved that present appellant, during cohabitation with the deceased, has subjected her to cruelty on the suspicion that she had illicit relations with her own father ?

(III) Whether the prosecution has proved that due to cruelty at the hands of the appellant, the deceased committed

suicide and the appellant has abetted commission of the same ?

. My findings to the above points are in the affirmative and the appeal is partly allowed to the extent of sentences, for the reasons to follow.

R E A S O N S

14] The factum of death of deceased due to poisoning has not been seriously challenged by the appellant. The question, would be as to whether, said death was the result of the suicide, as abetted by the present appellant.

15] The mother of deceased has died before the trial could begin and therefore, the Investigating Officer, who had recorded the FIR, entered the witness box to prove that the said statement was made by the deceased's mother to him. This, however, cannot be called as a proof of the

contents of the FIR. One of the corroborative piece of evidence, therefore, has lost.

16] We have, however, other substantive evidence i.e. depositions of the three witnesses regarding the charges levelled against the appellant.

. PW 2 – Sukhdeo, father of deceased, has deposed on the lines of the prosecution case. His statement was recorded by the Investigating Officer one week after the incident. It should be noted that death of the deceased has occurred in the year 1995. At that time, PW 2 – Sukhdeo was posted in Gadchiroli district in his government job. When the occasions arose, he used to come to his native village i.e. Dhamangaon-Badhe in Buldhana district. He had learnt about death of the deceased upon receipt of telegram from his wife. However, when the telegram had reached to the place of his posting, he had already left for

his site and therefore, thereafter he could return to his village Dhamangaon-Badhe.

17] If all these facts are taken into consideration, belated recording of statement of this witness, loses its significance. His evidence would show that when the deceased had made complaints regarding the illtreatment, he had visited her matrimonial home and at that time also, in his presence, present appellant made allegations doubting paternity of his own son. The statement of this witness cannot be said as a heresay evidence.

18] As regards PW 4 – Shankar Mali, only because he had affection towards the deceased and his certain relatives were residing at village Dhamangaon-Badhe i.e. place of parental home of deceased, his evidence cannot be thrown away.

. This witness made certain omissions and improvements in his deposition before the court, than the statement recorded by the police. The omissions are like, as to whether, the appellant had narrated contents of the documents to the vendor and thereafter, the vendor had reduced it into writing etc. In that view of the matter, though there is certain variance in the statement made in the court and the statement recorded by the police, there is no reason to doubt the credibility of this witness.

19] As far as PW 5 – Suryabhan is concerned, he is maternal uncle of the deceased. His entire deposition would show that the deceased had narrated him regarding the illtreatment at the hands of the present appellant. In that view of the matter, there is no reason to doubt the version of this witness.

20] Learned Sessions Judge has taken into consideration each and every aspect of the matter, as detailed above. The prosecution witnesses are straight forward in admitting that PW 2 – Sukhdeo himself was ready to seek divorce between the couple, however, present appellant at the eleventh hour of preparation of the documents of divorce, repented as having two children and even executed an undertaking promising not to illtreat the deceased in future. In the circumstances, I do not find that the evidence of these witnesses is unreliable. In that view of the matter, so far as the facts of the case are concerned, in my view, those are proved beyond the reasonable doubt.

21] Mr.Nagargoje, learned counsel for the appellant, submitted that the nexus between the cruelty and suicide is not proved. He has relied upon the ratio laid down in the cases of (I) **Ravindra Pyarelal Bidlan and ors. Vs. State of**

Maharashtra, 1993 Cri.L.J. 3019 and (ii) Ramesh Kumar Vs. State of Chattigarh, AIR 2001 SC 3837.

. In both these cases, proximity between the incidents of cruelty and suicide was not proved on facts.

22] In the present case, deposition of PW 2 – Sukhdeo, father of deceased, would show that he was shocked by the allegations of his having illicit relationship with his own daughter. Fed up with the continuous suspicion in this regard from the appellant, he even showed his readiness to arrange for divorce between the couple without seeking permanent alimony. The mother of deceased, who had occasions to hear frequent complainants of the deceased about cruelty, could not be examined due to her death. PW 2 – Sukhdeo, father of deceased, was away from his native village as he was in Gadchiroli District and

therefore, naturally, during the last phase of life of the deceased, he could not hear about the illtreatment to the deceased.

23] However, PW 4 – Shankar, who was residing in the very same village that of the present appellant, has deposed that after resumption of cohabitation between the couple, upon execution of undertaking by present appellant, again illtreatment had started to the deceased on the same suspicion. In that view of the matter, it has been proved that there was a nexus between cruelty and commission of suicide by the deceased.

24] In the circumstances, the appeal fails as regards the conviction awarded by learned Sessions Judge. As regards the sentence, however, certain interference is warranted.

25] Learned Sessions Judge has sentenced present appellant suffer rigorous imprisonment for five years for the offence punishable under Section 306 of Indian Penal Code and rigorous imprisonment for one year for the offence punishable under Section 498-A of Indian Penal Code. Both the substantive sentences were directed to run concurrently.

26] The facts proved on record would show that present appellant had suspicion about illicit relation between the deceased and her father. When the father of deceased i.e. PW 2 – Sukhdeo had arranged for divorce without seeking permanent alimony for the deceased, present appellant, at the time of execution of the divorce deed, upon watching his children, had executed an undertaking that in future he would not illtreat the deceased. The obsession, however, was continued and he lost his wife in the same.

27] Certain expiations, thereafter, has been brought on record i.e. the appellant is now maintaining his both children, including the son regarding whose paternity, the appellant had doubt during the lifetime of his deceased wife. The prosecution evidence would further show that the appellant has now married and is also having a child from the said second marriage. The appellant is maintaining children of his both marriages under one roof.

28] In the circumstances, the direction to suffer rigorous imprisonment for five years, would not be harsh only for him, but also to his family, including the children. In my view, therefore, following order shall meet the ends of justice :-

A] The appeal is partly allowed.

B] The judgment and order dated 1st October, 2001 passed in Sessions Case No.232 of 1995 by learned IInd Ad-hoc Addl. Sessions Judge, Jalgaon, thereby convicting the appellant for the offences punishable under Section 306 and 498-A of Indian Penal Code, is hereby maintained.

C] However, the order of learned IInd Ad-hoc Addl. Sessions Judge, Jalgaon, directing the appellant to suffer rigorous imprisonment for five years for the offence punishable under Section 306 of Indian Penal Code, is hereby set aside to that extent. Instead, the appellant is directed to suffer rigorous imprisonment for one year on this count.

D] The order of learned IInd Ad-hoc Addl. Sessions Judge, Jalgaon, directing the appellant to suffer rigorous imprisonment for one year for the offence punishable under Section 498-A of Indian Penal Code, is hereby maintained.

E] Directions to pay fine on both counts maintained.

F] Both sentences shall run concurrently.

G] Set off as per the rules be given to the appellant/accused from the substantive sentences.

H] Muddemal property be disposed of on the lines of the directions issued by learned IInd Ad-hoc Addl. Sessions Judge, Jalgaon.

[M.T. JOSHI, J.]

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