

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.154 OF 2002

The State of Maharashtra	]	 Appellant /
	]	(Org. Complainant)

Versus

1. Sampat Soma Shendge	]	
Age : 36 Yrs., Labourer	]	
	]	
2. Smt. Tarabai Soma Shendge	]	
Age : 65 Yrs., Occu.: Household Work	]	
Both residing at Village Ambale,	]	 Respondents /
Taluka Purandar, Dist. Pune.	]	(Original Accused)

Mrs. A.S. Pai, A.P.P., for the Appellant / State.

None for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 7TH DECEMBER 2015.

ORAL JUDGMENT :

1. The Appellant/State has preferred this Criminal Appeal against the acquittal of Respondent Nos.1 and 2 for the offences punishable under Sections 498A and 306 r/w. 34 of IPC, as recorded by the 9th Ad-Hoc Additional Sessions Judge, Pune vide his Judgment and Order dated 2nd November, 2001 in Sessions Case No.83 of 2000.

Brief facts of the Appeal can be stated as follows :-

2. The marriage of Baby, since deceased and the daughter of PW-1 Smt. Kesharbai Bhise, had taken place with Respondent No.1 Sampat Shendge about fifteen years prior to the incident. Out of the wed-lock, she had two sons by name Swapnil and Swarup. After the marriage, she was residing with Respondent No.1. Respondent No.2 is the mother of Respondent No.1.

3. It is alleged that, about four months prior to the incident, Baby has visited the house of her sister Shewanta and disclosed to her and her husband PW-2 Shamrao Admane that she was subjected to beating and harassment by Respondent Nos.1 and 2 on the count that she was having illicit relations with another person. PW-1 Kesharbai, her mother, convinced and sent her back. Before a month prior to the incident, Baby again came to the house of her mother and made complaint of ill-treatment and harassment. Hence, PW-1 Kesharbai took her to Jejuri Police Station, where she lodged complaint against Respondent No.1. An N.C. complaint was registered on the basis of her complaint. Thereafter, both, PW-1 Kesharbai and Baby went to the house of Social Worker Nilam Gore and gave complaint to her also. There, Respondent No.1 was called. He gave an undertaking in writing that he will not harass her and took Baby with him for co-habitation. Fifteen days thereafter, PW-1 Kesharbai

was informed by her nephew Balu that Baby has poured Kerosene on herself and set herself ablaze. Hence, PW-1 Kesharbai went to Jejuri and found the dead body of Baby. On the very day, she lodged complaint (Exhibit-18) against Respondent Nos.1 and 2.

4. On her complaint, PW-6 PSI Pramod Divakar registered C.R. No.62 of 1999 against the Respondents. Meanwhile, on the information of the incident given by one Shri. Govind Shedge, A.D. No.56 of 1999 was registered by Police Head Constable Jhagde. In the enquiry of that A.D., PW-6 PSI Divakar has prepared Inquest Panchanama (Exhibit-14) and sent the dead body to Primary Health Centre at Jejuri. There, autopsy was conducted, which reveal the cause of her death as *"100% burns"*. PW-6 PSI Divakar then made the Scene of Offence Panchanama and from the spot, he collected the burnt pieces of saree, blouse, kerosene can, match sticks and other articles vide Panchanama (Exhibit-32). Further investigation of the case was conducted by PW-8 PSI Prakash Jagdale. He sent seized muddemal articles to C.A. He recorded the statement of PW-4 Sanjivani Gaikwad on 31st January, 2000 and further to completion of investigation, filed Charge-Sheet in the Court against the Respondents.

5. On committal of the case to the Sessions Court, the Trial Court framed charge against the Respondents vide Exhibit-3. The Respondents

pleaded not guilty and came to be tried, raising the defence of denial and false implication.

6. In support of its case, the prosecution examined in all eight witnesses and on appreciation of their evidence, the Trial Court was pleased to hold that prosecution has failed to prove its case against the Respondents beyond reasonable doubt and, accordingly, acquitted them of both the charges levelled against them.

7. This Judgment of the Trial Court is challenged in this Appeal by learned A.P.P., submitting that there is sufficient evidence on record proving that, just before her death, Deceased Baby was subjected to the harassment and ill-treatment on the count that she was having illicit relations with the husband of PW-4 Sanjivani Gaikwad. An N.C. complaint to that effect was also lodged with the Police by her and this conduct of Respondent No.1 of subjecting her to willful conduct is sufficient to attract the charge under Sections 498A and 306 of IPC.

8. At the outset itself, in my considered opinion, it has to be noted that the death of Baby had taken place about 14 to 15 years after her marriage. As a result, the presumption, as laid down under Section 113A of Evidence Act, cannot be made applicable to the facts of the present

case. The prosecution, hence, has to prove independently the charge of abatement under Section 107 of IPC. The essential ingredients, which are required to be proved to bring its case within the four corners of Section 107 of IPC are that, there must be either intentional aiding or instigation or, lastly, hatching of conspiracy on the part of the Accused to prove the charge of abatement. The prosecution, in the present case, therefore, has to prove either that the Respondents had instigated Deceased Baby to commit suicide, or, they had intentionally aided her to commit suicide or, lastly, they had hatched conspiracy for her to commit the suicide. In the instant case, therefore, merely on the proof of Baby being subjected to harassment or ill-treatment, the charge under Section 306 of IPC will not be attracted, as the presumption under Section 113A of Evidence Act is not applicable; the death of Baby, a married lady, having taken place seven years after the marriage.

9. Now to prove that there was such intentional aiding or instigation on the part of the Respondents for Baby to commit suicide, there is absolutely no iota of evidence on record. It is admitted by PW-1 Kesharbai, the mother of Deceased Baby, that Respondent No.2 was residing separately from Respondent No.1 and, therefore, so far as Respondent No.2 is concerned, she deserves a clear acquittal.

10. As regards Respondent No.1 also, the evidence of PW-1 Kesharbai and PW-2 Shamrao Admane reveals that, four months prior to the incident, Baby had come to the house of PW-2 Shamrao, her sister Shewanta's husband, and made complaint of beating at the hands of her husband. At that time, she was convinced and sent back by her mother and PW-2 Shamrao. Thereafter, again she came to the house of her mother and disclosed about the harassment. Therefore, the N.C. complaint was lodged and then her mother took her to the house of Social Worker Nilam Gore. There, Respondent No.1 was called and an amicable settlement was arrived at. He gave an undertaking that hereafter he will treat the Deceased properly and, accordingly, Baby went along with Respondent No.1 to his house. There is no evidence on record to prove that Baby was thereafter again subjected to ill-treatment or harassment at the hands of Respondent No.1. The crucial evidence in the case would have been that of the two sons of Deceased and Respondent No.1, namely, Swapnil and Swarup, but prosecution has not examined them.

11. As a matter of fact, as per evidence of PW-1 Kesharbai, the alleged inland letter was written by Swapnil on behalf of Respondent No.1, as Respondent No.1 was illiterate. Therefore, Swapnil was very much the witness to various acts and as, admittedly, he was residing in the same

house, his evidence was of utmost significance and importance to the prosecution to prove that, even after the undertaking given by Respondent No.1 before the Social Worker, he continued to subject the Deceased to ill-treatment and harassment, or, for that matter, continued to take suspicion of her character. Such evidence is conspicuously lacking in the present case. As it was available but not adduced, makes it necessary to draw an adverse inference against the prosecution.

12. Even as regards the evidence of PW-4 Sanjivani Gaikwad, the wife of Vinayak Gaikwad, her evidence reveals that her statement was recorded more than two months after the incident in question. The incident has taken place on 8th November, whereas, her statement was recorded on 31st January and no explanation is offered for the delay in recording of the statement. Further, it is also pertinent to note that, as per her evidence, Respondent No.1 had satisfied himself after conducting the exercise of his wife and Vinayak Gaikwad touching the 'pardi' of Goddess Ambabai and taking the oath that there were no such illicit relations between Vinayak Gaikwad and Deceased Baby. Therefore, there was also no cause for ill-treatment and harassment after the said exercise. It is also worth to note that this PW-4 Sanjivani has not handed over carbon copy of the chit (Exhibit-28), which was reduced into writing by Suresh Shendge

on behalf of Respondent No.1, giving an undertaking that he will not harass either Baby or Vinayak Gaikwad further, at the time of recording of her statement but only in the course of evidence. This delayed recording of statement of PW-4 Sanjivani and non examination of Suresh Shendge in whose handwriting the chit (Exhibit-28) is offered, again constitutes lacunae in prosecution case.

13. There is also no evidence unequivocally proving that the death of Baby was on account of suicide and not accidental one. There is no eye-witness to the incident in which she sustained the fire and there is also no Dying Declaration; either oral or written. If one considers the Spot Panchanama, the possibility of her sustaining the burns accidentally also cannot be ruled out, in the absence of any categorical evidence proving that the cause of her death was suicide and suicide alone. There is no evidence proving that just before the incidence, there was any quarrel between her and Respondent No.1. As stated above, her sons, who were residing with her, are not examined by the prosecution, nor any independent witness like the neighbour is examined to prove that there was such immediate cause for her to set herself ablaze.

14. In view of these infirmities in the prosecution case, in my considered opinion, the view adopted by the Trial Court of extending the benefit of

doubt to the Respondents, being a probable and possible view, it would not be proper on the part of this Court to interfere in the said order while sitting in an Appeal against the acquittal. The scope of interference by the High Court while sitting in an Appeal against acquittal is limited one to the extent only when it is pointed out that the view adopted by the Trial Court is perverse or not borne out from the evidence on record, the interference by the Appellate Court is justified and not when two views are possible. In such situation, the Appellate Court cannot substitute its own view to the view taken by the Trial Court, assuming that on the set of same material and evidence, another view is also equally possible.

15. As a result, though the death of Baby was unfortunate one, as the prosecution has failed to prove its case within the legal parameters, the Judgment of acquittal of the Respondents, as recorded by the Trial Court, needs to be confirmed. Hence, the Appeal stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]