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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 539 of 1996.

Sharad Murlidhar Thakare

...Appellant.

Vs

The State of Maharashtra

...Respondent.

Mr Subir Sarkar, Advocate appointed for the appellant.
Smt. Anamika Malhotra, APP for the Respondent-State.

CORAM : A.S.GADKARI, J.

DATE : 16th June, 2016

ORAL JUDGMENT.

1) The appellant is convicted for the offences punishable under section 498-A and 306 of the Indian Penal Code and has been sentenced to suffer rigorous imprisonment (R.I.) for two years and five years and to pay fine of Rs. 500/- and Rs.1000/- respectively on the said two counts by the learned IInd Additional Sessions Judge, Nashik in Sessions Case No. 58 of 1996 by its Judgment and Order dated 30.8.1996. The Trial Court has further directed that both the substantive sentences shall run concurrently. The appellant has questioned the

correctness of the said Judgment and Order dated 30.8.1996 in the present appeal.

2) The record reveals that as none appeared for the appellant on earlier occasions, on 18/3/2016 this Court requested the learned Advocate Shri Subir Sarkar to espouse the cause of the appellant to which he had graciously accepted.

3) The facts which are relevant and necessary for the decision of the present appeal, can briefly be enumerated as under :

(i) That the deceased Kalpana was married to the appellant on 26.4.1992. Pundlik Shripati Patil (PW no.4) was the father of the deceased Kalpana. After the marriage the appellant initially for a period of eight to nine months the appellant treated deceased Kalpana nicely. The deceased Kalpana was graduate in Science faculty and had also completed her Diploma in Laboratory Technician. She was employed in Sinnar College as an Instructor. The appellant was a teacher in Janata High School at Sinnar. It is the prosecution case that after a year of the marriage, the appellant developed habit of consuming liquor and started returning to the house late in the night. This habit

of drinking liquor by the appellant gave a cause to frequent quarrels between the deceased and the appellant which ensued in the matrimonial discord. That the appellant also started beating the deceased. The deceased Kalpana on many occasions disclosed the said fact to her mother, her father Pundlik Patil (PW 4), her friends namely Varsha Anarase (PW 5) and Smt. Sangita S. Maind (PW 6).

(ii) The incident in question occurred on 29.12.1995. It is the prosecution case that in the evening at about 6:30 p.m. on 29.12.1995 the appellant consumed a substantial quantity of liquor along with his friend Rajendra Bidve. The appellant returned to his house at about 10:30 p.m. The deceased Kalpana advised the appellant to have dinner and not to go out of house, upon which an altercation took place between them. That the deceased Kalpana told the appellant that if he goes out of the house, she will commit suicide by pouring kerosene upon herself, to which the appellant refused and said that why she should commit suicide and he will do the needful. It is the further prosecution case that the appellant thereafter took the can filled up with kerosene and poured it on the person of the

deceased and ignited the fire. Rangnath Thorat (PW no.2) was informed by his wife that some untoward incident had taken place in the house of the appellant and he immediately rushed there. He saw the deceased Kalpana lying on the floor in burnt condition and the appellant was sitting near her feet. He, thereafter, doused the fire with the mattress. Kalpana was taken to hospital by an auto-rickshaw late in the night. The said fact of admission of Kalpana to the hospital was informed to her father Pundlik (PW 4). Pundlik Patil along with his wife Jijabai went to the hospital. It is alleged that the deceased Kalpana gave an oral dying declaration to thereby implicating the appellant in the present crime as the perpetrator of the crime. The deceased Kalpana had sustained 99% burn injuries and succumbed to those injuries at about 7:00 p.m. on 30.12.1995.

(iii) After the demise of Kalpana, PW 7 Bhagwan Navale (Assistant Police Inspector) registered an offence bearing CR No. 254/1995 under section 302 of the IPC at Sinnar Police Station, District Nashik. Namdeo Khalkar (PW 8) Police Head Constable, then attached to Sinnar Police Station effected the spot panchnama which is at Exh.17. After completion of

investigation and receipt of the postmortem notes, the Investigating Agency submitted the final report as contemplated under section 173 (2) of Cr.P.C. in the Court of the Judicial Magistrate, First Class, Sinnar.

iv) As the case was exclusively triable by the Court of Session, the learned Judicial Magistrate, First Class, Sinnar committed the said case to the Court of Session as contemplated under section 209 of Cr.P.C. After the committal of the case, the learned Trial Court framed charge below Exh.2. The said charge was initially framed under section 302 of the IPC below Exh.2 and after hearing the prosecution and defence, alternative charge under section 306 of the IPC was framed below Exh.2-A to which the appellant pleaded not guilty and claimed to be tried. It is the defence of the appellant that he was not addicted to liquor and never ill-treated Kalpana. That on the fateful day he had gone outside and when he returned, he saw Kalpana lying on the ground in burnt condition. He, then, admitted Kalpana to the hospital with the help of neighbours.

4) The prosecution, in support of its case, examined in all eight witnesses. The learned Trial Court after recording the

evidence of the prosecution witnesses and after hearing the parties to the said case, was pleased to acquit the appellant for the offence punishable under Section 302 of the IPC and convicted and sentenced the appellant under section 498-A and 306 of the IPC as stated herein above by the impugned Judgment and Order dated 30.8.1996.

5) Heard the learned counsel for the appellant and the learned APP and also perused the entire record pertaining to the present case.

6) The learned counsel for the appellant submitted that after the learned Trial Court discarded the oral dying declaration alleged to have been made by the deceased Kalpana, there is not even an iota of evidence to prove the guilt of the appellant under section 306 of the IPC. He submitted that even as per the prosecution the only difference of opinion the deceased Kalpana was having with the appellant was on the point of the alleged addiction of liquor by the appellant. He further submitted that even in answer to question no. 27 which was recorded under section 313 of the Cr.P.C. the appellant has specifically stated that he has been involved in a false case. He was not

consuming liquor. He used to treat Kalpana properly. There was no dispute between them. On 29.12.1995 he had been to the house at about 10:30 to 11:00 p.m. and saw people gathered there. When he entered the house he saw Kalpana lying in the varandha. He got frightened. His neighbour Mr Rangnath Thorat (PW 2) tried to douse the fire. Kalpana was suffering from pains. At that time, burnt pieces of clothes of Kalpana fell on his leg and he sustained burns to his hands while extinguishing the fire. He thereafter admitted Kalpana to Municipal Hospital, Sinnar and from there she was taken to Nashik Hospital. He informed the said fact to the parents of Kalpana. In short, the defence of the appellant was of total denial and he suffered injuries at the time of extinguishing the fire of Kalpana.

The learned counsel further submitted that the Trial Court has not taken into consideration the specific and precise defence of the appellant and had proceeded on the basis of the presumptions thereby holding the appellant guilty under sections 498-A and 306 of the IPC. He contended that as there was nobody to hold guilty for the said incident, the prosecuting

agency has filed charge-sheet against the appellant. He further contended that there was no abetment at all at the instance of the appellant to the deceased to commit suicide. That abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. In support of his contention, he relied upon a decision of the Supreme Court in the case of S.S. Chheena vs. Vijay Kumar Mahajan & Anr reported in 2010 (4) Crimes 101 (SC). He further contended that at the most it can be stated that the life style of the deceased Kalpana and the appellant was not compatible to each other and by no stretch of imagination it can be said that the appellant instigated, facilitated or abetted for commission of suicide. He contended that the deceased was a qualified lady and was working with a college. According to him, suicide could not have been the ultimate action to be adopted by the deceased. In support of the said contention, he relied upon a decision rendered by the learned Single Judge of this Court in the case of Pradeep Govind Revaskar and Anr Vs. The State of Maharashtra dated 17th February, 2015 in Criminal Appeal No. 782 of 2003. He, therefore, prayed that the present appeal may

be allowed and the appellant may be acquitted from the charges framed against him.

7) Per contra, the learned APP vehemently opposed the appeal and submitted that the learned Trial Court after taking into consideration the entire evidence available on record in its proper perspective has rightly convicted and and sentenced the appellant by the impugned judgment. She further submitted that as a matter of fact, after taking into consideration the testimony of PW 1 Dr Sanjay Laulkar and PW 4 Pundalik Patil (the father of the deceased Kalpana), the learned Trial Court ought to have accepted the oral dying declaration given by Kalpana to her father when she was on the death bed. She, however, fairly conceded to the fact that as the State has not preferred any appeal either for enhancement of the sentence or against the acquittal of the appellant under section 302 of the IPC, the finding recorded by the Trial Court that the oral dying declaration is not proved by the prosecution, cannot now be reversed in an appeal preferred by the appellant against the order of conviction. She, lastly, prayed that the present appeal may be dismissed and the conviction and sentence awarded by

the Trial Court may be maintained.

8) With a view to appreciate the submissions advanced by the learned Counsel for the appellant and the learned APP, it will be useful to refer to, in brief, the prosecution evidence.

9) PW 4 Pundalik Patil is the father of deceased who in his testimony has stated about the oral dying declaration made by Kalpana to him. He has also narrated about the ill-treatment meted out to Kalpana by the appellant. He has deposed about the addiction of the appellant to liquor and ill-treatment meted to the deceased thereafter. PW 5 Smt. Varsha B. Anarase and PW 6 Smt. Sangita S. Maind were the friends of deceased Kalpana who in their testimonies have also stated the instances of ill-treatment meted out to the deceased by the appellant. These two witnesses have also stated about the addiction of liquor of the appellant and the frequent quarrels between the deceased and the appellant due to the same.

10) PW 3 Smt. Tulsabai G. Nikam is the landlady where the appellant and the deceased earlier used to reside. The said witness in her testimony has also stated about the habit of drinking liquor by the appellant, his rowdiness after

consumption of liquor and harassment meted out to the deceased Kalpana when they were staying at the rented premises of the said witness.

11) PW 2 Rangnath J. Thorat is the landlord of the room where the deceased and Kalpana were lastly residing and the incident in question took place. PW 2 in his deposition has stated that on 29.12.1995 he was sleeping at his residence and at about 10:30 p.m. his wife woke him up and told that smoke is emerging out from the upper story of their house. He went to the room which was occupied by the appellant and saw deceased Kalpana lying on the ground. She had sustained burn injuries and was engulfed in flames. He saw the appellant standing there. He immediately brought one mattress from the neighbour's house and put the same on the body of the deceased Kalpana and extinguished the fire. At that time, he saw the appellant was sitting near the feet of Kalpana. When he put the mattress on the body of Kalpana the mattress also caught fire and the appellant received burns from the said burning mattress. He has further stated that at about 1:00 a.m. to 1:30 a.m. the parents of Kalpana arrived at the Hospital and

at about 2:30 a.m. he proceeded to Sinnar.

12) PW 1 Dr Sanjay V. Laulkar, was then attached to the Civil Hospital, Nashik as the Medical Officer, who performed the postmortem examination on the dead body of Kalpana along with Dr Sulakhe on 30.12.1995 between 8:45 to 9:30 a.m. On external examination, he found that deceased Kalpana had received 99% burns and all the said burns were ante-mortem. There were superficial to deep burns and at places bullae were seen. On internal examination he found brain, coverings and brain matters, larynx, lungs, liver, spleen, kidney congested. The stomach contained 50 mls of coffee colour fluid. Walls show pachtechial haemorrhage. Rigor mortis had just started. He found that cause of death was due to 99% burns. He further opined that the death of Kalpana must have occurred 1 to 2 hours prior to conducting the postmortem examination. He further found that the burns were fresh.

In his cross-examination he has admitted that when Kalpana was admitted to hospital at about 1:10 a.m. she was unable to talk.

13) PW 7 Mr Bhagwan Navale (Assistant Police Inspector) was

the Investigating Officer and PW 8 Namdeo Khalkar was the Police Head Constable, then attached to Sinnar Police Station. PW 8 has effected the spot panchnama which is at Exh.17. PW. No.8 has in detail deposed about the articles which were lying at the scene of offence and has proved the said spot panchnama (Exh.17). PW 7 Bhagwan Navale in his cross-examination has admitted that as Kalpana was unconscious her statement (dying declaration) could not be recorded.

14) In view of the admissions given by PW 1 Dr Sanjay Laulkar and PW 7 Bhagwan Navale, the alleged oral dying declaration of Kalpana given to her father Pundalik Patil (PW. no.4) has been discarded by the learned Trial Court from his consideration. Upon re-appreciation of the evidence on record, I find that the learned Trial Court has rightly discarded the said alleged dying declaration. Except the alleged oral dying declaration there is no other evidence on record to show that this is a case of culpable homicide. The appellant in the cross-examination of the witnesses or otherwise has not brought on record any material which would even remotely suggest that deceased Kalpana sustained burn injuries due to an accident

and therefore in view of the evidence on record it is clear that the deceased committed suicide.

15) As far as the addiction of the appellant to the liquor and his continuous harassment and ill-treatment to the deceased Kalpana is concerned, PW 4, 5 and 6 in their testimonies have categorically stated about various instances of harassment and the quarrels arising out of the habit of drinking liquor by the appellant. PW 3 Tulsabai G. Nikam, the erstwhile landlady of the appellant, has also stated about the habit of the appellant of drinking liquor and his rowdiness under its influence. She has also stated that on one occasion she had, in fact, slapped the appellant when he was under the influence of liquor. It is to be noted here that the marriage between the appellant and the deceased Kalpana was solemnized on 26.4.1992 and Kalpana died an unnatural death on 30.12.1995 i.e. within a period of seven years from the date of her marriage with the appellant and, therefore, the presumption under section 113-A of the Indian Evidence Act can safely be applied to the present case.

16) It is to be noted here that the deceased was well educated lady, serving with a college and had no reason to adopt the

extreme step of committing suicide and to end her life. In view of the evidence on record, it is apparent and clear that it is only due to the addiction of the appellant to the liquor and the continuous ill-treatment and harassment which he meted out to the deceased Kalpana, she decided to take the extreme step to end her life.

17) As far as the argument advanced by the learned counsel for the appellant with respect to the incompatibility between the spouses is concerned, according to me, this is not the case of incompatibility or the consequences of the incompatibility but it is clearly the case of ill-treatment and harassment meted out to the deceased by the appellant due to his addiction to liquor. One instance of sustaining the ill-treatment or harassment cannot be compared with another instance. Each and every case has to be weighed and considered from the facts and circumstances of the said case and for the same the reliance placed by the learned counsel for the appellant on the aforesaid decisions according to me is misplaced. In the present case, the prosecution has proved beyond reasonable doubt that the appellant was instrumental in causing harassment and ill-

treatment to the deceased which ultimately compelled her to take an extreme decision of ending her own life by committing suicide.

18) After taking into consideration, the entire evidence on record, I am of the considered view that the prosecution has proved beyond reasonable doubt the commission of the offence under sections 498-A and 306 of the IPC against the appellant in the present case. I find that the learned Judge of the Trial Court has not committed any error while convicting and sentencing the appellant by the impugned Judgment and Order.

19) In view of the above, I find that there are no merits in the appeal and the appeal is accordingly dismissed.

20) Before parting with the Judgment, it will not be out of way to place on record, a word of appreciation for the efforts put in by the learned Advocate Shri Subir Sarkar while representing the appellant.

(A.S.GADKARI, J.)