

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.91 OF 2005

DADASAHEB HARIBHA MANE)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Smt.Anjali Patil, Advocate for the Appellant.

Shri V.B.KondeDeshmukh, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 25th JANUARY 2016.

ORAL JUDGMENT :

1 The appellant was prosecuted on the allegation of his having committed offences punishable under Section 498A of the IPC and Section 306 of the IPC. The learned Additional Sessions Judge, Greater Mumbai, after holding a trial, acquitted him of the offence punishable under Section 306 of the IPC. The learned Additional Sessions Judge, however, found the appellant guilty of an offence punishable under Section 498A of the IPC and

sentenced him to suffer Rigorous Imprisonment for 2 years and to pay a fine of Rs.4000/-, in default, to suffer Simple Imprisonment for 3 months. Being aggrieved by his conviction and the sentence imposed upon him by the learned Additional Sessions Judge, the appellant has approached this court by filing the present appeal.

2 So far as the appellant's acquittal in respect of the offence punishable under Section 306 of the IPC is concerned, the same has become final as the State has not filed any appeal challenging the said acquittal.

3 I have heard Smt.Anjali Patil, the learned counsel for the appellant. I have heard Shri V.B.KondeDeshmukh, the learned APP for the State. I have gone through the record and proceedings. I have carefully considered the evidence adduced during the trial. I have gone through the impugned judgment.

4 The prosecution case, as put forth before the trial court, was as follows :

The appellant, who was, at the material time, working as a Constable in the State Reserve Police Force, from time to time subjected his wife Usha Dadasaheb Mane to cruelty. That, due to the constant ill-treatment, Usha committed suicide on 11th June 1992 by setting herself on fire. She was taken to hospital, where her statement was recorded by Special Executive Magistrate Mehtab Shaikh (PW1). In her statement, Usha said that the appellant used to suspect her character and beat her often. That, on the previous day also the appellant had beaten her with fists and kicks. That, on 11th June 1992 also, the appellant had beaten her. After beating her, she had gone out. In a fit of anger, she locked the room, poured kerosene on her person and set herself on fire. When she caught fire, she shouted. Neighbours came to her rescue. Even the appellant came there. The fire was extinguished and she was taken to hospital.

5 Usha had sustained 95 to 100% superficial to deep burn injuries. She succumbed to those injuries at 6.30 p.m. on the same day i.e. on 11th June 1992.

6 The prosecution examined five witnesses during the trial. The first witness, as aforesaid, is the Special Executive Magistrate Mehtab Shaikh. The second witness Nana Shankar Jadhav is the father of Usha. The third witness Dr.Madhukar Wagh is the one, who had, on 11th June 1992, examined Usha when she was brought to Cooper hospital after having sustained burn injuries. The fourth witness Dropadi Kale is a neighbour of the appellant and the deceased. She has, however, not supported the prosecution case to the effect that the appellant was treating his wife Usha with cruelty. The fifth and the last witness Gajanan Kapdule, Assistant Police Inspector, is the Investigating Officer in the matter. He had registered the First Information Report (FIR). This FIR is actually a dying declaration, in as much as, in this, Usha had narrated that because of the ill-treatment given to her by the appellant from time to time, she was fed up and she had poured kerosene on her person and set herself on fire.

7 The case against the appellant was based mainly on the dying declarations made by the deceased.

8 I have carefully gone through the dying declarations Exhibit 9 and FIR Exhibit 16.

9 I do not find any infirmity in the dying declarations. I do not find any inconsistency or improbability in the version of the deceased as is reflected in the dying declarations.

10 The learned counsel for the appellant submitted that the dying declarations ought not to be relied upon as there were some infirmities therein. She submitted that so far as the dying declaration recorded by the Special Executive Magistrate Mehtab Shaikh (PW1) is concerned, it did not show as to at what time the Magistrate commenced the recording of the statement. She also submitted that though this witness said about having recorded the dying declaration in Hindi, the dying declaration actually produced before the court is in English.

11 I have considered these aspects of the matter. I find that there was no cross-examination with respect to this supposed

discrepancy about the language; and therefore, not much importance to this can be given. The witness might have been able to explain it – or the cross-examiner thought so. Similarly, that the time of commencement of the recording of the dying declarations was not shown thereon, is also of no consequence.

12 I find that there is an endorsement of a doctor, whose writing and signature has been identified by PW3 Dr.Wagh to the effect that, at 11.30 a.m. the patient Usha was in a position to give a statement. I have also gone through the medical papers Exhibit 15 Collectively, and I find that an endorsement, to the effect that the patient was in a fit condition to give a statement, was made. Thus, that the opinion of the doctor was sought before recording the dying declaration of the victim cannot be doubted.

13 Even with respect to the FIR which is the other dying declaration of the deceased, I do not find any grounds to doubt the genuineness thereof.

14 The learned counsel for the appellant submitted that there would be a distinction between ability to speak and to be in a fit mental condition to make a statement, and according to her, there is no evidence to show that the deceased was in a fit state of mind to make a rational statement. Though as a proposition, what the learned counsel submits is correct, I find that the evidence, either of the PW1 Mehtab Shaikh or that of the Investigating Officer, was not challenged at all, to show likelihood of the victim not being in a state of mind to make a rational statement. As already observed, the dying declarations of the deceased appear to be coherent, not suffering from any internal inconsistency or improbability, and are not shown to have been a result of tutoring. It is undisputed that when these dying declarations were recorded, none of the relatives of the deceased were present, and they apparently had not been able to contact the deceased till her death. The possibility of tutoring the deceased to make such statement, therefore, needs to be discarded.

15 The question that, however, requires to be considered is, whether the deceased did not make any statement, and that, PW1 Mehtab Shaikh and PW5 A.P.I. Gajanan Kapdule, are making false statements in that regard. In other words, the question is, whether these witnesses are falsely stating that Usha made the statements, which they claim to have recorded, without Usha having said anything of that sort. I am unable to accept such possibility as probable or likely. It is because, there is no serious challenge to the evidence of these witnesses to the effect that Usha indeed made a statement. There is also nothing to show that in the condition in which she was, Usha could not have made a statement. There is no serious attempt to create a doubt about whether it is possible for Usha to speak, having regard to her health condition, and the cross-examination was not directed towards creating such a doubt.

16 The evidence of Usha's father Nana Jadhav (PW2) also supports the theory that Usha was being ill-treated by the appellant. The evidence of Nana Jadhav does not seem to be

suffering from any infirmities. Infact, when it was suggested to him that he had no communication with his daughter for about two to three years prior to the incident, he accepted it. Though it appears that, the incident of alleged cruelty meted out by the appellant to Usha, as stated by this witness, were old, the evidence of this witness serves as corroboration to the version of Usha, as is reflected in the dying declarations Exhibits 9 and 16.

17 PW4 Dropadi has not supported the case of the prosecution. However, her version that the relations between the appellant and his wife Usha were good, is not sufficient to discard the version in the dying declarations, when a doubt that the dying declarations are manipulated, cannot be seriously or reasonably entertained. As such, I am not inclined to give much importance to the fact that the said witness had not supported the prosecution case about cruelty.

18 On a reading of the dying declarations and the evidence of PW1 Mehtab Shaikh and PW5 A.PI. Gajanan Kapdule,

the same appears to be convincing. A dying declaration ought not to be disbelieved merely because the deponent is not available for cross-examination. If, on the whole, the dying declarations seem to be reliable, the same can be safely acted upon.

19 The learned trial Judge has held that, though the appellant was treating Usha with cruelty and that Usha committed suicide, the appellant cannot be attributed with the necessary *mens rea* to hold him guilty in respect of the offence punishable under Section 306 of the IPC.

20 In my opinion, the appreciation of evidence, as done by the trial court, cannot be said to be suffering from any error or infirmity. It, therefore, follows, that the finding that the appellant was guilty of an offence punishable under Section 498A of the IPC, as recorded by the trial court, needs no interference.

21 The learned counsel for the appellant submitted that the appellant deserves to be treated leniently with respect to the

sentence. She pointed out that the incident had taken place in 1992. The appellant was convicted on 19th May 2004. The appellant who was in service then, has now retired. It is submitted that he would not be able to get pensionary benefits on account of the conviction. It is also submitted that the appellant subsequently re-married in the year 1997-98. He is present in the court with his wife. I am informed that the appellant has three children from his second marriage.

22 I have considered the matter. Though I hold the appellant guilty of cruelty, it is a fact that there is only a general allegation of cruelty, without any specific instances, and as such the degree or gravity of the cruelty cannot be ascertained. The suicide has not been attributed to the general cruelty, but to something, that happened on that fateful day.

23 Under these circumstances, I am inclined to take lenient view of the matter, as regards the sentence. I find that the appellant was in custody during the period from 11th June 1992 to

19th June 1992. There seems to be no point in sending the appellant to prison for the incident that had taken place about 23 years back.

24 In the result, the conviction of the appellant with respect to the offence punishable under Section 498A of the IPC is maintained. However, the substantive sentence imposed upon him is reduced to the period already undergone. The amount of fine is enhanced to Rs.15,000/-. The amount of fine already deposited by the appellant, pursuant to the order of the trial court, shall be adjusted towards the amount of fine that he would be required to pay in accordance with this order. This additional amount of fine shall be paid within the period of fifteen days from today.

25 Subject to the reduction in the sentence, as aforesaid, the appeal is dismissed.

(ABHAY M. THIPSAY, J.)