

IN THE HIGH COURT OF BOMBAY AT GOA.**Criminal Appeal No.34 of 2015**

State of Goa,
Through Porvorim Police Station,
Porvorim Goa.

Appellant**Versus**

Gajanand Bandodkar (Major),
s/o Krishna, aged 26 years,
r/o H.No.341, Canca,
Khalapwada Bardez – Goa.

Respondent

Shri S.R.Rivankar, Public Prosecutor for the Appellant.
Shri Gaurish Agni, Advocate for the Respondent.

CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON :26/09/2017.
PRONOUNCED ON :05/10/2017.

JUDGMENT:

This is an appeal by the State against the judgment of acquittal rendered by the Sessions Judge, Panaji, giving a benefit of doubt to the appellant for the offences punishable under Sections 498-A, 306 and 302 of the Indian Penal Code.

2. Briefly stated the facts are as follows:-

The appellant was married to deceased Gayatri in the year 2003. It was a love-marriage against the wish of mother of the deceased PW 3 – Sunanda Ghatwal. After the marriage, the deceased went to cohabit with the appellant at

various places in a rented house. It is the case of the prosecution that the appellant used to harass the deceased for demand of money, as he was unemployed. It is also alleged that the appellant used to torture the deceased under the influence of liquor and, therefore, the deceased used to visit her parents house and her mother PW 3 – Sunanda Ghatwal used to assist her financially. It is also the case of the prosecution that the appellant had sold all the gold ornaments of the deceased including the gold ear rings gifted to her daughter by PW 3 - Sunanda. PW 3 - Sunanda Ghatwal used to help the deceased and her husband by paying Rs.1500/- per month.

3. The incident in question occurred on 26.11.2005. It is the case of the prosecution that because of constant harassment, the deceased poured kerosene on her person and set herself ablazed resulting into 100% burns. The appellant was responsible for abetting suicide by the deceased because of his demand of money from her mother as well as his threats of divorce. On 27.11.2005 PW 3 - Sunanda Ghatwal lodged a complaint with Porvorim Police Station wherein she alleged about the ill-treatment meted out to her daughter by the appellant. However, in the complaint, she has stated that she has a full suspicion that the appellant must have killed her daughter by hatching a pre-plan.

4. A Crime was registered at Porvorim Police Station bearing No.138/07 under Sections 498-A and 306 of IPC. The investigation is conducted by PW 14 - Devendra Gad. He recorded the statements of the witnesses, recorded spot panchanama as well as inquest panchanama and collected autopsy report and thereafter, filed a Charge-sheet against the appellant in the Court of JMFC, Mapusa. The learned Magistrate committed the case to the Court of learned Sessions Judge, as Section 306 of the IPC is exclusively triable by the Court of Sessions. Initially, the learned Additional Sessions Judge framed a Charge under Sections 498-A and 306 of IPC on 3rd March, 2009, however, subsequently the Sessions Judge framed additional charge under Section 302 of IPC. The accused pleaded not guilty and claimed to be tried. His defence was of total denial and false implication in this case by his mother-in-law, who was against his marriage with the deceased. No defence evidence has been adduced on his behalf.

5. The prosecution examined as many as 14 witnesses in support of its case. The learned Sessions Judge, after evaluating the evidence of the prosecution witnesses, arrived at a conclusion that the prosecution has failed to prove the Charge against the appellant and gave him a benefit of doubt.

6. I heard Shri Rivankar, learned Public Prosecutor for the appellant.

7. He has assailed the judgment mainly on the ground that though there are inconsistencies in the evidence of the prosecution witnesses, yet, it cannot be lost sight of the fact that the deceased died within seven years of her marriage and, therefore, there is a presumption under Section 113-A of the Indian Evidence Act, which comes into play. However, learned Public Prosecutor has also pointed out certain inconsistencies in the testimonies of PW 3 - Sunanda Ghatwal and PW 4 - Sonam Ghatwal and other witnesses and fairly admits that there is no evidence on record to show that it was the appellant, who set the deceased on fire.

8. On the other hand, learned counsel appearing for the appellant, submits that there is no eye witness to the incident. There was no prior complaint either by the mother or sister of the deceased before the incident in question as regards the alleged harassment of the deceased by the appellant. They had stated so for the first time before the Sub Divisional Magistrate. He also pointed out to the fact from the evidence on record that the appellant was gainfully employed and, therefore, there was no question of repeatedly demanding money from the victim's

mother. As regards the quarrels between the husband and the wife, the learned counsel submits that it is a common phenomenon in the married life of any husband and wife, which cannot be construed to be an offence under Section 498-A of IPC. It is also submitted that it was the deceased who, on her own, used to bring money from her mother and that she herself set on fire. The learned counsel also brought to my notice that no forensic evidence is on record to show that the bottle of Pepsi alleged to have contained kerosene had finger impressions of the appellant. The Investigating Officer also failed to seize clothes of the appellant. The learned counsel, therefore, supported the impugned judgment.

9. At the outset, Section 498-A of IPC contemplates cruelty to wife by the husband or his relatives which should be of willful nature and it should be likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb or health. Second part of Section 498-A of IPC contemplates that if there is an harassment to a woman with a view to coerce her to meet any unlawful demand of any property or valuable security, then it can be construed as a cruelty as provided under Section 498-A of IPC. It would be essential to examine as to whether there was any willful conduct on the part of the appellant, which was of such a nature as it drove the

deceased to commit suicide and whether there was any unlawful demand and harassment for that purpose.

10. There is no dispute that the deceased died due to 100% burn injuries, which is evident from the deposition of PW 7 - Dr. Girish Kamat, who conducted autopsy on the dead body of the deceased on 27.11.2005 between 4.30 p.m. to 5.40 p.m. According to this witness, there is absolutely no possibility of causing those injuries due to some accident as the kerosene appeared to have been poured on the top of her head. He also testified that in cases of 100% burns, it is difficult for a person to speak. It is also an admitted fact that the deceased was brought to the hospital by the appellant himself. The Medical Officer during his cross-examination admits that it is possible for a person to pour kerosene on another resulting into 100% burn without himself getting burn but the probability of the other person also getting burnt cannot be ruled out. It is significant to note that when the deceased was burnt, it was PW 10 - Vijayanti Kambli, who tried to extinguish the fire. According to this witness, at the relevant time she had gone to work in the house next to the house of the deceased at Verem. Around 2.00 p.m. she noticed smoke billowing out from the house and heard cry of the child of the deceased. When this witness came out from the house, a girl outside the house was crying and she also

noticed that the deceased was outside the varandha of the house in a completely burnt state and engulfed with fire. The deceased made signs with her fingers pointing towards a sack, which was lying on the ground. This witness, therefore, removed the sack and put it on the body of the deceased in order to extinguish the fire. She categorically deposed that nobody was present there at the relevant time except her. The Investigating Officer has also failed to collect the material from the scene of occurrence including the clothes of the appellant in order to show that the appellant was involved in setting the deceased on fire. It is pertinent to note that the deceased was admitted in the hospital by the appellant himself. This shows that the appellant was not responsible for setting his wife on fire.

11. PW 9 - Damodhar Korgaonkar is a driver by profession. He has a Maruti Omni, bearing Registration No. GA-03-R - 7893. According to him, on 26.11.2005 at about 3.30 p.m. when he was at Verem fish market, the appellant requested him to take the deceased to G.M.C.Bambolim. Accordingly, the deceased along with her sister Sonam and the appellant took the deceased to GMC, Bambolim in his vehicle. This evidence also totally rules out the possibility of the appellant setting the deceased on fire, as his natural conduct would have been to flee

away from the spot. He was also accompanied by the sister of the deceased in the vehicle and, therefore, by no stretch of imagination, it can be said to be a case under Section 302 of IPC.

12. Coming back to the evidence of PW 3 - Sunanda Ghatwal, the mother of the deceased, who in her complaint, stated that on 26.11.2005 she took the deceased to the GMC Hospital, Bambolim after the incident and while on the way to the hospital the deceased told her that she was going to be alright after treatment and also informed her mother that she would tell everything as to what had happened after getting recovered. PW 3 - Sunanda Ghatwal has, thus, contradicted her own complaint by testifying that she reached the hospital at about 4.00 p.m. directly from her house. In the hospital, according to this witness, the deceased informed by sign language that she would tell her the facts after she gets recovered. Thus, it can be seen that there was no conversation between the deceased and her mother nor with the deceased and her sister PW 4 - Sonam Ghatwal. It is pertinent to note that the deceased was shifted in the hospital at about 4.00 p.m. She was alive till at 8.00 p.m. During the said period of four hours she must have been treated by some doctors. However, the prosecution has not made any attempt to record the

statements of treating doctors of the deceased, who must have asked about the injuries sustained by the deceased. The deceased could have explained the injuries even by sign language to the treating doctors, which would have thrown light on the actual incident in question. It has come in the evidence of PW 7 - Dr. Girish Kamat that in case of 100% burn injuries, it is difficult for a person to speak. However, such person can convey by sign language as to what he or she intends to say. Even the statement of such persons can be recorded in question and answer forms to ascertain the facts. In the absence of any such evidence, it would be very difficult to ascertain as to whether there was any coercion or harassment to the deceased before her death. There is no dying declaration on record, which could have been recorded by the treating doctors in the casualty.

13. It is testified by PW 3 - Sunanda Ghatwal that the the appellant had sold gold neck-less, six gold bangles and 2-3 pairs of gold ear-rings and other ornaments given to her daughter. However, she admits that her daughter did not tell her as to why the appellant had sold the gold ornaments. It has come on record in her evidence that the appellant was working in a private firm but some-times he used to remain unemployed. It was her daughter, who used to come to her

house asking for money and then she used to pay Rs.1500/- per month. It is not the evidence of PW 3 Sunanda Ghatwal that it was the appellant, who at any point of time, made a demand of money or harassed or subjected the deceased to cruelty in her presence. It is the evidence of this witness that she had a doubt that her daughter might have been set on fire by the appellant. She does not say in so many words that it was none other than the appellant, who had set her daughter on fire. It is significant in the light of the fact that perhaps because this witness was against the love marriage of the deceased with the appellant. She has a suspicion against the appellant. It was suggested that PW 3 - Sunanda Ghatwal wanted her daughter to be married with a government servant, which she admits. This perhaps can be a reason to lodge a complaint against the appellant, in view of the admitted fact that this witness wanted her daughter's marriage to be arranged one and that too with a government servant. If the appellant was consistently demanding money, then PW 3 - Sunanda Ghatwal would have reported the matter to the police.

14. It is clear from the evidence on record that the deceased died a suicidal death and, therefore, a presumption under Section 113-A of the Indian Evidence Act, would come into play. However, it is to be seen that its a rebuttable

presumption. The evidence of PW 3 – Sunanda Ghatwal, therefore, does not inspire full confidence, as she clearly admits that whatever she has deposed about the relations of her daughter with the appellant were based on what her daughter told her. It is absolutely hearsay evidence. It is also clear from the evidence of this witness that after the incident the appellant came to her house and informed about the incident. This conduct of the appellant also points out towards his innocence. The presumption has been rebutted in the light of the evidence on record, which also comprises the testimonies of PW 4 – Sonam Ghatwal and PW 8 - Santosh Arlekar

15. PW 4 - Sonam Ghatwal is the sister of the deceased who testified that after their love-marriage, her sister and the deceased started residing at Bastora. They shifted their residence to Phadtewada, Verem in a rented premises of one Santosh Arlekar - PW 8. Having stayed for two months over there, due to frequent quarrels, the landlord asked them to vacate the premises. Thereafter, they resided in the house of PW 6 - Tukaram Shirodkar, where the incident in question took place. According to PW 4 – Sonam Ghatwal, the appellant used to send the deceased to bring money from her mother and, therefore, was harassing and assaulting her. She testified that once she had personally seen the appellant slapping her sister

while demanding money. According to her, this incident occurred in the house of PW 7 - Santosh Arlekar. However, she does not say about any willful conduct or continuous harassment by the appellant to her sister which drove her to commit suicide. The normal wear and tear in a family is bound to occur, which does not *ifso facto* mean that only because of such act, the deceased was forced to take her own life by setting her on fire, more particularly, in view of the fact that it was the appellant himself, who first took the deceased to the hospital and also informed his mother-in-law about the incident. According to this witness, she accompanied the appellant to the house where she noticed her sister with burn injuries and a woman in the neighbourhood was trying to extinguish the fire. She also deposed that the appellant was not ready to accompany with her sister at GMC Bambolim, but he was forced to accompany. This is something inconsistent with the evidence of PW 9 - Damodhar Korgaonkar, who testified that it was the appellant, who had been to him to request him to take his wife to the hospital in his Maruti Omni Car.

16. PW 8 - Santosh Arlekar was the landlord of the appellant and the deceased. His room was obtained on rent by PW 3 - Sunanda Ghatwal. He testified that the appellant and the deceased were paying monthly rent of Rs.1000/-. They

resided there for two months but did not pay rent. According to this witness, the appellant used to come late at night after consuming alcohol and there were altercations between the husband and the wife. He, therefore, asked them to vacate the room. A quarrel between wife and the husband, who used to return home after consuming alcohol, would not in itself constitute an offence under Section 498-A of IPC, as there is no evidence about the cruelty to the deceased by the appellant. Quarrel simplicitor under the influence of liquor by the husband would not attract ingredients of Section 498-A of IPC or Section 306 of IPC. The evidence of this witness would not be of any help to the prosecution in order to show that the deceased was subjected to cruelty by the appellant to such an extent that it drove her to commit suicide.

17. PW 6 - Tukaram Shirodkar was also a landlord of the appellant and the deceased from 1.11.2005 onwards. He deposed that on 26.11.2005 when he returned from work at 7.00 p.m. his wife informed him that Gayatri had sustained burn injuries and was shifted to GMC, Bambolim where she died. This witness has not uttered anything about the conduct of the appellant and the deceased or about their relations. His evidence is also, therefore, of no use to the prosecution.

18. PW 12 - Kisan Satardekar was a witness on the Scene of offence panchanama, which was drawn by the Investigating Officer on 27.12.2005. He is a stock police witness as he admits that he had acted as panch witness on 3-4 occasions and the police calls him on his mobile. He admits that there were no match sticks inside the matchbox. Thereafter, the Investigating Officer had picked up some half burnt match sticks and put inside which were identified. When the match box was opened in the Court, it contained three match sticks, which were unused. If that being so, the prosecution has not explained as to where are the burnt matchsticks?

19. The learned Sessions Judge in the impugned judgment has correctly appreciated the evidence of all the prosecution witnesses and its effect, which call for no interference in appeal. It has been held in catena of decisions that the Appellate Courts should be slow while interfering in the judgment of acquittal. The impugned judgment is otherwise well reasoned and after appreciating the evidence on record in a proper manner, a benefit of doubt has been given to the appellant.

20. Having considered the evidence on record and after going through the impugned judgment, I find that it does not call for interference in appeal. The prosecution has failed in

proving beyond all reasonable doubts that the appellant subjected the deceased to cruelty and, therefore, she had committed suicide within seven years of her marriage. Consequently, the appeal is bound to fail. As such, the appeal stands dismissed.

PRITHVIRAJ K. CHAVAN, J.

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