

Rane

* 1/15 * APPEAL-521-1996 (SR.20)
Tuesday, 21.11.2017

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 521 OF 1996

Sameer Chandrakant Joshi,
Aged adult, residing at G-722-723
Sunderdham, Saibaba Nagar,
Borivli West, Mumbai-92

....Appellant
(Orig. Accused 1)

V/s.

The State of Maharashtra
(Senior Inspector of Police,
Borivali Police Stn, Mumbai)

....Respondents

* * * * *

Mr. Prem Keshwani and Mr. Vineet R. Randive, Advocate
for the appellant.

Ms. R.M. Gadhvi, APP for the respondent, State.

CORAM :- SANDEEP K. SHINDE, J.

DATE :- 21ST NOVEMBER, 2017.

JUDGMENT (PER :- SANDEEP K. SHINDE, J)

1. This Appeal, under Section 374(2) of the Code
of Criminal Procedure Code, 1973 ("the Code" for short) is

preferred by respondent, accused no.1, Samir against the conviction recorded in Sessions Case No. 1523 of 1994 by the Additional Sessions Judge, Mumbai whereby he has been convicted for offences punishable under Sections 498A and 306 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for 2 years and five years respectively. The other three accused were acquitted, who are the parents and brother of appellant-accused no.1.

2. The name of the deceased is Jyoti. Her marriage with accused no.1 was solemnised on 5th November, 1990 at Vileparle. It was arranged marriage. Soon after the marriage, Jyoti was living at Vileparle with her husband and in-laws. The alleged incident had taken place on 17th July, 1994. At the relevant point of time, the couple had two daughters. The elder daughter was born in 1991 and the second was born in the year 1993.

3. It is the prosecution's case that, accused no.1

wished to start business and as such was in need of capital. He demanded money from in-laws through his wife. Once, he had gone to the house of brother-in-law who demanded Rs.10,000/- from him.

4. It is the prosecution's case that, the accused was recurringly harassing deceased for bringing money from her parental house. It is the prosecution's case, that the consequent harassment for not meeting with unlawful demand was so unbearable that, Jyoti committed suicide by jumping from the seventh floor of building on 17th July, 1994 and succumbed to the injuries. P.W.2, Rajendra, brother of deceased lodged a complaint against the appellant, his parents and brother, whereby offence under Section 498A and 306 of Indian Penal Code came to be registered.

5. The Learned Sessions Judge framed the charge under Section 498A, 304B and in alternative under Section 306 of the Indian Penal Code.

6. The prosecution to substantiate the charge, had examined good number of witnesses which would include the close relatives and the neighbours of the deceased, besides technical witnesses. The accused had examined the defence witnesses.

7. The Learned trial Judge after appreciating the evidence, convicted the appellant-accused as aforesaid and acquitted the other accused of all the offences.

8. The Learned Counsel appearing for the appellant has taken me through the evidence of P.W.2, Rajendra, P.W.3 Rakesh and the evidence of P.W.4, Hira.

9. P.W.2 and P.W.3 are the brothers of the deceased and P.W.4 is the sister of the deceased. Besides, he also taken me through the evidence of P.W.6, Heena the neighbour of deceased and evidence of Gautam who is the father of P.W.6.

10. I have gone through the evidence of these witnesses so as to ascertain, whether the prosecution had proved beyond reasonable doubt that, deceased was subjected to cruelty as she could not fulfill demand of her husband.

11. The explanation appended to Section 498A and particularly Clause-(B) thereof, calls upon the prosecution to prove, at the first place, “unlawful demand” and second, the harassment caused to her on account of her failure to meet the unlawful demand. That in order to prove the cruelty, the prosecution has relied on the evidence of P.W.2 and the evidence of P.W.4. The evidence of another brother, P.W.3 would just corroborate the evidence of Rajendra and therefore I will first assess the evidence of P.W.2.

12. It is the evidence of P.W.2 that, there was no complaint by Jyoti since after she came back from Bangalore, a year after her marriage. It is his evidence

that, the accused had come to meet him and demanded Rs.10,000/- for starting his business somewhere in 1992, after the birth of first daughter. It is his evidence that, the first demand of Rs.10,000/- was somewhere in the year 1992-93 but he did not pay. He would further say that, on 2nd July, 1994, Jyoti had been to his house and told him that the accused wanted Rs.30,000/-. It is his evidence that, Jyoti told him that she was subjected to harassment by the husband and the other accused for not paying the subject amount.

13. It may be stated that, even if the evidence of P.W.2 is accepted as it is, it can be said with certainty that, from 1992 till 2nd July, 1994, accused did not demand money from Jyoti. It is much clear from his evidence that, first demand was made in the year 1992 when the accused returned from Bangalore and the second alleged demand was in July, 1994. That save and except these two incidents of demand, there is nothing more to hold,

accused persisted with his demand and for not making it good, he harassed her. The Learned Counsel appearing for the appellant has drawn my attention to the fact that the allegations of demand of Rs.30,000/- by the accused-appellant in July, 1994 is an omission. Be that as it may, the evidence of this witness only narrates the two incidents of demand as stated hereinabove.

14. Now let us turn to the evidence of other witnesses i.e. evidence of Hira, sister of the deceased, who was examined as P.W.6. This witness would paint different picture and would say nothing about the demand of Rs.30,000/-. Hira in her evidence would say that, Jyoti told her on 16th July, 1994 i.e. a day prior to the suicide that, she was beaten up by her husband on 15th July, 1994. It is her evidence that, Jyoti told her that, there was social gathering which was attended by deceased alongwith daughters and husband. After attending the gathering, Jyoti was told by her husband to go home with

daughters but she refused. It is her evidence that, accused no.1, husband felt insulted as Jyoti refused to follow his command, but reluctantly he went home with Jyoti and thereafter he severely beat her. In the evidence, Hira would further say, Jyoti told her that, one Mr. Kaushikbhai was summoned at night to intervene and settle the quarrels and disputes between Jyoti and her husband. It further appears from her evidence that, husband of Jyoti told Kaushikbhai that Jyoti was not cooking food or was not interested in sex.

. The evidence of P.W.6, Hira thus proceeded on a completely different footing. She did not say anything about the unlawful demand by the accused and consequent harassment for not making it good. A fact cannot be ignored that, had there been any demand by the accused, for money and consequent harassment for not making it good, there was no occasion for the sister of the deceased to omit to state about the same in the evidence.

15. Now let me read the evidence of the neighbour who is the independent witness being examined by the prosecution i.e. P.W.6, by name, Mamta. Before looking into her evidence, it may be stated that, her statement was recorded nearly two months after the incident, but interestingly her father's statement was recorded soon after the incident. Be that as it may, in the evidence, this witness would first narrate the incident of 1993 when she had noticed some black marks on the left eye of the deceased. It is her evidence that, when she enquired with Jyoti about such black marks on the left eye, Jyoti told her husband had hit her on the eye. It may be stated that, neither P.W.2, brother nor P.W.6, Hira narrated about the incident of assault by the husband to Jyoti. It seems, not logical as to why brothers and sister would not refer to this incident in evidence. Be that as it may, the evidence of Hira proceeds to narrate all together a different facts then the evidence of relatives as discussed hereinabove. This witness had stated that the accused was expecting

male child (son) on second pregnancy of Jyoti but blessed with another daughter and on this count he used to beat Jyoti.

16. Thus, after appreciating the evidence of these three witnesses, except the evidence of P.W.2, there is nothing in the evidence either of P.W.6 or in the evidence of P.W.5 that the accused was persistently making unlawful demand from the deceased and for not fulfilling the said demand, he was subjecting her to cruelty by beating or assaulting.

The evidence of P.W.4, Hina assumes importance in a sense that, she had narrated the incident which had taken place on 15th July, 1994 as told by deceased to her. Hina had given a clear account of what had happened on 15th July, 1994 i.e. soon before the alleged incident of suicide which allegedly had proximity in time. P.W.4 had stated in the evidence that, accused no.1 felt insulted when Jyoti refused to go home with the daughter leaving the husband

alone in the party/gathering. Hina stated that, the husband of Jyoti felt insulted and therefore on the very night, he had beaten up Jyoti. She had also stated about the intervention of Kaushikbhai. Infact, the prosecution ought to have examined Kaushikbhai as witness but he was examined as defence witness.

The sum and substance is that, though the prosecution attempted to examine the close relatives, as well as, independent witness, save and except, the deposition of P.W.2 that accused had demanded Rs.10,000/- somewhere in the year 1992-93 and again demanded Rs.30,000/- from him, there is nothing on record to show that, there was persistent demand from Jyoti and further there is nothing on record to indicate that, she was recurringly harassed and/or was bearing physical assault by the accused for not paying the amount demanded.

Thus, upon reading the evidence of the prosecution witnesses, I am of the view that, the prosecution has not

proved at the first place that the husband was making an unlawful demand from Jyoti. The prosecution has equally not proved that for not fulfilling the said demand, she was subjected to cruelty.

20. The Learned APP at this point of time, would submit that, since Jyoti had died within seven years from the date of her marriage, there would be presumption of abatement of suicide under Section 113A. She would submit that, Jyoti had committed suicide and suffered death on 17th June, 1994 and therefore there is presumption of the fact in favour of the prosecution that, she was subjected to cruelty. She would therefore submit that, the Court has to presume that, she committed suicide because of the cruelty being inflicted on her by the accused persons.

Under Section 113A, "cruelty" shall have the same meaning as Section 498A of the Indian Penal Code. I have already held that, the prosecution has failed to prove the

unlawful demand and the consequent harassment. As such, I have held that the prosecution has failed to prove that Jyoti was subjected to cruelty at the hands of the accused. Having failed to prove that, the deceased was subjected to cruelty by the accused, presumption under Section 113A cannot be raised.

22. Now the next question that arises for consideration is, whether the conviction under Section 306 Indian Penal Code is sustainable. In the case in hand, there is no dispute that the deceased had committed suicide by jumping from the seventh floor of her house. It is settled law that, Section 498A and 306 of the Indian Penal Code are dependent but constitute different offences. Though depending upon the facts and circumstances of an individual case, subjecting a women to cruelty may amount to an offence under Section 498A and may also, if the course of conduct amounts to cruelty is established, leaving no other option for woman, except

to commit suicide, would amount to abatement to commit suicide. Thus merely because an accused has been held to be liable to be punishable under Section 498A of the Indian Penal Code, it does not follow that, on the same evidence he must and necessarily be held guilty of having abated commission of suicide by the person concerned. In the case in hand, I have held, the prosecution has failed to prove cruelty being inflicted on the deceased by the accused in terms of the provisions of Section 498A. Thus, I hold that, the prosecution having failed to prove cruelty, had equally failed to prove the charge of abatement of suicide as framed against the accused herein.

23. In the result, Appeal is allowed. The conviction and sentence recorded by the Learned Trial Judge in Sessions Case No. 1523 of 1994 is hereby quashed and set aside. The Bond executed by the accused is cancelled and is discharged. The mudemaal property, if any reserved, be destroyed after 30 days.

Rane

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(SANDEEP K. SHINDE, J)