

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPEAL NO.43 OF 2015

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

... Appellant

V e r s u s

Kanchan Chodankar,
(Major), s/o Vishwanath Chodankar,
r/o. Maliwad, Revora,
Bardez, Goa.

... Respondent

Shri S. R. Rivankar, Public Prosecutor for the State-Appellant.

Shri J J Mulgaonkar, Advocate for the Respondent.

Coram:- NUTAN D. SARDESSAI, J.

DATE : 18 July 2018

JUDGMENT

1. Heard Shri S. R. Rivankar, learned Public Prosecutor appearing for the State-appellant and Shri J. J. Mulgaonkar, learned Advocate for the respondent.

2. This is an appeal by the State challenging the acquittal of the respondent for the alleged commission of the offence punishable under Section 498-A and 306 of the I.P.C.

3. The parties would hereinafter be referred to as the State and the accused for brevity's sake.

4. The State through the Mapusa Police Station had laid a chargesheet against the accused alleging that the accused was subjecting his wife to cruelty by his unlawful conduct to meet the demand for dowry and used to assault her. He had assaulted her on the intervening night of 15/16.05.2007 at around 07.30 hours and caused injuries to her and thereafter had drowned her in the river which was situated at a distance of 15 metres from his house at Revora and thereby caused her death with the knowledge that the injuries inflicted on her would result in her death. A chargesheet was initially filed against the accused by the CID Crime Branch, Dona Paula under Section 302 of the IPC and the charge accordingly came to be framed against him to which he pleaded not guilty. The prosecution after recording a part of the evidence, filed an application under Section 216 of the Cr.P.C. for the alteration of charge from Section 302 to Section 498-A and 306 IPC vide the order dated 03.07.2014 and the charges were framed against the accused to which he pleaded not guilty and claimed to be tried.

5. The prosecution had examined 14 witnesses in support of its case to drive home the point that the accused had committed the offences punishable under Section 498-A and 306 of the Indian Penal Code while the accused examined none in defence after denying the case of the prosecution as put to him in his statement recorded under Section 313 of the Cr.P.C. Be that as it may, the learned Sessions Judge by the impugned judgment dated 12.12.2014 formulated points for determination whether the prosecution had proved that the deceased was subjected to cruelty by the accused to meet the unlawful demand for money and whether he had instigated/aided/abetted the suicide committed by his wife as to attract the offences punishable under Section 498-A and 306 of the IPC and held against the prosecution on both the counts thereby acquitting the accused and giving rise to the appeal.

6. The State challenged the impugned judgment on the premise that the learned Trial Court had erred in placing undue reliance upon the non-filing of the complaint by the mother of the deceased against the accused for causing harassment to her despite her explanation for such non-filing. The learned Trial Court failed to appreciate the laudable object of the provisions of Section 498-A and erred in appreciating the legal

evidence on record proving the case that the accused was causing harassment to her to fulfil his demand for dowry. The Trial Court failed to appreciate the medical evidence which showed three ante mortem injuries on the body of the deceased and instead relied on the testimony of the panch witness and the inquest panchanama which did not disclose any injuries on the body of the deceased. The learned Judge fell in error in not accepting the autopsy report which indicated three ante mortem injuries on her body and laid undue weightage on the testimony of the panch witness and inquest panchanama. The learned Trial Court erred in appreciating the evidence brought on record by the prosecution and therefore the impugned judgment was thus liable for interference on such similar grounds raised in the Appeal Memo.

7. Shri S. R. Rivankar, learned Public Prosecutor came to be heard on behalf of the State who canvassed the grounds urged in the appeal memo and the case of the prosecution and submitted that the judgment of the Sessions Court was not proper in acquitting the accused and that it was a fit case on an appraisal of the material on record to reverse the judgment and hold the accused guilty of the commission of the said offence. The appeal had therefore to be allowed.

8. Shri J. J. Mulgaonkar, learned Advocate appearing for the accused submitted that the judgment of acquittal reinforced the presumption of innocence in favour of the accused who had been acquitted by the Sessions Court and therefore it was only in case the impugned judgment was fraught with illegality or there was ample material on record demonstrating that there was a failure by the Trial Court in appreciating the evidence, would a reversal be permissible. He placed reliance in the case of Chandrappa and ors. vs. State of Karnataka [(2007) 4 SCC 415] and Murugesan & Ors. vs. State [(2012) 10 SCC 383] in support of his contention while pressing for the dismissal of the appeal.

9. i would consider their contentions in the light of the evidence brought on record before the Trial Court, the judgment under challenge and the judgments of the Apex Court relied upon by Shri J. J. Mulgaonkar, learned Advocate for the accused and decide the appeal accordingly.

10. It was incumbent on the State-prosecution to establish the various acts of harassment to fulfil the demand for dowry to attract the offence punishable under section 498-A and further to show that the accused was instrumental or had aided and abetted the deceased to commit suicide so as to

attract the ingredients of the offences punishable under Section 498-A and 306 of the IPC. It would therefore be appropriate to refer to the evidence of the witnesses and to find out whether the learned Sessions Judge had at all committed an illegality in appreciating the material evidence and ultimately in acquitting the accused.

11. Mohini (Pw.1), the mother of the deceased narrated that she had given the deceased in marriage to the accused around 11 years back which was arranged through one Suhasini Naik and that her daughter started residing with the accused at Revora alongwith her father in law and mother in law and her minor son. She had deposed on 01.02.2010 and according to her, about two and half years back which would take the case somewhere around 2008 that the accused had called her sons Uday and Dinesh telephonically and asked them to take away the deceased and threatened that he would assault her in case they had not taken her away. They had visited the house of the accused at Revoda and when the deceased informed them that the accused was not in the house and besides that she was being beaten and ill-treated by the accused. Two days later, the accused had phoned again to take the deceased and accordingly she went to Revora with her son Dinesh and met the deceased who started crying. The accused had then

caught hold of her neck and banged her head against the wall in her presence. She had requested the accused not to assault her and assured to bring the intervenor who had arranged the marriage and returned back home. A cursory perusal of this evidence would reveal that around the time of this incident in 2008, the marriage of the deceased with the accused was more than eight years old and therefore the statutory presumptions in that respect would not come to the aid of the prosecution to nail the accused.

12. Mohini (Pw.1) had further revealed that she had gone to the house of the accused two days later with her sons Umesh and Dinesh, the intervenor by name Suhasini and her sister in law Kamani when the accused was present in the house and told her that he would not take the deceased back if in case they took the deceased away while the brother of the accused who was present, assumed responsibility for her daughter. A month later, the brother of the accused had phoned her son and communicated that her daughter had drowned herself in the river and committed suicide. Her testimony reveals that her supplementary statement was recorded at the Police Station in which she had made a report to the police that the deceased was being assaulted for no rhyme or reason and furthermore that the accused had demanded ₹1,50,000/-

about six months prior to her death and she had given ₹50,000/- to the accused through her son Dinesh. Mohini (Pw.1), at the outset, admitted that she had not lodged any complaint to the police regarding the threats given by the accused in 2008 to take away the deceased or otherwise he would assault her with the help of goondas. She had no explanation for such absence of complaint and merely denied the suggestion that no such incident of threats ever took place qua the deceased. Even in respect of the alleged incident of assault by the accused and ill treatment to her, she admitted that neither she nor her sons had lodged any complaint to the police against the accused for the acts of ill treatment and beating. Her cross examination further indicates that much of her statements in the examination in chief on the assault, the banging of the head against the wall were improvements made by her in Court and that these were not at all stated by her to the police. She tried to justify on the premise that the police at the Mapusa Police Station had refused to take a detailed complaint when confronted with the omissions therein but relented that she had not lodged any complaint about the Police Officer to his Superior. There was also a material omission in her statement on the demand made by the accused for ₹1,50,000/- and she having given ₹50,000/- to

the accused through her son Dinesh and without any explanation forthcoming at her instance.

13. Kamini (Pw.2) had come on record to state that Mohini (Pw.1) had come to her house on 07.04.2007 to request her to accompany her to the house of the accused. At that time, she had disclosed to her that there was some problem in her maternal house and she was being assaulted physically by the accused. Accordingly she went with Mohini (Pw.1) and another lady by name Suhasini and when the brother of the accused was present and the accused came after sometime. She had found the deceased very thin and made inquiries with her and at which time the deceased had shown her back and she noticed burn injuries on her shoulder and back. The brother of the accused stated that she was not assaulted and she confronted him showing the burn injuries on the back of the deceased. She had confronted the accused for these injuries and who had revealed that she was not doing her household work. She had also told her that she had conceived seven times and she had aborted the child the same number of times at the instance of the accused.

14. At the outset, Mohini (Pw.1) being the mother of the deceased did not make any statement about the burn injuries

being shown by the deceased to them on her back on inquiries about her health by Kamini (Pw.2). There was also no reference by Pw.1 to the episode of the deceased having conceived seven times and aborting her foetus the same number of times which gives rise to speculation as to whether Kamini (Pw.2) had at all accompanied Mohini (Pw.1) to the house of the deceased on the stated date. This is besides the fact that Kamini (Pw.2) was unable to account for the omission in her statement that Mohini (Pw.1) had told her that the accused used to assault the deceased physically. Kamini (Pw.2), had also stated that she had not lodged any complaint against the accused on seeing the burn injuries nor did any of her family members lodge a complaint which makes the version on the presence of the burn injuries very doubtful. Her testimony too draws flak and does not advance the prosecution case. It is to be seen whether the brother of the deceased Shri Dinesh (Pw.3) has corroborated the version of Mohini (Pw.11) or otherwise.

15. Dinesh (Pw.3), stated that he had visited the house of the accused with his other brother Uday and met the deceased on 04.04.2007. They had made inquiries with her as to what had happened when she told them that the accused was assaulting her without any rhyme or reason. They had waited

for his arrival and as he did not return till 13.30 hours, they had come back home. The accused had phoned his brother Uday on 05.04.2007 during midnight and told him to take his sister or else he would get rid of her by employing goondas. Accordingly, he had visited the house of the accused on the next morning with his mother Mohini (Pw.1) when the accused who was present in the house made a grievance that she was not doing any work and caught hold of her neck in their presence and dashed her head against the wall. He had told the accused that in case he did not want her, they would take her and not to assault her and that he would bring his aunt to sort out the issue. On 08.04.2007, the intervenor Suhasani and his mother (Pw.1) brother Uday and Kamini (Pw.2) apart from himself went to Colvale as the brother of the accused was residing there. They then went to the main house at Revora where the accused on seeing Suhasani became aggressive and went to assault her. They had told her to sit in the car and not to come inside and to which the accused told her in an intimidating tone to take the deceased or otherwise he would kill her. Since the brother of the accused intervened and told that he would assume responsibility they did not bring back his sister and returned only to receive a message on 16.05.2007 that she had committed suicide.

16. Dinesh (Pw.3), admitted at the outset that he had not lodged any complaint against the accused on learning from the deceased that he was assaulting her without any rhyme or reason. This conduct of the witness who is the brother of the accused is rather surprising knowing that his sister was subjected to physical abuse and assault at the hands of the accused. It only leads to a conclusion that no such incident as alleged ever took place as otherwise the complaint should have flown in the normal course. Even in so far as the accused phoning them in the midnight of 02.05.2007 is concerned, he admitted that he had not lodged any complaint against the accused despite hearing that the accused would employ goondas to get rid of his sister. Therefore a mere denial of the statement that there was no such incident does not stand the prosecution case in good stead. He too like Mohini (Pw.1) was unable to account for the material omission in his statement qua the accused catching the neck of the deceased in their presence and dashing her head against the wall. He had no explanation on that count and also on the omission in his statement that they would bring back the deceased in case he did not want her and not to assault her. Moreover, although he claimed to have accompanied his mother to the house of the deceased with one Kamini and Suhasini, there was no reference to any burn injuries noticed

on the back of the deceased as narrated by Kamini. Besides, he admitted unlike the other two that there were nearly ten houses near the house of the accused but volunteered that they were not in talking terms with the accused.

17. Suhasini (Pw.5) stated that she was instrumental in arranging the marriage of the accused and the deceased and that the mother of the deceased had contacted her telephonically on 08.04.2007 and requested her to accompany her to the house of the accused who was harassing the deceased. She had gone alongwith Mohini (Pw.1), Dinesh (Pw.3) and another brother apart from Kamini (Pw.2) to the house of the deceased and reached around 12 noon. She had noticed the deceased standing at the entrance, asked her as to what had happened and who pointed out to some injuries on the waist areas of her back and when the accused came running and started abusing her saying "chedyechea paiem mortolom". The deceased did not tell her anything else as in the meantime her husband took her aside and made her sit in the Maruti Van. First and foremost, she admitted that though Kamini (Pw.2) was her sister, she was not in talking terms with her as she had married without the family consent. It was the case of Mohini (Pw.1), Kamini (Pw.2) and Dinesh (Pw.3), that during their first visit to the house of the accused he was not

present in the house unlike the version of Suhasini (Pw.5), that he was present and abused Suhasini with filthy words "chedyechea paien modtolom". Though she was confronted with her statement recorded by the police, she could not give any explanation as to why such abuses were not stated by her. Her testimony too does not inspire any confidence in the prosecution case qua the harassment and abuses to the deceased and the demand for dowry as is the case of the prosecution.

18. Suhas(Pw.6), husband of Suhasini (Pw.5) stated that Mohini (Pw.1) had contacted Suhasini (Pw.5) on 08.04.2007 during the afternoon time and told her that the accused was harassing her daughter and that she should accompany her during her visit to the house of the accused. Accordingly, she had gone with Mohini (Pw.1), Dinesh (Pw.3) and Uday to the house of the accused and reached around 13.00 hours. They had seen the deceased who had told them that the accused had assaulted her and showed the injuries to his wife. Suhasini (Pw.5) then told the accused that she would take the deceased to Vasco upon which the accused started abusing her saying "chedi" and that he would break his legs. This witness was shown to be working as an LDC in the Electricity Department at Mapusa between 09.30 hours till 18.00 hours

and lunch break from 13.15 hours till 14.00 hours. It was also stated that the distance between his office and Revora was 12 kms. Unlike the other witness, he admitted that he had no personal knowledge of the harassment meted out by the accused to the deceased and the assurance given to his wife to settle the matter. His presence at that time is doubtful considering the distance between his office and the house of the deceased and he had returned back for duty by 14.00 hours after travelling a distance of 12 kms one way and the interaction of the accused/his family. Therefore, his testimony too does not inspire confidence.

19. All these family and other related members examined by the prosecution failed to show that the deceased was subjected to harassment and assault in the demand for dowry at the instance of the accused. Therefore, the prosecution had failed to drive home the charge against the accused on that count and rightly so recorded by the learned Trial Court in the impugned judgment.

20. Dr. Ghodkirekar (Pw.4), had conducted the autopsy examination on the body of the deceased on 16.05.2007 and found a contusion over the right high parietal region of the scalp, features of black eye for the left eye and bruise over

the medial aspect of the right knee. In his opinion, the cause of death was due to asphyxia as a result of drowning in water in a person having injuries which were ante mortem in nature. He had no doubt opined that the injury nos.1 and 2 i.e. the contusion and feature of the black eye individually and collectively could cause head injury and could make a person unconscious even sometime in a state of coma but there was not a word of whisper at the instance of the family members who had seen the body of the deceased soon after the incident to which i would allude a short while later. Further, during the cross examination, the Doctor did not rule out that the injury nos.1 and 3 namely the contusion and bruise on the knee could be caused if a person had to jump in a river and had to come in contact with a hard object but not the injury no.2 i.e. the black eye. In any event, he had certified that the injury of black eye was not material to cause death and being simple in nature.

21. Ramdas (Pw.7), had acted as a pancha on 16.05.2007 to the scene of offence panchanama near the Chapora river in the vicinity of the house of the accused. Nothing turns on his testimony which is relevant only to identify the scene of crime. Shripad (Pw.8) similarly had visited the site at Maliwada Revora and drawn the sketch showing the location of the body

in the river Chapora which was based on information given to him. Shivanand (Pw.9), was the pancha to the arrest panchanama who did not support the case of the prosecution, was declared hostile and cross examined at the instance of the prosecution to no avail. Harijan (Pw.10), was the pancha to the attachment of the clothes of the deceased on 16.05.2007 who was admittedly working as a Home Guard and knew PSI Naik very well at whose instance he had acted as a panch witness. His testimony too is inconsequential to establish the offence even under Section 306 of the IPC.

22. PSI P. Fadte (Pw.11) had received the complaint of Mohini (Pw.1) against the accused that he was subjecting her daughter to cruelty and that she had committed suicide jumping in the river water. He had also registered an offence against him, effected the entry in the Station Diary and recorded the statements of the witnesses as per their say. He had also conducted the scene of offence panchanama apart from the inquest panchanama, forwarded the attached exhibits to CFSL Hyderabad and sought opinion from the Forensic Surgeon on the injury nos.1 and 3. He had placed the accused under arrest, drawn the arrest panchanama and then handed over the investigation to the Crime Branch Donapaula. The accused made a concerted effort to prove the omissions and

contradictions of the statement of Mohini (Pw.1) during his cross examination and clarified that he had not refused to take her detailed complaint.

23. PSI M. Naik (Pw.12), had come on record that he had received a phone call from the accused on the morning of 16.05.2007 that his wife had committed suicide by jumping in the river and he had contacted the PI and besides he informed him about the incident and he had gone to the scene of offence near the river at Revora and found the accused and he had shown the place where his wife had jumped in the water. The accused told him that the body was floating and that he had retrieved the same and taken it to his house in order to find out whether his wife was still alive. He had conducted the scene of offence panchanama and the inquest panchanama in the presence of the panch witnesses and later referred the body for post mortem examination and noticed that no injuries were found on her body.

24. PI Uday Naik (Pw.13), was attached to the CID Crime Branch Donapaula when he received the relevant case papers on 21.05.2007 from PI Gad and that he visited the spot with Engineer Naik (Pw.8) to draw the scene of offence panchanama. He had recorded the statement of the son of

the deceased and had then filed the chargesheet. Last but not the least, PI D. Gad (Pw.14) had recorded the statement of Mohini (Pw.1), Dinesh (Pw.3) and Suhasini (Pw.5). He had written to the Captain of Ports requesting to furnish information regarding the tide situation of river Chapora between 15.05.2007 to 16.05.2007 and the water level height in the river and the direction of the flow of water. He had received a reply stating that such record was not maintained by their office and thereafter he had written to the Executive Engineer to depute a Draughtsman and then handed over the investigation to PI Dessai since he had resumed his duties.

25. The accused in defence had clearly brought out that no statement was made by Dinesh (Pw.3) that the accused had caught hold of the victim in his presence and dashed her head against the wall. From the evidence of all these witnesses, the prosecution has not been able to show that the deceased was at all instigated or was aided and abetted by the accused to commit suicide by jumping in the river water. Besides, Mohini (Pw.1) stated that after they learnt of the suicide by her daughter, she had gone to the GMC to see her body. There was not a word or whisper about the injuries noticed on her person or that the accused had abetted the commission of suicide. Dinesh (Pw.3) too had gone to GMC and who

revealed that he had seen an injury above the right eyebrow and on the rear side of the head of the deceased. However, as per the version of Dr. Ghodkirekar (Pw.4), she had suffered a black eye which is not the version of Dinesh(Pw.3). Otherwise, he was totally silent on the accused having abetted the suicide by the deceased.

26. Chandrappa (supra), laid down the general principles regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal. In other words, while dealing with the appeal against the judgment of acquittal, the Apex Court has clearly held that there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court. These principles laid down by the Apex Court in Chandrappa(supra) squarely apply in the facts of the present case where the prosecution has

miserably failed to establish that the accused had subjected the deceased to cruelty in order to fulfil his demand for dowry and/or that he had abetted or instigated her to commit suicide in order to attract the offences punishable under Section 498-A and 306 of the I.P.C.

27. Murugesan (supra) which considered Chandrappa (supra) observed at para 32 that the reversal of acquittal could have been made by the High Court only if the conclusions recorded by the Trial Court did not reflect a possible view. It must be emphasised that the inhibition to interfere must be perceived only in a situation where the view taken by the trial court is not a possible view. The use of the expression "possible view" is conscious and not without good reasons. The said expression is in contradistinction to expressions such as "erroneous view" or "wrong view" which, at first blush, may seem to convey a similar meaning though a fine and subtle difference would be clearly discernible while dealing with an appeal against acquittal and the jurisdiction of the High Court to interfere.

28. Having considered the law on the point and discussed the evidence on record which was no doubt examined by the

Trial Court, there is no escape from the conclusion that the judgment of acquittal brooks no interference.

29. In the result, i pass the following :

ORDER

The appeal is dismissed and the judgment of acquittal is confirmed. The bail bonds executed by the accused before this Court shall accordingly stand discharged.

NUTAN D. SARDESSAI J.

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