

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.46 OF 2018

The State of Maharashtra .. Applicant
Versus
Vilas Shivram Bansode and anr .. Respondents

...

Mrs.P.P. Shinde, APP for the State.
Mr.Girish B. Badigar for respondent nos.1 and 2.

CORAM: SMT. BHARATI H.DANGRE, J

DATED : 6th SEPTEMBER, 2018

P.C:-

1 By the present application, the State of Maharashtra has sought leave to Appeal under Section 378 of the Code of Criminal Procedure. The judgment passed by the Sessions Judge, Pune in Sessions Case No.337 of 2016 is sought to be assailed, by which the Sessions Judge has acquitted the accused persons of the offences punishable under Section 498A, 306 r/w Section 34 of the Indian Penal Code. The case of the prosecution is that the accused no.1 was married to deceased

Seema in the year 2011 and that the deceased was subjected to cruelty on the ground that she had given birth to two daughters. In support of the case of the prosecution, the prosecution has examined PW no.1 Parvati Nagesh Gaikwad, who is the mother of the deceased and one Ganga Nagappa Shringeri PW no.2, the sister of the deceased. In order to establish the cruelty and the harassment inflicted to the deceased, an independent witness PW no.3 who is a neighbor is also examined. Apart from this, one maternal uncle Shankar Dhanappa Hasure PW no.6 is examined.

Perusal of the testimony of the near relatives including that the mother and the sister of the deceased would reveal that their statements contain bald allegations about the alleged harassment. It is stated by PW no.1 that at the time of marriage, one *tola* of gold was given to the husband, but 1 ½ Tola was not given to Seema. However, there is no statement made by PW no.1 - Parvati that on account of the not giving of the said gold ornaments, the deceased was subjected to any ill-treatment or harassment. PW no.1 has not spoken about any harassment in relation of demand of dowry but her specific

statement is that after Seema gave birth to a girl child, the accused nos.1 and 2 started to taunt Seema on account of giving birth to a girl child and after two years, Seema delivered another girl child. This is the only allegation of harassment that PW no.1 talks about. As far as PW No.2 is concerned, she had stated that there was harassment due to various reasons. No specific incidence has been mentioned which would lead to an inference about harassment and the only allegation is that since Seema gave birth to two girls, she was subjected to harassment. The evidence of the independent evidence PW no.3 who is a neighbor, is also to be noted and she had stated that she had come to know from the neighborhood sources that Seema was subjected to harassment. Similarly, PW no.6 also does not support the case of the prosecution in specific and in support of the charge of Section 498A and 306 of the IPC. None of the witnesses have given any particulars of harassment. On the other hand, PW no.1 herself has admitted in the cross-examination that the deceased used to frequently visit her parental house and that was always with the consent of the accused. The prosecution witness no.5, a Medical Officer who

conducted the post mortem has given the cause of death as “asphyxia due to hanging”.

Learned Sessions Court has adduced the entire evidence brought on record by the prosecution. He records a clear finding that merely because a woman has committed suicide, it would not lead to an inference that the accused persons have instigated her to commit suicide and he has rightly observed that for bringing a charge under Section 306 of the IPC, something more has to be brought on record and a nexus has to be shown between the cruelty inflicted and the act of committing suicide. Bald allegations of ill-treatment or the allegations without any substratum cannot be said to be sufficient for driving a person to commit suicide and in the absence of any nexus being demonstrated, the said charge cannot be proved.

2 By now, it is settled position of law that in order to establish a charge under Section 306 of the IPC, it is necessary for the prosecution to atleast *prima facie* establish that the

accused had any intention to aid or instigate or abate the deceased to commit suicide and in the absence of availability of such material, accused cannot be convicted under Section 306 of the IPC. The law as to what are the requirements to constitute offence punishable under Section 306 of the IPC, is not more *res integra* in a catena of cases including the judgment of the Hon'ble Apex Court in ***Sanju @ Sanjay Singh Sengar's Vs State of Madhya Pradesh***,¹ considered the earlier judgment and observed thus :

"9. In Swamy Prahaladdas v. State of M.P. & Anr., 1995 Supp. (3) SCC 438, the appellant was charged for an offence under Section 306 I.P.C. on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die' . This Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even prima facie enough to instigate the deceased to commit suicide.

10. In Mahendra Singh v. State of M.P., 1995 Supp.(3) SCC 731, the appellant was charged for an offence under Section 306 I.P.C basically based upon the dying declaration of the deceased, which reads as under:

"My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of those reasons and being harassed I want to die by burning."

¹ 2002 Cri.L.J. 2796

11. This Court, considering the definition of 'abetment' under Section 107 I.P.C., found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

As far as charge under Section 498A of the IPC is concerned, the section itself defines and explains the term "Cruelty" and it is only if the conduct of the accused fall within clauses (a) and (b) of the Explanation appended to Section 498A, then the ingredients of 498A can be said to be satisfied. This would cover any willful conduct of such a nature as is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health (whether physical or mental) of the woman or the harassment of women with a view to coerce her or any person related to her to meet any unlawful demand of dowry. These ingredients of the said section are not established by the prosecution by bringing on record any evidence to that effect.

3 The findings recorded by the Sessions Judge Pune, therefore, cannot be said to be perverse or illegal and are rather

borne from the record and evidence brought on record by the prosecution in support of its case. The learned Sessions Judge has rightly acquitted the accused nos.1 and 2 of the offences punishable under Section 498A and 306 of the IPC r/w Section 34 of the IPC. The said judgment do not suffer from any illegality or perversity and hence calls for no interference.

Leave to Appeal refused.

Application is dismissed.

(SMT. BHARATI H. DANGRE, J.)

**Manali
Prasanna
Tilak**

Digitally signed
by Manali
Prasanna Tilak
Date:
2018.09.07
16:56:20
+0530