

Chagan Vs. State of Maharashtra

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Court : Mumbai Aurangabad

Decided On : Jan-31-2013

Judge : K.U. Chandiwal

Appeal No. : Criminal Revision Application No.234 of 2000

Appellant : Chagan

Respondent : State of Maharashtra

Judgement :

Oral Judgment:

The revision is admitted on 7th March, 2002.

2. The revision applicant is husband of deceased Smt.Punam @ Bebi. Learned Assistant Sessions Judge, Osmanabad, after recording evidence, on 21.5.1999 in Sessions Case No.129/1996, convicted revision applicant for offense under Section 498-A of IPC and directed him to undergo rigorous imprisonment for one year and to pay fine of Rs.1,000/-; in default, rigorous imprisonment for one month, and for the offense under Section 306 of IPC, to suffer rigorous imprisonment for three and half years i.e. three years and six months and fine of Rs.2000/-; in default, rigorous imprisonment for six months. Both the substantive sentences were directed to run concurrently. The learned Sessions Judge in Appeal No.10/1999 dismissed the appeal.

3. The scope in revision is limited; except when perversity or blatant illegality, or irregularity is pointed out, the revisional Court should not venture to read the evidence. However, in terms of Section 401 of Cr.P.C. certain exceptions are carved out.

4. With the assistance of learned Counsel for the revision applicant, evidence of the witnesses i.e. PW No.1 Dayanand, brother of the deceased, his FIR (Exh.26) was scanned. Evidence of PW No.2 Ramchandra, Police Patil, illustrate that, to the best of his knowledge, accused did not harass deceased Punam @ Bebi any time. PW No.3 Sangita, is sister of the deceased. She has accepted in evidence, the family life of the husband / revisional applicant Chhagan and his wife Smt. Punam was happy and cordial. PW No.4 Govind and PW No.5 Dattu, Panch witnesses, did not support the prosecution, however, Panchnama Exh.30-A/ 30-B is placed on record through investigating officer PW No.6 Bapu Sangale. In evidence of PW No.1, his narration in respect of demand to him about beating to the wife, sending her to his house or deceased committing suicide by setting herself on fire are not reflected in the Police statement recorded under Section 161 Cr.P.C. These are provenly material improvements in the narration of PW No.1. No proper explanation was offered.

In the cross examination, PW No.1 has, indeed, admitted, revision applicant Chagan has good financial status. He was in Armed Forces and, after getting voluntary retirement, has joined service as Driver with Maharashtra State Road Transport Corporation. Consequently, he has no financial crunch to make any demand from brother of the deceased. In fact, PW No.1 had to accept, about cordial relations between the family of the revision applicant Chagan, complainant and also the happy married relations. He had no personal knowledge about any cruelty extended or harassment faced by the deceased. PW No.3 Sangita, though tried to impress, of torture or illegal demand, however, it relates to 4/5 days prior to the incident, however, as the demand or harassment to the deceased is not reflected in her statement under Section 161 of Cr.P.C., there is nothing to demonstrate that PW No.3 could pacify Beby or about visit to her room prior to 4/5 days of the incident. In fact, PW Nos.2 and 3, as stated earlier, have admitted that the family life of the petitioner husband and deceased was happy and cordial.

5. Learned Counsel for the revision applicant has pointed a glaring mistake on the part of the investigating officer as he had recorded a statement of two neighbours Pratibha Thomba and Dhondabai Sutar which he confirmed in his cross examination but, for the reasons best known, he did not enclose these statements under Section 161 Cr.P.C. with final report.

In terms of Section 114(g) of Evidence Act, the Court may presume existence of certain - facts that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. Thus, an impression is generated, the accidental death of Smt. Beby which was unfortunate event occasioned after 13 years of the marriage was given a colour and flavour of suicidal death. In inquiry under Section 174 Cr.P.C., daughter of the applicant, in unmistakable terms, showed how death of her mother was by accident, however, same was again kept in wraps by the investigating officer.

6. Taking survey of above factual details in the matter, it emerges that immediately in close proximity of the events dated 21.6.1995, there was no demand or harassment to deceased to undergo a traumatic situation. The mental status of the deceased is not illustrated by her brother or by her sister Smt. Sangita. The family life, as could be seen, was well placed as the deceased and the applicant Chagan have five children. The death was merely an accidental event. Consequently, the conviction referred to above, recorded by both the Courts calls for interference.

7. Criminal Revision Application allowed. The revision applicant is acquitted of the charge levelled against him. Bail bonds cancelled.

Rule made absolute accordingly.

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