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Court : Mumbai Nagpur

Decided On : Feb-11-2014

Judge : M.L. Tahaliyani

Appeal No. : Criminal Revision Application No. 10 of 2007

Appellant : Ramu Shankar Wagh

Respondent : State of Maharashtra

Judgement :

Oral Judgment:

1. The applicant has been convicted by the learned Ad hoc Assistant Sessions Judge, Nagpur, for the offences punishable under Sections 306 and 498A of the Indian Penal Code. In all there were three accused including the applicant. The applicant was accused No.1 in the Sessions Trial No.409/2002. Accused Nos. 2 and 3 were brothers of the applicant. All the accused were chargesheeted for the offences punishable under Sections 306, 498A and 304B read with Section 34 of the Indian Penal Code. Accused Nos. 2 and 3 have been acquitted of all the charges framed against them. Accused No.1/applicant has been acquitted of the offence punishable under Section 304B of the Indian Penal Code and is convicted of the offences punishable under Sections 306 and 498A of the Indian Penal Code.

2. The prosecution case, in brief, is that deceased Swati was married to the applicant on 26-5-2001. The applicant and his brothers were staying at Village Chande Mangali in Tahsil-Mouda, District-Nagpur. The applicant was in a private service at Mouda. He, therefore, along with the deceased was staying separately from his other family members in a rented room at Mouda. It is alleged that the applicant and other accused had been demanding Rs.2,000/- to Rs.3,000/- from the deceased and asking her to bring the amount from her parents for getting a LPG connection. This demand was continuously being made. Due to continuous harassment on the part of the applicant and other accused, the deceased had allegedly committed suicide by hanging herself on 26th March, 2002. It is also alleged that the deceased was being asked to work in the agricultural field after finishing her domestic work. The applicant used to harass the deceased as she was unable to work in the agricultural field.

3. The complaint in respect of the present offences was lodged by father of the deceased. During the course of investigation, dead body was sent to the Medical Officer for Post-Mortem Examination. The Medical Officer had opined that the deceased had died due to hanging. A ligature mark was found around neck above the level of thyroid cartilage running obliquely upwards and backwards. The length of ligature mark was 13 cm. and its breadth was 4.5 cm. Statements of the witnesses were recorded. The complainant Mahadeo, his brother Raghunath and mother of the deceased by name Kusum had stated before the police that the deceased was subjected to cruelty and that there was a demand on the part of the applicant of Rs.2,000/- to Rs.3,000/- for getting a LPG connection. It is also stated by these witnesses that P.W.1-Mahadeo and P.W.6-Kusum had gone to the house of the deceased after the marriage on 7th September, 2001 and that Kusum had stayed with her daughter upto 10th September, 2001. During that period also the deceased had stated to her mother that she was being subjected to cruelty by the applicant and other accused.

4. The case of prosecution is mainly based on the evidence of P.W.1-Mahadeo, P.W.4-Raghunath and P.W.6-Kusum. As far as cause of death is concerned, it is not disputed. It is, therefore, not necessary to discuss the evidence of the Medical Officer in respect of Post-Mortem Report and Police Officer in respect of the

Inquest Report. It is also not necessary to discuss the evidence in respect of spot panchanama. The only issue, which needs to be examined in this case, is as to whether the prosecution had been able to establish that the applicant had subjected the deceased to cruelty. In this regard, it may be noted here that all the witnesses have highlighted the incident of demand of Rs.2,000/- to Rs.3,000/- for getting a LPG connection. There was some general allegations also. However, as far as specific incident is concerned, the only incident narrated by the witnesses is in respect of the said demand of Rs.2,000/- to Rs.3,000/- for getting a LPG connection.

5. Learned Counsel Shri R.M. Daga has submitted that the evidence is short of proving the charge of demand of dowry. It is submitted by learned Counsel Shri R.M. Daga that the evidence of P.W.1-Mahadeo, P.W.4-Raghunath and P.W.6-Kusum is not trustworthy and reliable. It was brought to my notice that the evidence on the basis of which the conviction has been arrived at by the learned trial Court and has been confirmed by the learned appellate Court (Additional Sessions Judge) is missing from earlier statements of the witnesses. It was brought to my notice that P.W.1-Mahadeo, P.W.4-Raghunath and P.W.6-Kusum have stated in their cross-examination that they had stated before the police during the course of recording of their statements that the deceased had told that there was demand of Rs.2,000/- to Rs.3,000/- for getting a LPG connection. However, the police statements are silent on this aspect. The Police Officer has stated that the statements were recorded as per the say of the witnesses. The joint reading of evidence of P.W.1-Mahadeo, P.W.4-Raghunath, P.W.6-Kusum and P.W.8-Mr. Damodhar Rathod, Police Sub-Inspector would clearly show that the witnesses had not stated before the police that the deceased was being continuously tortured on account of dowry.

6. The learned trial Court has convicted the applicant for the offence punishable under Section 306 of the Indian Penal Code with the help of Section 113A of the Indian Evidence Act.

7. Before I proceed further, let me reproduce certain legal provisions, which are relevant to the present case. Abetment has been defined under Section 107 of the

Indian Penal Code as under:-

œ107. **Abetment of a thing** “ A person abets the doing of a thing, who “

First “ Instigates any person to do that thing; or

Secondly “ Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly “ Intentionally aids, by any act or illegal omission, the doing of that thing.?

8. As such intentional aid, by any act or illegal omission, is the integral part of the offence of abetment to commit suicide. However, in the present case, the learned trial Court has pressed provision of Section 113A of the Indian Evidence Act into service. Section 113A of the Indian Evidence Act runs as under:

œ113A. **Presumption as to abetment of suicide by a married woman** “ When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.?

As such to draw a presumption under Section 113A of the Indian Evidence Act, it is necessary to prove that (i) the deceased had committed suicide within a period of seven years from the date of her marriage; (ii) her husband or relative of her husband had subjected her to cruelty; and (iii) once it is proved that the deceased had committed suicide within a period of seven years and she was subjected to cruelty by her husband or relative of her husband, the Court might presume that such suicide has been abetted by her husband or such relative of her husband. However, the Court has to take into consideration all other circumstances of the case while taking help of Section 113A of the Indian Evidence Act.

9. The cruelty has been defined under Section 498A of the Indian Penal Code as under:

œ498A. Husband or relative of husband of a woman subjecting her to cruelty

:- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation “ For the purpose of this section, œcruelty? means “

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.?

10. The case of the applicant will have to be examined keeping in view the provision of Clause (b) of Explanation to Section 498A of the Indian Penal Code. The prosecution was under obligation to prove that the applicant had harassed the deceased with a view to coercing her or any person related to her to meet the demand of Rs.2,000/- to Rs.3,000/- and that the said demand was unlawful or the applicant was causing harassment to the deceased on account of her failure to fulfill the demand. If this is not established in the present case, the charges under Sections 498A and 306 of the Indian Penal Code will fail.

11. Let us now, therefore, go by the evidence of prosecution witnesses. As already stated by me that cause of death has not been disputed. There is no independent witness except the evidence of P.W.1-Mahadeo, P.W.4-Raghunath and P.W.6-Kusum. The major portion of evidence on which the prosecution relies is found to be omitted by the witnesses while giving their statements before the police. I have examined the judgments and orders of both the Courts below. The learned trial Judge has not taken into consideration the effect of omissions. Therefore, the

judgment of the learned trial Court suffers from severe infirmity inasmuch as a very crucial issue, which could have changed the direction of the judgment, has not been taken into consideration. The learned appellate Court i.e. the Court of Additional Sessions Judge has considered the effect of omissions in the earlier statements of the witnesses. While considering the effect of omissions, the learned Additional Sessions Judge has stated that it was not necessary for the witness to mention each and every aspect of cruelty in the First Information Report because First Information Report was not encyclopedia of the whole case. The learned appellate Court failed to take note of the fact that the major allegation against the applicant and other accused was in respect of demand of Rs.2,000/- to Rs.3,000/- for getting a LPG connection. Therefore, if that portion of the evidence is found missing from the police statements, it creates a serious doubt about the correctness of evidence of the witnesses. As already stated by me that there are no other allegations except some general remarks made by the witnesses. The case of prosecution is that the deceased had committed suicide because the parents could not meet demand of Rs. 2,000/- to Rs.3,000/- for getting a LPG connection. If this portion of evidence is missing from the police statements, it cripples the prosecution case to a large extent.

12. As such, in my considered opinion, the cruelty aspect has not been established by the prosecution beyond all reasonable doubts. Once the prosecution has failed to establish allegations of cruelty, the presumption under Section 113A of the Indian Evidence Act could not have been drawn in favour of the prosecution. In that situation, it is for the prosecution to establish on the basis of other evidence that the applicant had intentionally aided, by any act or illegal omission, the abetment of commission of suicide by the deceased. There is no evidence to establish any act or omission on the part of the applicant, which might have instigated the deceased to commit suicide. As such charge under Section 306 of the Indian Penal Code fails miserably. As far as charge under Section 498A of the Indian Penal Code is concerned, it is now obvious that the said charge also fails. In this regard, it may be additionally noted that the statement made by the deceased to her father, mother and uncle few days or few months before her death could not be admissible in evidence under Section 32(1) of the Indian Evidence Act as far as charge under Section 498A of the Indian Penal Code is

concerned as the cause of death of the deceased was not in question for the said charge. As such there is no evidence at all to establish the charge under Section 498A of the Indian Penal Code. Both the charges fail miserably. Both the judgments and orders of the Courts below will have to be set aside and the applicant will have to be acquitted. Hence, I pass the following order.

The criminal revision application is allowed.

The judgment and order dated 27-10-2004 passed by the learned Ad hoc Assistant Sessions Judge in Sessions Trial No.409/2002 of Nagpur Sessions Division, convicting the applicant for the offences punishable under Sections 498A and 306 of the Indian Penal Code, is set aside. The judgment and order dated 21-12-2006 passed by the learned Additional Sessions Judge in Criminal Appeal No.85/2004 of Nagpur Sessions Division is also set aside.

The applicant is acquitted of the offences punishable under Sections 306 and 498A of the Indian Penal Code.

His bail bonds shall stand cancelled.

The revision application accordingly stands disposed of.

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