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Court : Mumbai Aurangabad

Decided On : Sep-15-2014

Judge : T.V. Nalawade

Appeal No. : Criminal Appeal No. 134 of 2000

Appellant : Gulab

Respondent : State of Maharashtra

Judgement :

1. The appeal is filed against the judgment and order of Sessions Case No.218/1995, which was pending in the Court of 2nd Additional Sessions Judge, Aurangabad. The appellant is convicted and sentenced for offences punishable under sections 306 and 498-A of Indian Penal Code and sentence of rigorous imprisonment for three years is given to the appellant and total amount of fine of Rs.1500/- is imposed on him. Both sides are heard.

2. The deceased Sangita was a daughter of complainant. She was given in marriage to appellant about three years prior to the date of incident. It is the case of complainant that after few days of marriage, the deceased had started complaining to him and to relatives on parents side that the husband and his relatives were giving ill-treatment to her. She had disclosed that her husband had asked her to bring Rs.1000/- from her parents as he wanted to purchase bed for him. She had also disclosed that husband was harassing her and even giving

beating to her on petty counts.

3. It is the case of complainant that the deceased used to visit the house of her parents on the occasions of festivals. On one occasion when she visited the house of her parents, the parents had smell of kerosene from the clothes of deceased. She had then disclosed that her husband had poured kerosene on her person and he wanted to finish her. About three-four months prior to the date of incident, she had returned to the house of parents and she was complaining that her husband was giving beating to her on petty counts. It is the case of complainant that he had given sever beating and due to beating there was swelling on her hand and there was probably fracture injury. On that occasion she had stayed for fifteen days in her parents house due to the said incident. The appellant/husband had then visited the house of complainant and as he had given undertaking to behave well with the deceased, the deceased was sent back to the matrimonial house. The deceased had again visited house of her parents to attain the marriage ceremony of her brother which was in the month of April.

4. After the marriage of the brother, deceased was residing in her matrimonial house. On 05/05/1995 father of the appellant visited to the house of complainant at midnight. He informed that Sangita was admitted in hospital and she had sustained burns injuries and was hospitalized. Complainant went to the hospital but till that time Sangita was dead. Complainant then gave report to police on 06/05/1995 and crime came to be registered for offences punishable under Sections 306, 498-A, 34 etc. of Indian Penal Code against husband-appellant and his relatives. The complainant has made allegation that applicant/husband and his relatives had given ill-treatment to the deceased and due to ill-treatment Sangeeta commit suicide by setting fire to herself.

5. The trial Court framed charge for aforesaid offences. The prosecution examined 09 witnesses. Three witnesses were examined in defence. The appellant took defence that it was accident and the deceased had also disclosed to doctor that her clothes caught fired accidentally. The trial court has not believed the defence taken by the appellant and trial court believed the aforesaid disclosures made by daughter of the complainant and versions against the appellant.

6. The complainant Horeshwarrao (P.W.01) has given evidence as per the aforesaid version given in the F.I.R. and the F.I.R. is proved at Exh.13. The evidence of P.W.01 shows that right from the beginning, deceased was complaining that there was ill-treatment to the deceased from her husband and husband used to give beating to her. The evidence is given that husband used to beat to the deceased and due to sever beating on one occasion there was swelling to one hand of deceased. The complainant has given evidence that on 24/4/1995 there was marriage of his son. This marriage was attended by deceased and appellant. He has deposed that on that occasion also ill-treatment was given by appellant. Bablabai (P.W. No.03) mother of deceased has given similar evidence. The evidence of P.W.1 Horeshwarrao Charlasrao Mane and P.W.2 Babalbai Horeshwarrao Mane shows that on one occasion, they had smell of kerosene to the cloths of deceased. The other evidence is mostly of the nature of disclosures made by the deceased to them.

7. The cross examination of P.W.1 Horeshwarrao and P.W.2 Babalbai shows that both the witnesses have stated some new things and those things were not stated before police in F.I.R. and police statement. Those omissions are duly proved by the defence. In F.I.R. there is no mention that the appellant had attended the marriage of complainant's son in April 1995 and on that occasion there was quarrel and appellant had given ill-treatment to deceased. P.W.01 Horeshwarrao has added new allegations by saying that accused wanted that P.W. 1 should accept the daughter of uncle of accused in marriage for son of complainant and as the daughter was not accepted, appellant gave ill-treatment to deceased. This omission is also duly proved. Though, there are said omissions in respect of few circumstances stated in evidence by P.W.01 Horeshwarrao and P.W.2 Babalbai in relation to their previous the versions, these omissions have not created reasonable doubt about their versions on ill-treatment. The evidence of P.W.01 Horeshwarrao and P.W.2 Babalbai shows that appellant used to give beating to the deceased on petty counts and on one occasion they had noticed that there was smell of kerosene to the clothes of the deceased. It needs to mentioned that in the statement given u/sec.313 of Code of Criminal Procedure, appellant has admitted that he had attended the marriage on 24/04/1995.

8. Subhash (P.W.04) brother of deceased has also given evidence that deceased used to disclose to him about the ill-treatment given by the appellant. Sushilkumar (P.W.05) is the cousin of the deceased and his evidence shows that prior to four months of incident he had seen injury on one hand of deceased and deceased had disclosed to him that beating was given to her by appellant. Evidence of Subhash (P.W.04) shows that he has added few things when those were not mentioned in the statement given to police. There is also evidence of Vijak s/o Charlasrao Mane, P.W.06 uncle of deceased on ill-treatment and which is similar to the evidence of these two witnesses.

9. The evidence of aforesaid witnesses shows that incident took place within two weeks of the last visit of Sangita to the house of her parents. Even if the omissions mentioned above in relation to the previous statements are considered and evidence in that regard is omitted from consideration, the fact remains that all the witnesses have given evidence that there were disclosures made by the deceased to them about ill-treatment from her husband. There is the evidence given by them that on one occasion they had seen one injury on the person of deceased and it was caused by the appellant. Their evidence also shows that they had smell of kerosene to the clothes of deceased on one occasion, when she had returned to parents house due to such ill-treatment.

10. The evidence of Dr. Rajendrakumar (P.W.09), who conducted postmortem examination on dead body of Sangita shows that he found five injuries on the dead body, which were apart from burn and they were as under:-

(1) Two cresentric abrasions of size 1 x1/4 cms. on either side of neck on anterolateral aspect of upper pat of neck.

(2) Abrasion of 4 cms x 31/2 cms, left maxilary area.

(3) Abrasion of 21/2 x 2 cms, on lateral of left eye.

(4) Abrasions of 3 x 2 cms, and "2 x 2 cms at right side of neck below and lateral to cresentic abrasion.

(5) Abrasion at right thigh upper part on lateral aspect of 6 x 1/4 cms. directed above downwards. All abrasions were redish brown, no scab found. All the burns and other injuries were antemortem injuries.

11. On internal examination Dr. Rajendrakumar found that there was contusion of size 3 x 2 cms at frontal region. The case papers produced during evidence show that there was bleeding from left ear of Sangita when she was admitted in hospital. The medical evidence shows that Sangita was pregnant and she was having male foetus of seven months.

12. Dr. Rajendrakumar has denied suggestion given by defence that aforesaid injuries can be self inflicted. He has also denied the suggestion that the aforesaid injuries can be caused due to dragging of body on rough surface (probably to take her out of room where her clothes caught fire). Dr. Rajendrakumar has admitted that only the injury mentioned in column no.19 in postmortem report can be caused due to fall. The evidence on record shows that the accused sustained burn injuries and he is not disputing that he has present in room and he also sustained injury. In view of these circumstances, it was necessary for the appellant to explain as to how Sangita sustained aforesaid injuries. If there is no explanation, these circumstances can be used against the accused. In the statement given under section 313 of Code of Criminal Procedure no such explanation is given by accused. In view of aforesaid circumstances adverse inference is possible that it is accused who had caused injuries No.1 to 5 on the day of incident to deceased. The evidence of about aforesaid injuries gives corroboration to the disclosures of deceased that accused used to give beating to her on petty counts.

13. If the aforesaid injuries were caused to the deceased on the day of incident and deceased committed suicide after giving of beating by the husband further inference can be drawn against the accused and provision of sections 106 and 114 of Evidence Act can be used against the accused. The evidence on the injuries sustained by deceased before starting of fire gives corroboration to the version of witnesses examined by prosecution that accused used to give ill-treatment to the deceased. These circumstances also can be used for proving the case of prosecution that due to the ill-treatment, beating, given by the accused,

Sangeeta committed suicide. When there is such evidence interference can be drawn that there was ill-treatment of such extent that there was no alternative before Sangeeta then to put to end to her life. Thus, it can be inferred that there was instigation as mentioned in Section 107 of Indian Penal Code and it is a case of abetment to suicide which is punishable under Section 306 of Indian Penal code. In such a case, if prosecution proves that there was such ill-treatment just prior to committing of suicide and beating was given to the deceased by the accused, it needs to be inferred that it is the case of abetment of suicide.

14. For proving that Sangita committed suicide prosecution has relied on the evidence like spot panchanama prepared during investigation, postmortem report and CA report in respect of clothes of the deceased.

15. In the evidence of Jagannath (P.W. 03) spot panchnama is proved. There is also evidence of Investigating officer who recorded the spot panchnama at Exh.17 which was prepared on 06/05/1995. It is mentioned that in the room/house of appellant there was traditional fire place like "Chul" for which firewood is used and not the stove for which kerosene is used. People keep can of kerosene in the house for lightening the lantern and also for starting of fire at the cooking place. No stove was found in the house. Pieces of partly burnt Saree of deceased were found in the room. One can of kerosene not having cap and containing some kerosene was found at the spot. Adjoining to the house there were houses of neighbors.

16. Panchnama of seizure of clothes found on the dead body is proved in the evidence of witness Gangadhar. Panchnama is at Exh.23. The clothes found on the dead body and which were taken over from the spot of offence were sent to CA office with covering letter which is at Exh. 26. At Exh.36 there is CA report and it shows that Kerosene was detected on those clothes.

17. Aforesaid evidence is sufficient to infer that kerosene was used for setting fire to the clothes of deceased Sangita and it is a case of suicide. It is not disputed that Sangita died due to burn injuries which were to the extent of more than 92%. It is already observed that accused was present on the spot at that time and he has not explained the aforesaid circumstance and also the reason for which Sangita

committed suicide. It view of the provision 106 of Evidence Act, burden was on the accused to explain the things, but the accused has not explained the things. Therefore, inference needs to be drawn against the accused under Section 114 of Evidence Act.

18. If the postmortem report is perused and the evidence of Dr. Rajendrakumar S/o Nivetirao Kagne is considered, it can be said that there were burns injuries on the head, neck, face, trunk anterior, trunk posterior, both lower side of upper limb and lower limb and burn injuries were present on the chest, abdomen, thigh and both upper limbs. Thus, the burn injuries were present all over the dead body. Thus the P.M. report at Exh. 34 also gives corroboration to the case of prosecution. There are circumstances to infer that it is a case of suicide and burn injuries were not sustained accidentally.

19. Dr. Arun s/o Vishwambhar Marwale, defence witness No.1 has given evidence that history of burn injury was given by the appellant, husband to the hospital when deceased was admitted in hospital. His evidence shows that however he made inquiry with the deceased and obtained thumb impression of deceased when she was conscious. This happened probably at 22.10 hours.

20. Shri. Narayan Banderao Kunte, D.W. No.02 Police Head Constable has given evidence that as per the information supplied to him by A.S.I. Sable on phone about M.L.C. and accordingly he noted down M.L.C.. Thus, he has no personal knowledge about contents of document Exh.51.

21. Shri. Rustumrao s/o Kondiba Sable, D.W. No.03 A.S.I. who had supplied information to Shri. Narayan Banderao Kunte from Police Chowky attached to Civil Hospital has given evidence that he made inquiry with appellant and deceased and he recorded information at Exh.55. He has admitted in the cross-examination that Exh.-55 is prepared as per the statement of Sangeeta. In the cross-examination made by leaned APP for the State, Shri. Rustumrao s/o Kondiba Sable again stated Sangeeta had not supplied the information mentioned by him in Exh.55.

22. Exh.55 was created at 22.10 hours on 05/05/1995. This report does not bear signature or thumb impression of deceased Sangeeta. Exh.51 was prepared by Shri. Narayan Banderao Kunte on the basis of information provided by Shri. Rustumrao s/o Kondiba Sable. Exh.51 was created at 22.30 hours. The case papers in respect of admission and treatment of Sangeeta in government hospital show that the patient was admitted at 10.30 p.m. (22.30 hours). On the rubber stamp was used on government paper, the time is shown 10.15 p.m. The endorsement appearing on first page of Government Hospital case papers show that doctor had advised to arrange for recording dying declaration. The case papers show that Sangeeta was first examined in government hospital at 10.45 p.m. on 05/05/1995. First entry of examination of Sangita shows that history was given by the patient, but no history was given that it was accident. General condition of patient was poor. There was evidence of bleeding through left ear and there were blood stains on face. The subsequent entry made at 10.50 p.m. shows that patient was unconscious at that time and request was made to doctor by police for permission to record statement, but the statement could not be recorded as patient was unconscious. At 11.30 p.m. also she unconscious. She did not regain consciousness till her last breath. In the record it is mentioned that the death was caused due to100% burn injuries.

23. The aforesaid record of case papers shows that the deceased was taken to hospital by appellant-husband. The evidence on record is sufficient to show that deceased was not in a position to talk and to disclose any history to doctor or police. Nobody from side of parents of deceased was present in the hospital at the relevant time. There was bleeding through left ear, there were injuries, blood stains on face and general condition was poor. The extent of burns was more than 92%. In view of these circumstances, this Court holds that it is not possible to believe the defence of accused that the deceased had given history of burn injuries and she had disclosed that she had sustained burns accidentally. In view of the aforesaid facts and circumstances the Trial Court has rightly held that deceased was not in a position to disclose anything. No dying declaration could be recorded by the doctor who had opportunity and the doctor had not given opinion that the deceased was fit to give dying declaration.

24. From the aforesaid evidence only one inference is possible that Sangita committed suicide. The evidence on record also shows that the deceased had not disclosed to police that she had sustained burn injuries due to accidental fire.

25. In the present case Sangita committed suicide within three years of marriage. It is appeal against conviction for the offences punishable under Section 306 of IPC. In such case actual abatement as defined in Section 107 of IPC. is not required to be proved in view of the provisions of Section 498-A of IPC and Section 113-A of Evidence Act. Section 113-A of Evidence Act runs as under:-

"113-A. When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative or 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."

26. From the wording of Section 113-A of Evidence Act, (the word may) it can be said that the presumption under Section 113-A is not mandatory presumption. The provision further shows that such presumption can be drawn after having regard to all other circumstances of the case. In the case reported as "Ramesh Kumar Vs State of Chhattisgarh" (AIR 2001 SC 3837) the Apex Court has laid down that the term "all other circumstances of the case used in Section 113-A of Evidence Act requires cause and effect relationship between cruelty and suicide needs to be established before drawing the presumption. It is further laid down by the Hon'ble Apex Court that presumption is rebutable in nature.

27. The provision of Section 498(A) of Indian Penal Code runs as under:-

"498-A - 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 who may extent to three years and shall also be liable to fine.

Explanation.- For the purpose of this section, "cruelty" 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."

28. In the case reported as Girdhar Tawade Vs State of Maharashtra (2003 Bom.C.R. (Cri.) 575) the Hon'ble Apex Court has made following observation.

"The basic purport of the statutory provision in sec. 498-A is to avoid 'cruelty' which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word 'cruelty' as is expressed by the legislature : Whereas explanation (a) involved three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical and thus involving a physical torture or atrocity. In explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as coercive harassment which obviously as the legislature intent expressed is equally heinous to snatch the physical injury ; whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of 'cruelty' in terms of sec.498-A."

It is further observed by the Apex court at para Nos.16, 17 and 18 that in order to bring home guilt for offence u/sec.498-A of IPC., willful act or the conduct of the Accused which have direct relations to the death, need to be established.

29. In Explanation to Section 498-A Indian Penal Code, there are two words like "willful" indicating the intentional conduct of the accused and "likely" indicating that the accused is supposed to anticipate the effect of his conduct. The word shows

that the accused being husband or relative of husband, if they are involved in such of case, they can not be allowed to say that they had not anticipated such reaction, of suicide of the deceased due to their conduct of the ill-treatment. They are the best persons who know what kind of ill-treatment deceased was receiving and at the relevant time what actually happened. It is already observed that the provisions of Sections 106 and 114 of Evidence Act can be used against such accused and so both the words - "willful" and "likely" need to be read together. In the result the word "willful" cannot be taken in strict sense of "intention" in such cases.

30. In view of aforesaid position of law this Court holds that evidence on record against the appellant is more than sufficient to prove that he has committed the offences punishable under Sections 498-A and 306 of Indian Penal Code. Considering all other circumstances of the case as mentioned in Section 113-A of Evidence Act, this Court has no hesitation to hold that the presumption available under Section 113 (A) of Evidence Act needs to be drawn against appellant, husband of the deceased. Thus, this Court sees no reason to interfere in the decision of conviction given by the trial Court. On the point of penalty, it can be said that, conviction of three years R.I. already given by the trial Court is on lower side. Thus no possibility of interference is there in the decision of the trial Court on the point of penalty also.

31. In the result appeal stands dismissed. The appellant is to surrender to his bail bonds for undergoing the sentence.

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