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Court : Mumbai Nagpur

Decided On : Jun-24-2014

Judge : P.N. Deshmukh

Appeal No. : Criminal Appeal No. 70 of 2002

Appellant : Ankush

Respondent : State of Maharashtra

Judgement :

1. By this appeal, original accused No.1 takes exception to the judgment and order passed by 1st (Ad hoc) Additional Sessions Judge, Bhandara in Sessions Trial No.37 of 1997 dated 27th of December, 2001, whereby appellant came to be convicted for the offence punishable under Section 498-A of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.1000/-, in default of payment of fine to suffer R.I. for one month and for the offence punishable under Section 306 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.1000/-, in default of payment of fine to suffer rigorous imprisonment for one month.

2. Prosecution case can briefly be stated as under -

Deceased Rekha was daughter of complainant Smt.Laxmibai Raut and was married to appellant on 10/6/1996. After her marriage she was cohabiting with the

appellant at his house. However, after residing for some days whenever she visited her parents house she has stated to complainant Laxmibai, her mother, that appellant provided her ill-treatment and harassment on the ground of demand of Rs.2000/-. It is also case of prosecution that such ill-treatment was provided to deceased at the interval of fifteen days. On 29/3/1997 deceased was brought to her parents house by complainant. However, on her return relations of appellant refused to accept her. In spite of that complainant left her daughter with the appellant and returned back on the following day. About seven days thereafter on, 7/12/1997, complainant learnt about death of Rekha by falling into the Well upon which complainant lodged her report with Police Station Palandur, on the basis of which offence came to be registered vide Crime No.16 of 1997 under 498-A, 306 of the Indian Penal Code. During the course of investigation, spot panchanama, inquest panchanama were drawn and the dead body was referred for post mortem. After completion of investigation charge-sheet came to be filed before the learned Judicial Magistrate, Sakoli. In the course of time, case came to be committed for trial to the Sessions Court.

3. The charge was framed against the appellant vide Exh.11 for the offence punishable under Sections 498-A, 306 r/w 34 of the Indian Penal Code. On considering the evidence, learned Trial Court acquitted original accused nos.2 to 4 and convicted appellant as aforesaid. Hence, this appeal.

4. Heard learned Advocate Shri S.D. Sirpurkar for the appellant and Shri A.H. Laddhad, learned APP for the State.

5. To effectively evaluate the submissions advanced by learned Advocates for both the sides, I have scrutinized the evidence with their assistance.

6. PW.3 Laxmibai, the complainant, has stated that her daughter deceased Rakha was married to appellant on 10/6/1996 and was thereafter residing with him at his village along with his family members. She further stated that when Rekha visited her parents house for festival, she stayed there for fifteen days and was thereafter taken back by the appellant. Deceased thereafter again returned after eight days alone and complained against the appellant saying that he was demanding Rs.2000/- and was subjected to ill-treatment on this count. It is her further

evidence that whenever Rekha was sent back to appellant, she used to come back after interval of eight days and after staying for period of one month was again sent back to the house of appellant. It is her further evidence that fact of ill-treatment was stated by deceased to her in the presence of husband, son, daughter and two son-in-laws and after Rekha was reached back to the house of appellant, eight days thereafter she learnt about her death by falling into the Well. According to complainant, as deceased was subjected to ill-treatment she had committed suicide and has proved on record her report (Exh.22).

7. In the cross-examination, the complainant admitted that the financial condition of appellant was good and he was working as contractor. She admitted that no report of ill-treatment alleged to be provided to her by the appellant was lodged at any point of time prior to the incident. Complainant denied that Rekha fell in the well accidentally.

8. To corroborate the complainant's version, prosecution has examined her son-in-law as PW 2 Fattu Neware, who has stated that deceased was younger sister of his wife and had died within ten months of the marriage with the appellant. He has further stated that appellant used to bring deceased up to Bhandara bus stand and go back. He further stated that deceased was subjected to ill-treatment and harassment by the appellant on demand of Rs.2000/- which was narrated to him and as demand was not fulfilled, she committed suicide.

In the cross-examination, material omission of this witness is brought on record when he has admitted to have stated in his statement recorded by police that Rekha told him that appellant was harassing and providing ill-treatment to her. However, according to him, he cannot assigned any reason as to why said fact is not mentioned therein. He further stated to have mentioned in his statement that accused used to leave Rekha alone at the Bhandara bus stand and used to go back. However, he has again expressed his inability for not having said contents in his statement. Above two omissions when considered, it is seen that evidence of PW 2 Fattu cannot said to be corroborating to the evidence of complainant on the material aspect of ill treatment which according to prosecution has led deceased Rekha to commit suicide.

9. Though prosecution had examined PW 4 Ganesh, brother of deceased, who finds to have corroborated to the evidence of his mother, complainant Laxmibai, prosecution has not examined any independent witness on the point of cruelty and harassment alleged to be provided by the appellant, as stated by complainant, in spite of the fact that statements of as many as 18 witnesses are recorded and they are cited as witnesses in the charge sheet.

Prosecution, to establish the charge against the appellant, had examined PW 5 Lata Donalkar as an independent witness, who is friend of deceased Rekha. She has stated that whenever Rekha used to come to her parents house, she used to come to her and used to tell her that her husband and her in-laws ill-treat and harass her on the ground of demand of Rs.2000/-. According to her evidence, lastly, deceased had visited her eight days prior to her death. However, again evidence of this independent witness do not inspire confidence as she too appears to have improved her version so as to suit the case of prosecution when she has deposed to have stated before the police in her statement about alleged ill-treatment and harassment provided to deceased by the appellant and his relatives. However, according to her, she is unable to put forth any reason as to why said facts are not mentioned in her statement.

10. Having considering the omissions in the evidence of said independent witness, there appears absolutely no evidence brought on record by the prosecution to establish the charge levelled against the appellant and as such for want of necessary ingredients of Section 498-A of Indian Penal Code to be proved by prosecution, no presumption as contemplated under Section 113-A of Indian Evidence Act can even be raised though Rekha died within seven years of her marriage.

11. On considering the evidence of complainant and her son in-law PW 2 Fattu, it is noted that in the evidence of none of these witnesses, there are specific allegations of cruelty as required under the law, to be established by the prosecution. The existence of cruelty cannot be proved merely because suicide has been committed. Undoubtedly, to a large extent the concept of "Cruelty" will be subjective; but no claim of "cruelty" can be made without an objective basis.

Thus, merely because the victim has taken a drastic step of ending her life, it can not be presumed that the treatment that was being given to her was cruel, so as to attract the punishment provided for, in Section 498-A of the Indian Penal Code. The explanation to Section 498-A of the Indian Penal Code makes it clear that Cruelty means, "any willful conduct which is of such a nature as is likely to drive a woman to commit suicide or cause grave injury or danger to life, limb or health (whether mental or physical) of the woman". The words "willful conduct" and "likely to" used in Explanation clause (a) are significant. The words "likely to" used in the said Clause show that clause (a) of Explanation to Section 498-A of the Indian Penal Code requires the willful conduct to be of such a nature as would likely to drive a woman to commit suicide or to cause grave injury, or danger to life, limb or health. As reactions of different persons vary, the extent of cruelty treatment needs to be objectively assessed in order to see whether a reasonable or average person would be likely to be driven to commit suicide or cause grave injury to her on account of such treatment. At the cost of repetition, it may be emphasized that suicide has been in fact committed, can not, by itself, be considered as proof of cruelty.

12. Similarly, with reference to charge for the offence punishable under Section 306 of the Indian Penal Code is concerned, from the post mortem report (Exh.26) deceased is found to have sustained two external injuries by way of contusion on forehead admeasuring 1" x 1/2" in the center and another injury by way of lacerated wound on chin admeasuring 1/2" x 1/4". At this stage, on considering evidence of PW 1 Ramesh, spot panch, together with spot panchanama (Exh.17), it reveals that the Well wherein the dead body of deceased was found was big in size, having diameter of 49 ft.and is stated to be 60 ft. deep having 33 ft. water therein. Considering the diameter of the Well, thus, it can be held that in the event of any person committing suicide, there is no possibility of his or her sustaining any injuries. However, deceased is certified to have sustained two injuries on her person as stated above, which fact, therefore, raises sufficient doubt in the case of prosecution of deceased committing suicide and in fact supports the case of appellant of deceased falling into the Well accidentally. The defence of accused is found more substantiated as from the contents of spot panchanama it appears that there are four poles of cement concrete kept on the parapet wall of the Well which

is of 1 ft. height. The villagers whosoever were visiting the Well were fetching water by standing on said cement poles. Considering said fact, it can thus reasonably said that the deceased while fetching water accidentally fell into the Well.

13. Even otherwise law on the aspect of Sections 107 and 306 of the Indian Penal Code is by now well settled. The concept of 'abetment' in the context of abetment of suicide, which is punishable under Section 306 of Indian Penal Code, is discussed by the Apex Court in the case of Sanju alias Sanjay Singh Sengar vs. State of Madhya Pradesh, (2002 Criminal Law Journal 2796]. In the reported decision, the Supreme Court of India extensively dealt with the concept of 'abetment' in the context of the offence punishable under Sec.306 of the Indian Penal Code. In that case, the allegation against the accused-appellant before the Supreme Court was that he had abetted the commission of suicide of his sister's husband - one Chander Bhushan. The facts appearing in the reported judgment show that there were matrimonial disputes between Neelam - sister of the appellant/accused and her husband and that, in connection with these disputes, the appellant had allegedly threatened and abused the said Chander Bhushan. Chander Bhushan committed suicide and the suicide was attributed by the prosecution to the quarrel that had taken place between the appellant and the said Chander Bhushan, a day prior. It was alleged that the appellant had used abusive language against said Chander Bhushan and had told him "to go and die". The appellant, who had been charge sheeted for an offence punishable under Section 306 of the Indian Penal Code, filed a Petition under Section 482 of the Code of Criminal Procedure, for quashing the proceedings against him, but his petition was dismissed by the High court. The petitioner had, therefore appealed to the Supreme Court. While allowing the appeal, Their Lordships of the Supreme Court, inter alia, observed as follows :

"Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation." (Para 13 of the reported Judgment).

14. In the light of above facts and settled legal position, it is noted that even if a person would commit suicide because of certain acts of the accused, the accused cannot be said to have committed abetment of suicide by the deceased unless the accused would intend, while causing such acts to the victim, that he/she should commit suicide. As such, it is necessary for the prosecution to establish that by his acts, the accused could reasonably foresee that because of his conduct, the victim was almost certain or at least, quite likely to commit suicide. Unless this is established, a person cannot be charged of having abetted commission of suicide, even if, suicide has been committed as a result of some of the acts committed by the accused.

In the case of Sanju (supra), it is seen that even in the case where the accused had uttered words such as "go and die" in abusive and humiliating language which, allegedly, led to committing of suicide, it was held that it would not amount to instigation and consequently, there would be no offence of abetment of suicide.

15. In the appeal in hand there is absolutely no evidence to establish that on the day of incident or immediately prior to death of deceased, appellant has instigated or abetted the deceased to commit suicide. In view of above facts involved in the appeal and for the reasons stated herein above, the appellant cannot be attributed with the requisite mens rea so as to hold him guilty as a abettor and thus prosecution can said to have even not spelt out any offence punishable under Section 306 of the Indian Penal Code. In the result, the appeal is liable to be allowed as prosecution has failed to establish any of the charges levelled against the appellant beyond reasonable doubt. Hence, the following order.

16. Appeal is allowed.

The judgment and order passed by the 1st Ad hoc Additional Sessions Judge, Bhandara on 27/12/2001 in Sessions Case No.37 of 1997, convicting the appellant - accused for the offence punishable under Section 498-A, 306 of the Indian Penal Code is hereby quashed and set aside and the accused is acquitted of the offence for which he was charged and convicted.

His bail stands cancelled.

Fine amount, if any, paid be refunded back to appellant.

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