

Devidas Vs. State of Maharashtra

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SooperKanoon Citation : sooperkanoon.com/367467

Court : Mumbai

Decided On : Aug-02-2004

Reported in : I(2005)DMC861

Judge : S.B. Deshmukh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 306 and 498A; Evidence Act - Sections 4, 113A and 113B; ;Code of Criminal Procedure (CrPC) - Sections 294 and 313; Criminal Law (Second) Amendment Act, 1983

Appeal No. : Criminal Appeal No. 91 of 1995

Appellant : Devidas

Respondent : State of Maharashtra

Advocate for Def. : Borade, APP

Advocate for Pet/Ap. : Joydeep Chatarjee, Adv.

Disposition : Appeal allowed

Judgement :

S.B. Deshmukh, J.

1. The appellant faced trial for the offence punishable under Sections 498A and 306 of IPC.

The prosecution version as unfolded during the trial is as under:

The appellant (hereinafter referred to as 'the accused' for short) was at the material time, working in the Archeological Department of the Govt. of India as Watchman. Sonabai is the first wife of the accused. Sonabai has two daughters and a son. The eldest son, Datta was about 14-15 years old and the second daughter Ashabai (P.W. 4) is about 8-9 years old. Sonabai was suffering from some ailment, which affected her legs. Therefore, Mangalabai, sister of Sonabai was given in marriage to the accused, 4-5 years before the incidence. The P.W. 1 Dadarao Ghule, P.W. 2 Dnyaneshwar Ghule are brothers of Sonabai as well as deceased Mangalabai. Mangalabai sustained 100% burn injuries and succumbed to it. The inquest Panchanama shows that the deceased sustained injuries on 16.8.1991. In the same incidence, P.W. 4 Ashabai, daughter of the accused from Sonabai also sustained injuries. The injured Mangalabai was rushed to the Govt. Medical College/Hospital, through auto-rickshaw. Mangalabai expired in the hospital on 20.8.1991 at about 6.30 p.m. The FIR, in this case, is lodged by Dadarao Ghule, P.W. 1, brother of deceased Mangalabai on 21.8.1991. Based on this FIR, Entry at Sr. No. 133/1991 was taken at about 11.15 and Crime No. 205/1991 under Sections 498-A and 306 of IPC is registered. The investigation was undertaken and completed. Charge-sheet was led in the Court of learned Judicial Magistrate, First Class, Aurangabad. The case was committed to the Court of Session. It was Sessions case No. 25 1/1991. The learned Additional Sessions Judge, Aurangabad, by the judgment and order dated 6th March, 1995, convicted the accused for the offence punishable under Sections 306 and 498-A of IPC and sentenced him to suffer R.I. for 7 years and to pay a fine of Rs. 500/-, in default, to undergo R.I. for one month for the offence punishable under Sections 306 of IPC. The accused is also convicted for the offence punishable under Section 498-A of IPC and sentenced to suffer R.I. for 3 years and to pay a fine of Rs. 500/- in default, to undergo R.I. for one month. It is this conviction, which is challenged by filing this appeal by the accused in this Court.

2. The learned Additional Sessions judge framed charge at Exh. 4 under Sections 498-A and 306 of IPC against the accused. The charge was explained to the accused, who denied and claimed to be tried.

3. According to the accused, there was no beating to deceased Mangalabai by him, as alleged. He had also denied the beating to Mangalabai on the day of incidence- According to the accused, deceased Mangalabai sustained accidental burn injuries while cooking and at that time, he was not in the house, but was on duty.

4. The FIR in the present case is lodged by P.W. 1 Dadarao. It is admitted fact that accused initially married with Sonabai, the sister of P.W. 1 Dadarao, prior to 12-13 years of the lodging of the FIR. The marriage of Mangalabai, the real sister of P.W. 1 Dadarao as well as 1st wife of the accused Sonabai about 6 years prior to the lodging of FIR is also not disputed. Suffice it to say that marriage of Mangalabai with accused within a period of 7 years from the date of incidence is an admitted fact. There is an accusation in the FIR that deceased Mangalabai was treated with love and affection by the accused for about 2-3 years. Thereafter, according to the case, in the FIR, that there was beating to deceased Mangalabai by the accused for about 3 years before the date of incidence. Physical ill-treatment to deceased Mangalabai is also alleged in the report filed by the informant P.W. 1. Deceased Mangalabai herself had disclosed the ill-treatment at one or two occasions, according to the contention raised in the FIR. An Important feature of this case is that the alleged cruelty or harassment to the deceased Mangalabai was on account of domestic cause. The accused used to beat deceased Mangalabai on any domestic cause and used to say that she may die. It is also stated in the FIR that deceased Mangalabai is having a daughter, who was about 2 years old at the time of incidence. The informant further alleges that on 17.8.1991, while working in the field, he received an information from his brother-in-law Uttamrao Phulmare that his sister Mangalabai committed suicide on 16.8.1991 by drenching herself in kerosene and set herself on fire. She was admitted to the Govt. Hospital at Aurangabad which is popularly known as 'Ghati Hospital'. At about 3.00 p.m. her elder sister Sonabai had gone to the field for fetching fodder. The accused came at the house at about 5.00 p.m. and asked her as to why she-buffalo is not tethered by her. On this cause, accused beat her and said that he is fed up with her and she may die. She has also disclosed that because of physical and mental harassment, she poured on her person kerosene oil. At that time, accused was at the house itself. However, he did not try to extinguish the fire. Out of fit of anger,

she set herself ablaze and after unbearable pains, tried to wrap herself in a quilt, for extinction of fire.

5. The prosecution to prove that charge has examined about 10 witnesses. Out of those 10 witnesses, 5 witnesses are material for the alleged ill-treatment and the incidence dated 16.8.1991. P.W. 1 Dadarao and P.W. 2 Dnyaneshwar are real brothers of deceased Mangalabai. P.W. 4 Ashabai is the daughter of accused from Sonabai. P.W. 3 Machchindra is a neighbour. P.W. 5 Sayed is an auto-rickshaw driver, who rushed the deceased Mangalabai to the Govt. Medical Hospital. P.W. 8 Mr. Panse is the Executive Magistrate, who has recorded the dying declaration of deceased Mangalabai. P.W. 6 Dr. Rajput and P.W. 10 Dr. Kankriya are the Medical Officers from the Govt. Hospital. P.Ws. 7 and 9 are the Police Officers.

6. The learned Additional Sessions Judge considered the provision laid down under Section 113A of the Evidence Act to be very relevant. The learned Additional Sessions Judge seems to have been impressed by the fact that suicidal death of deceased Mangalabai occurred within a period of 7 years from the date of her marriage with the accused. Considering the allegation of cruelty, in the prosecution case, the learned Additional Sessions Judge, with the help of Section 113A of the Evidence Act, inferred the abetment of suicide by the accused. The learned Additional Sessions Judge also took note of inquest Panchanama Exh. 8 as well as Post-mortem Report Exh. 20 admitted by the accused under Section 294 of Cr.P.C. The post-mortem report clearly depicts that deceased Mangalabai sustained 100% burn injuries and cause of death is septicaemia shock due to 100% thermal injuries.

7. The learned Additional Sessions Judge also took note of the answer given by the accused under Section 313 of Cr.P.C. admitting that death of deceased Mangalabai occurred due to burn injuries. Under these circumstances, the learned Additional Sessions Judge, considered the Dying Declaration recorded by P.W. 8 Mr. Panse, a public servant, clearly showing that it was a suicide and suicide was committed due to cruelty at the hands of the husband/accused. The learned Additional Sessions Judge was wary of the fact that about 5 witnesses turned hostile. The learned Additional Sessions Judge, considering the evidence of P.W.

1 Dadarao, a hostile witness, observed that the testimony of P.W. 1 shows the extent which this person went in telling falsehood. P.W. 2 Dnyaneshwar is also not supporting the case of the prosecution. According to the learned Judge, Ashabai being daughter of Sonabai and her father (the accused) is on bail, she is not supporting the case of prosecution. The learned Additional Sessions Judge, taking note of hostility of the witness P.W. 5 Sayed observed that from the evidence of PSI Wakde, it appears that neighbours were not ready to give statement due to fear of the accused.

8. The learned Additional Sessions Judge believed the evidence of P.W. 6 Dr. Rajput, who stated in his evidence that when admitted in the hospital, she had sustained 100% burn injuries and was conscious. He recorded the history as disclosed by deceased Mangalabai in the medico legal cases register at Ex. 20. According to this witness, deceased Mangalabai gave history that her husband assaulted her with wood and stone at 5.00 p.m. and he was beating her everyday. That, her husband was suspecting her character. She also told P.W. 6 that at about 6.00 p.m. she poured kerosene on her person and set herself on fire.

9. The learned Additional Sessions Judge accepted the evidence of P.W. 6 Rajput, P.W. 8 Executive Magistrate, Mr. Panse, P.W. 10 Dr. Kankriya, Police Constable, P.W. 9 Mr. Malekar, Police Sub-Inspector Mr. Wakde, P.W. 7 observing that there is no reason for these persons to give false evidence or create false evidence against the accused. The learned Additional Sessions Judge observed that even though there is no corroboration from witness like Ashabai, the evidence led is sufficient to base conviction.

10. It is to be noticed that the cruelty by husband or relatives of the husband as defined under Section 498-A reads as follows:

'498-A. 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, 'cruelty' means--

(a) any wilful 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 on account of failure by her or any person related to her to meet such demand.'

The expression 'cruelty' is explained in the Explanations (a) and (b). 'Cruelty' means any wilful conduct which is 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 mental or physical) of the woman; or 'cruelty' means harassment of the woman where such harassment is with a view to coercing her or any other person related to her to meet any unlawful demand for any property or valuable security on account of failure by her or any person related to her to meet such demand.

In first part of Explanation (a) nature of any wilful conduct is important. The nature of any wilful conduct of the husband or relative of husband must be of such a type 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. However, harassment of a woman, in case of 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 on account of failure by her or any person related to her to meet the demand, is cruelty. It is, therefore, clear that if in a given case, there is no proof of harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security, or harassment is not on account of failure by her or any person related to her to meet the unlawful demand, it cannot be said that the person concerned is liable for punishment for cruelty to married woman. In a case, if any wilful conduct is to be branded as 'cruelty', in that case, nature of such conduct must be established as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the married woman.

Keeping in mind the expression 'cruelty' under Section 498-A noted above, I shall now consider the evidence led by the prosecution in this case.

11. The First Information Report, by way of statement of P.W. 1 Dadarao Ramrao Ghule is at Exh. 25. Suffice it to note that P.W. 1 Dadarao is not supporting the case of the prosecution. However, contradictions have been proved by the prosecution by Exhibits A, B, C and D. P.W. 1 Dadarao is declared as hostile on behalf of the prosecution. Even if the contradictions are considered, it appears from those contradictions at Exhs. A, B, C and D that the accused used to beat the deceased on account of domestic causes and used to say that 'she may die'. Accepting this allegation for the moment, admittedly, it is not the case within the meaning of Explanation (b) of Section 498-A of IPC. The nature of beating is not detailed. Nature of wilful conduct, contemplated within the Explanation (a) as likely to drive the woman to commit suicide, is not explained. The nature of the alleged beating on the date of occurrence i.e. 16.8.1991 is not established. The alleged cause for beating is not on account of unlawful demand or failure of deceased Mangalabai to meet unlawful demand but is on account of non-tethering of she-buffalo. Therefore, even if the contradictions have been proved on behalf of the prosecution, it cannot be said that the 'cruelty' within the meaning the Section 498-A is established with the evidence of P.W. 1 Same is the case of evidence of other prosecution witnesses, namely, P.W. 2 Dnyaneshwar, the brother of deceased Mangalabai. P.W. 4 Asha D/o Devidas Karpe, P.W. 3 (neighbour) Machchindra Dagdu Pawar and P.W. 5 Sayed Samand Mehboob (Auto Rickshaw Driver). All these witnesses do not support the case of the prosecution.

12. With this, the only piece of evidence on behalf of the prosecution remains to be considered is the Dying Declaration Exh. 31. The prosecution has examined P.W. 8 Executive Magistrate Mr. Balwant Panse. From this Dying Declaration Ex. 31, it appears that it is recorded in question and answer form. The Dying Declaration referred to alleged incidence of beating by the accused to deceased Mangalabai at about 4/5 p.m. What is material in this case is that the deceased Mangalabai in her Dying Declaration states that on account of beating, she got annoyed and, therefore, she poured kerosene oil on her person and set herself ablaze. Therefore, beating by husband at about 4/5 p.m. is not the cause for committing

suicide by deceased Mangalabai. Admittedly, according to her version, in the Dying Declaration, it is the state of anger of her mind or fit of anger, which drove her to commit suicide by getting poured kerosene oil on her person and setting herself on fire. In my view, this cannot be said to be either abetment, incitement or instigation by accused within the meaning of Section 306 of IPC. In my view, this cannot be said to be a case of cruelty, under Explanation (a) i.e. driving the deceased Mangalabai to commit suicide for the harassment caused to her by the husband. Therefore, the evidence adduced by the prosecution falls too short for recording a conviction either under Section 498-A of IPC or Section 306 of IPC.

13. I have also seen the evidence of Medical Officer P.W. 10, Dr. S. Kankriya who has admitted that deceased Mangalabai had sustained 100% burn injuries when she was admitted to the hospital. However, he maintains that she was conscious and fit to give statement, or was having well orientation of time, place and person. He also states in his evidence that no sedative was given to her. He also quoted the endorsement regarding fitness of deceased Mangalabai for giving statement of the Dying Declaration. It is for this reason that I have examined the Dying Declaration of deceased Mangalabai.

14. The learned trial Court considered the provision laid down under Section 113A of the Evidence Act. According to the Trial Court, when the question is whether the commission of suicide by a woman had been abetted by 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 had subjected her to cruelty, the Court may presume, having regard to all the circumstances of the case, that such suicide had been abetted by the husband. The presumption under Section 113A of the Evidence Act, is considered by the Apex Court in the matter of *Hans Raj v. State of Haryana*, reported I (2004) DMC 502 (SC):II (2004) SLT 507:I (2004) CCR 420 (SC):AIR 2004 SCW 1283. The Apex Court in the matter of 'Hans Raj' held thus:

'14. Unlike Section 113B of the Indian Evidence Act, a statutory presumption does not arise by operation of law merely on proof of the circumstances enumerated in Section 113A of the Indian Evidence Act. Under Section 113A of the Indian

Evidence Act, the prosecution has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband (in this case) had subjected her to cruelty. Even if these facts are established the Court is not bound to presume that the suicide had been abetted by her husband. Section 113A gives a discretion to the Court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is of cruelty it must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of word 'cruelty' in Section 498-A, IPC. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband. The Court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the Court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. The law has been succinctly stated in *Ramesh Kumar v. State of Chhattisgarh*, VII : 2001 CriLJ4724 , wherein this Court observed:

This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26.12.1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113A shows that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the above said circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory, it is only permissive as the employment of expression 'may presume' suggests. Secondly, the existence

and availability of the above said three circumstances, shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the Court shall have to have a regard to 'all the other circumstances of the case'. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. Last but not the least, the presumption is not an irrefutable one. In spite of a presumption having been raised and evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase 'may presume' used in Section 113A is defined in Section 4 of the Evidence Act, which says, 'Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it'. 17. Having regard to the principles aforesaid we may now advert to the facts of this case. The learned Trial Judge, took the view that since the wife of the appellant committed suicide and since the appellant did not disclose as to what conversation preceded her committing suicide and that there were allegations of cruelty against the appellant, it must be presumed under Section 113A of the Indian Evidence Act that the suicide had been abetted by him. We do not find ourselves in agreement with the finding of the Trial Court, having regard to the facts and circumstances of this case and our finding that the prosecution is guilty of improving its case from stage to stage. The allegations that the appellant did not like to keep the deceased with him because she was not good looking, or that he was addicted to liquor or that the deceased had reported these matters to her parents and others, or that the appellant intended to re-marry and had told His wife Jeeto about it, or that the deceased had once come to her father's house in an injured condition, or even the allegations regarding beatings, do not find place in the statements recorded by the police in the course of investigation. These allegations have been made at the trial for the first time. All that was alleged in the FIR or even at the stage of investigation was that there were frequent quarrels between the husband and wife, sometimes resulting in physical assault, on account of the husband being addicted to consumption of 'Bhang'. The other allegation that the appellant was aggrieved of the fact that his sister Naro was not being properly treated by Fateh Chand, P.W. 3, brother of the deceased, also appears to be untrue because there is

nothing on record to show that there was any disharmony in the marital life of his sister Naro. In fact, Fateh Chand, P.W. 3, her husband, himself stated on oath that he was living happily with his wife Naro, sister of the appellant. On such slender evidence, therefore, we are not persuaded to invoke the presumption under Section 113A of the Indian Evidence Act to find the appellant guilty of the offence under Section 306 of IPC.'

15. The learned trial Judge, referring to the inquest Panchanama, Exh. 8, Post-mortem Notes Exh. 20 and statement of the accused under Section 313 of Cr.P.C., that his wife died due to burn injuries, and dying declaration recorded by the public servant, held that it clearly shows that it was suicide and the suicide was committed due to cruelty at the hands of the husband. The learned Judge also observed that it clearly shows that there were repeated beating and ultimately, Mangalabai was frustrated with her life and felt that death is the only permanent solution to the torture. These observations are made by the learned Judge in para 9 of the judgment.

In my view, the learned Trial Court did not consider the evidence in its proper perspective and illegally held that the suicide is committed by deceased Mangalabai on account of the cruelty at the hands of the accused.

16. The learned Counsel for the appellant also relied upon the judgment of this Court in the matter of *Shamrao Dadarao Jadhav v. State of Maharashtra*, reported in 2004 ALL MR (Cri) 1787.

17. I am in respectful agreement with the view taken by this Court in the matter of '*Shamrao Dadarao Jadhav*' (supra). In the case on hand, there is absolutely no evidence bringing the case within the ambit of Explanation (a) or (b) of Sections 498-A and 306 of WC. The appellant, therefore, deserves to be acquitted.

'In the result, the appeal is allowed. The conviction of the appellant for the offence under Sections 498-A and 306 of IPC is quashed and set aside. The accused is acquitted of the offence under Sections 498-A and 306 of IPC. Fine paid, if any, be refunded.'

