

Bench: N S Hegde, B P Singh.

CASE NO.:

Appeal (crl.) 564 of 1997

PETITIONER:

Ashok Vishnu Davare

RESPONDENT:

State of Maharashtra

DATE OF JUDGMENT: 10/02/2004

BENCH:

N Santosh Hegde & B P Singh.

JUDGMENT:

JUDGMENT

SANTOSH HEGDE, J.

Being aggrieved by the judgment of the High Court of Judicature at Bombay, the appellant has preferred this appeal. By the said judgment said High Court confirmed the conviction and sentence imposed on the appellant by the Court of Sessions Judge at Nasik for offences punishable under sections 498A and 306 IPC. Brief facts necessary for the disposal of this appeal are as follows :

The appellant herein was married to one Jayashree about 10-11 years before the death which took place on 8.5.1998. The cause of death was suicide by consuming pesticides. It is the prosecution case that about 15 days before the death of said Jayashree she had visited her parents who were staying in village Chitegaon which was a neighbouring village to the one in which the appellant and Jayashree were staying with their family namely village Konambe. During the abovesaid visit to her parents, it is stated she told her brothers that she was sent by her husband to bring a sum of Rs.5,000. It was also the case of the prosecution that she did express that her husband was mal- treating her and physically abusing her for bringing said money. On such request being made by the deceased, it is stated that her brothers told her that they will make arrangements for sending the said money. Shortly thereafter Jayashree returned to her husband leaving behind one of her sons whom she had taken along with her. On 7.5.1988 it is stated Vilas PW-6 who is the son of one of the brothers of the deceased visited village Konambe along with the son of the appellant by name Kiran whom the deceased had left behind in her parents' house but he did not bring the promised amount. It is stated that PW-6 stayed overnight at Konambe, though not in the house of the appellant, but visited the appellant's house, which is a farm-house situated in the lands belonging to the family of the appellant, on 8.5.1988 in the morning when this witness saw appellant quarrelling with the deceased and even beating her. It is stated that PW-6 then returned to his village Chitegaon and informed PW-2 Ranganath one of the brothers of the deceased about what he had seen in the house of the appellant. The prosecution further alleges that at about 2 p.m. on that day some villagers of Konambe came and told PW-2 that his sister had died. On hearing this news PW-2 and another brother of his along with some villagers went to Konambe and saw the dead body lying on a cot in front of the farm-house. Suspecting some foul play it is stated that PW-2 went to Police Station Sinnar and lodged a complaint of unnatural death of his sister, pursuant to which a case was registered

and after investigation the appellant and his father by name Vishnu Anand Davare were charged for offences punishable under sections 498A and 306 read with 34 IPC before the learned Sessions Judge, Nasik and after trial the said court came to the conclusion that the prosecution while failing to establish its case against A-2 the father of the appellant herein, has established its case against the appellant, therefore, punished him for an offence punishable under section 306 IPC and sentenced him to undergo RI for 2 years and further to pay a fine of Rs.250. It further convicted the appellant for an offence punishable under section 498A IPC and sentenced him to undergo RI for one year and to pay a fine of Rs.250. The substantive sentences were directed to run concurrently.

As stated above, an appeal filed against the said conviction and sentences in the High Court of Bombay came to be dismissed.

Mr. Gaurav Agarwal, learned counsel appearing for the appellant contended that though prosecution had examined about eight witnesses and exhibited certain documents, it has failed to establish that the appellant either abetted the suicide of Jayashree or had in any manner subjected her to cruelty. The prosecution evidence in this regard, according to learned counsel, has failed to establish the required ingredients of sections 306 and 498A. Learned counsel first pointed out that if really there was any cruelty meted out to Jayashree by the appellant then it would have been clearly mentioned in the complaint filed by PW-2 on 8.5.1988 before the Sinnar Police. He took us through the complaint and urged that nowhere in the complaint any allegation is made against the appellant in regard to he beating her or making any demand as sought to be made out subsequently in the evidence led before the court. Learned counsel submitted that if really PW-6 had noticed the appellant beating the deceased on the day she committed suicide, the said fact would certainly have been mentioned in the complaint since it is the prosecution case that PW-6 did mention this to PW-2 when he returned back from the village. Similarly he pointed out from the evidence of Sonabai PW-3, who was a neighbour of PW-2 residing in Konambe village, that the allegation of beating and the demand of Rs.5000 as stated by her before the court was not stated by her when her statement was recorded during the course of investigation by the investigating agency, hence the same should be treated as an improvement. Similarly with reference to the evidence of PW- 6, the nephew of the deceased, the learned counsel submitted that his evidence is also full of material contradictions, creating serious doubt as to his having witnessed the alleged assault by the appellant on the deceased. In these circumstances learned counsel submits that both the courts below have failed to notice these vital defects in the prosecution case hence they erred in coming to the conclusion that the prosecution has established its case against the appellant.

Mr. S.S. Shinde, learned counsel appearing for the State of Maharashtra, per contra, contended that from the evidence led by the prosecution as accepted by the two courts below, it is clear that the prosecution has established beyond all reasonable doubt that the appellant was demanding money from the family of the deceased and was also physically ill-treating her to bring the money. He submitted that the concurrent finding of the two courts below does not require any interference by this Court. We will now examine whether the prosecution in this case has established beyond all reasonable doubt that the appellant in any manner abetted the suicide of the deceased so as to make his act punishable under section 306 and whether he had subjected the deceased to such a degree of cruelty or harassment to meet the monetary demand made by him as to hold him guilty of an offence punishable under section 498A IPC.

As noted above, to bring these ingredients of the two sections with which the appellant was charged, the prosecution relies on the evidence of PWs.2 to 7.

So far as PW-2 is concerned, we notice that in his evidence before the court he did say that the appellant used to make demand for money through the deceased which the deceased's family was meeting. He also says that 15 days prior to her death, deceased Jayashree had asked for Rs.5,000 since her husband was demanding the same. He further states that since the family did not have sufficient money at that point of time, he promised to send the money 4 or 5 days later. He also says on 7.5.1988 he sent Kiran son of the deceased who was left behind in their house by the deceased during her last visit, with his nephew PW-6 to Konambe village and

when PW-6 returned from the said village on 8.5.1988 in the afternoon PW- 6 did tell him that the appellant had beaten the deceased. Therefore, it is clear this witness had the knowledge of the fact that the appellant was making the demand for money and about 15 days prior to the death of the deceased, she had come to her parental home and asked for the money which could not be paid and on the day of her death PW-6 had come to him and told him that the appellant had beaten the deceased. In spite of the same we find that in the complaint given by this witness to the Police on the very day of the death of the deceased, none of these facts has been mentioned. If really, these facts were known to PW-2, he would not have failed to mention these facts in his complaint. On the contrary in the complaint all that is stated is that two persons from the village Konambe had come to him in the afternoon of 8.3.1988 and told him that Jayashree had died. On hearing it he and his relatives went to Konambe and saw the dead body. The failure to mention any one of these facts which might have been the cause of his sister's suicide indicates that at that point of time when he gave the complaint he did not have any knowledge either of the demand for money or of harassment meted out to his sister including the beating. Further during his cross-examination he even denies the fact that PW-6 had gone to Konambe on 6.5.1988 accompanying Kiran the son of the deceased. In such circumstances we think it not safe to place reliance on the evidence of this witness.

The next witness examined by the prosecution to establish its case of harassment and demand for money is PW-3 Sonabai, a resident of Chitegaon and a neighbour of PW-2. This witness does mention the fact that whenever the deceased visited Chitegaon she used to come to her house and used to complain that her husband was beating her. She also states about 8 days prior to the death of the deceased she had come to her and told her that deceased's father-in-law was demanding Rs.5,000. From her evidence it is not clear when exactly the beating referred to in her evidence had taken place. Obviously, it cannot be the beating referred to by PW-6 because PW-6 had never met her and told her about it therefore if at all her evidence is true, it could be with reference to some beating earlier during the subsistence of 11 years' marriage between the appellant and the deceased. Therefore, this part of her evidence cannot be treated as the evidence indicating the harassment meted out to the deceased. It is also to be noticed that in her evidence, she states that deceased had told her about 8 days before her death that her father-in-law had demanded Rs.5,000 which is not the case of the prosecution. According to the prosecution the demand was being made by the husband- appellant herein. In the cross examination a suggestion is put to her that she had not told the I.O. when her statement was recorded under section 161 Cr.P.C. of these facts of harassment and demand which of course she denied. But from the above discussion as noticed by us it is clear that the evidence of this witness is insufficient to hold that the appellant had immediately prior to the death of deceased on 8.3.1988 had either beaten her or had made a demand of Rs.5,000 unless there is an acceptable corroboration on these aspects from other sources.

PW-4 is a neighbour of the appellant. He says that he had scribed two letters dated 22.1.1986 and 6.1.1987 at the instance of the deceased to her parents. According to this witness these have been exhibited as Ex. 29 and 30. A perusal of these two letters does not indicate that there was any demand for money by the appellant or for that matter from anybody from his side or about any harassment meted out to her. The letter merely states that she wanted a blouse piece and a good blanket. The letter as per Ex. 29 only states and makes a complaint that she has not been receiving any letters from her family in Chitegaon. Even in Ex.30 there is no allegation as to any harassment or demand. This letter states that she has been sick for about 8 or 10 days but not to worry about the same. But in that letter she did request one of her brothers to visit her. In our opinion, neither the evidence of PW-4 nor the two letters Ex.29 and 30 support the prosecution case in any way.

PW-5 is the wife of one of the brothers of the deceased who states in her evidence generally that the husband of the deceased was demanding money and her family was paying money from time to time. She also states that about 8 days prior to the incident in question deceased had come to their house and asked for Rs.5,000 since the same was being demanded by her husband, but the money could not be given. She further states that on his return PW-6 did tell her that there was some dispute going on between the husband and the wife. She does not state that PW-6 told her that he saw the appellant beating deceased on 8.5.1988. In our considered opinion the statement of this witness in regard to harassment and the demand for money is too general in nature to base a conviction or to treat the same as corroborating any other acceptable evidence led by the

prosecution.

PW-6 is the nephew of the deceased who according to the prosecution visited the house of the appellant on 7.5.1988 with a view to drop the appellant's son Kiran who was staying for a few days with his grand-parents at Konambe. According to this witness he stayed overnight in Konambe though not in the house of the appellant. He further states that he visited the farm-house of the appellant on 8.5.1988 when he saw the appellant beating the deceased. He further states that on his return he told his father and uncle about this incident of beating. But in his cross examination this is what the witness stated :

" At that time, Jayashri was present out of the hut and our talk taken place out of the

hut. The quarrel was going on between

husband and wife before I reached there. I

am unable to give reason for the quarrel.

Accused Ashok had beaten her before I

reached there. Accused again beat her in my

presence. I did tell before police "accused

Ashok beat his wife because I did not take

money or there was a talk about money,

between myself and Jayashri and he assured

Jayashri that he would send the money and

Jayashri replied I should send money

immediately."

This part of the statement of PW-6 clearly shows that his evidence in regard to having seen the beating of the deceased by the appellant and the demand for money is an improvement from his previous statement made to the Police. This coupled with the fact that in the complaint no such allegation has been made makes us feel that it is not safe to rely on the evidence of this witness.

PW-7 in his evidence has stated that on one or two occasions the deceased was driven out of the house because she did not bring money which is not even the case of the prosecution. The evidence of PW-7 shows that the demand for money was made by the appellant's father who was A-2 before the trial court hence we do not think it would assist the prosecution in any manner to implicate the appellant.

From the evidence of PW-8, the I.O. it is seen that PW-3 Sonabai, the neighbour of PW-2 did not tell him that the deceased had told her about the demand of Rs.5,000 and that she had heard about it. Therefore, this part of the evidence of PW-3 becomes an improvement.

From the above evidence, in our opinion, it is not possible to come to the conclusion that the prosecution has established its case beyond all reasonable doubt in regard to the charges alleged against the appellant. In our opinion, the courts below have not properly appreciated the evidence and failed to notice the glaring

improvements made by the witnesses in their evidence given before the court. These improvements in our opinion materially affect the creditworthiness of the prosecution case hence it is not safe to base a conviction.

For the reasons stated above, this appeal succeeds and the same is allowed. We set aside the judgments of the two courts below, setting aside the conviction and sentence imposed on the appellant. His bail-bonds shall stand discharged.