

(2012) 02 BOM CK 0207

Bombay High Court (Aurangabad Bench)

Case No: Criminal Appeal No. 107 of 1998

Parmeshwar and Others

APPELLANT

Vs

The State of Maharashtra and
Others

RESPONDENT

Date of Decision: Feb. 2, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 307, 34, 498A

Citation: (2012) BomCR(Cri) 444

Hon'ble Judges: A.H. Joshi, J

Bench: Single Bench

Advocate: S.P. Katneshwarkar, Appeal abated against Appellant No.2, for the Appellant;
S.G. Nandedkar, Assistant Public Prosecutor for respondent No. 1 and Shri H.K. Munde,
advocate, for the Respondent

Final Decision: Allowed

Judgement

A.H. Joshi, J.

The appellants were charged for commission of offences under Sections 307, 498-A r/w 34 of the Indian Penal Code, in Sessions Case No. 47 of 1995 by the learned 2nd Additional Sessions Judge, Ambajogai.

2. Appellant no.2 Ramkishan died during pendency of appeal.

3. Complainant Mangal is wife of Parmeshwar Bade - the appellant-accused no.1. Her oral statement was registered as F.I.R. on 23.4.1994. The incident occurred on early morning of 19.4.1994. Her in-laws poured kerosene on her person and set her ablaze. Complainant Mangal suffered burn injuries, when she was cooking. Sarubai _ accused no.3 took Mangal to the S.R.T.R. Medical College and Hospital, Ambajogai where she was admitted and continued till 24.7.1994 and was discharged on recovery, though with disfigurement.

4. In the trial the prosecution has examined in all 9 witnesses. PW 1 Narayan Ghule, PW 2 Khandu Bargaje and PW 3 Ramchandra Kurud are panch witnesses. They have turned hostile.

5. PW6 Bhaskar Tambare is the police constable, who has registered the F.I.R. PW9 Madhukar Bhale is the investigating officer. The fact of recording F.I.R. and its contents are not disputed. Any discussion on these testimonies is not of much use.

6. Case rests on testimonies of following witnesses :-

PW 4 Dr. Tulshidas Bhalerao Medical Officer who had attended to Mangala when she was admitted in the hospital soon after the incident.

PW 5 Mangalbai Bade - Complainant

PW 7 Vishnu Tidake _ Father of the Complainant

PW 8 Trivenibai Tidake _ Mother of the Complainant

7. The prosecutrix has narrated in her examination-in-chief, her version as found in the complaint, namely :-

(a) In the morning of 19.4.1994 the accused persons had spoken that Mangal had failed to bring cash and gold ornaments from her parents;

(b) Letting her to fast did not change and it is better to set her to fire;

(c) The mother-in-law poured kerosene on her person;

(d) Other accused caught hold of her; and

(e) Husband set her to fire.

8. In so far as the aspect of illtreatment is concerned, Mangal has stated that :-

(a) She was illtreated.

(b) The illtreatment was meted out on the ground that less gold and money was given.

(c) The illtreatment was of the nature of accosting her and forcing her to starve.

9. Due to the said illtreatment she had left the matrimonial home after first two years of cohabitation and had stayed with her parents and had returned to cohabit only after she was assured good treatment.

Version of parents of Mangal in relation to the illtreatment is that Mangal had told them about the illtreatment i.e. demand of cash amount and gold as well as not providing her food.

10. The evidence of prosecution witnesses is challenged by the defence on the following grounds :-

(a) That version of parents as regards illtreatment to Mangal is hearsay.

(b) The illtreatment by the accused, as has been described in the contents of statements of PW 7 Vishnu and PW 8 Trivenibai is too scanty to answer the statutory requirement that _ illtreatment has to be of such nature and extent that she was driven to commit suicide or inflict on herself such bodily injury which would threaten her life.

(c) Extent and nature of such illtreatment is not described at PW 5 Mangal, by PW 7 Vishnu and PW 8 Trivenibai. Thus, the accusation of illtreatment is not duly proved.

(d) Mangal has deposed that she had revealed to villagers about illtreatment and also gave their names. She also told the names of occupants in the neighbouring houses.

(e) Even one witness who is an outsider including those named by Mangal is examined by the prosecution.

(f) Mangal has deposed in the examination-in-chief that she was unconscious for 4 days. She seems to have stated so for enabling her to overcome the delay caused in lodging the F.I.R. Her statement is falsified by the version of PW 4 Dr. Tulsidas Bhalerao in his deposition who has stated that Mangal gave information about the cause of fire.

(g) Statement of Mangal for implicating accused thus comes under grave cloud of doubt.

(h) PW 4 Dr. Tulsidas Bhalerao admits that :

(i) He inquired with Mangal about the background, which was disclosed to him by Mangal, and she has told the cause was that she suffered burn injuries due to falling of a kerosene lamp (Chimani) on her person. Mother in law of Mangal had brought her to hospital, etc.

(ii) Executive Magistrate had arrived to record Mangal_ s dying declaration, which was recorded.

11. Based on these submissions, learned advocate Shri S.P.Katneshwarkar urged in support of acquittal.

12. Learned advocate Shri H.K.Munde submitted that the prosecutrix was divorced during pendency of trial. She has performed second marriage and is well placed. She carries no grudge and wants to adopt the policy of forgive and forget.

13. Learned A.P.P. has supported the prosecution case and urged in favour of dismissal of appeal.

14. In order to test the submissions of the defence, this court has scrutinized the evidence of prosecutrix, her parents and medical witnesses.

15. As regards the illtreatment, it would be useful to refer to the version of PW 7 Vishnu and PW 8 Trivenibai by quotation than by description.

(a) PW7 Vishnu states as follows :-

1.....

Mangal used to visit our house for two years, after marriage occasionally. She used to say that the accused no.1 used to demand cash amount and gold and for that he used to illtreat her. She also used to say that the accused no.2 to 4 also used to illtreat her. She used to say that they used to illtreat her by not providing food.

.....

[quoted from page 106 of the paper book]

(b) PW8 Trivenibai states as follows :-

1.....

She used to make complaint about causing of illtreatment to her. She used to say that the demand made by the accused is not complied by us. She was making the complaint about non-fulfillment of amount by the accused to her regarding nonproviding of cash amount and gold by us. She used to make complaint of causing of illtreatment by the accused to her. She was also making complaint that the accused do not provide food to her.

.....

[quoted from page 112 of the paper book]

16. Apart from the portions quoted above, there is no other material to prove the nature and extent of illtreatment.

17. PW 5 Mangal states about illtreatment to her in the examination-in-chief as follows :-

1.....

The accused used to harass me, as I am not having any issue. The accused also used to demand cash amount and gold from my maternal home. All the accused were demanding it.

2. I used to visit my maternal home during the four years period after my marriage. My father was unable to provide the demand made by the accused. After marriage I cohabited for two years with the accused. Thereafter the accused reached me at my maternal home and told me that unless I shall bring cash amount and gold, I shall not come to cohabit at their house.

.....

4. The incident took place on 19.4.1994. Prior to the incident the accused used to say that I should be killed. The accused used to say that I am not dying and therefore, I should not be provided meals and I should be kept hungry for a period of 4 days. They also used to say that even after keeping me hungry for about 4 days, I am not dying, and used to say that I should be burnt and killed.

.....

[quoted from pages 88 & 89 of the paper book]

18. In so far as the disclosure of illtreatment to local persons is concerned, prosecutrix Mangal has revealed in cross-examination as follows :-

.....

6.....

It is true that the house of accused is to the East side of Takali-Chincholi road. It is true that the said house is now surrounded by houses. It is true that after crossing road of width of 5 feet, to the north side of our house there are houses of Sakahari Bade, Sriram Tandale, Nemichand Tandale etc. It is true that the door of our house and the house of Sakahari are in front of each other. It is true that the family members of Sakahari and he himself were residing in his house.

7.....

It is true that during the period of two years after marriage, the accused used to allow me to go to maternal home for festivals or other occasions. I made complaint regarding the illtreatment and harassment by the accused to Ramkisan Bade and his family members and Sarpanch of village Takali. I also made complaint to one Devichand Tandale, Sriram Tandale, I had cohabited at the house of accused after returning from my maternal home lastly for about one month.

.....

.... _

[quoted from page 93 of the paper book]

19. Now so far as incident is concerned, the prosecutrix has admitted in the cross-examination the following portion :-

.....

9.....

It is true that on the day of incident I was wearing nylon sari, and the blouse was also of nylon.

.....

[quoted from pages 95 of the paper book]

20. As regards prosecutrix being unconscious, etc.

while in the hospital, the prosecutrix has stated as

follows :-

.....

9.....

I was unconscious for about 4 days after the incident. It is true that I was not knowing during that period who had come to see me and what talk between them took place.

.....

[quoted from pages 96 of the paper book]

21. In response to the revelations/reply, etc. to PW 4 Dr. Tulsidas, PW 5 Mangal has stated as follows :-

.....

9.....

It is not true to say that on 19-4-94 I was admitted in the hospital and at that time I was conscious. It is not true to say that on 19-4-94 when I was examined by the doctor he made enquiry with me and I replied to his answers and thereafter I was admitted for the treatment in the hospital.

..... _

[quoted from pages 97 of the paper book]

22. So far as medical evidence is concerned, after detailing the injuries, PW4 Dr. Tulsidas replied in the cross-examination as follows :-

.....

3 Cross-examination by Shri S.G. Mishra, Adv. for all accused : -

On 19-4-94 the patient was brought by her mother-in-law by name Sarubai Ramkisan Bade. After the patient was brought in the hospital I enquired her name and she herself told her name. It is true that when the patient was brought for medical examination before me she was conscious. Prior to examining the patient, I enquired about the history of the injury caused to her.

I had enquired with the patient Mangalbai regarding the history of causing of injuries to her. Said patient told that the kerosene lamp (Chimni) fallen down on her body in the morning at 4 a.m. on 19-4-94 and by that she had sustained the burn

injuries. It is true that in M.L.C. register of the said patient I had taken entry accordingly. On the same date I have informed to the police station Ambajogai to P.S.O. Shirsat B. No. 591. I informed him by telephonic message.

I do not know whether thereafter the police had arrived in the hospital or not as the patient was then admitted in accident ward No.14, and she was looked after by another doctor of that ward.

The case papers brought by me in this case show that the statement of the injured patient was recorded by Spl. Executive Magistrate, Ambajogai, on 19-4-94, at 17.25 hours.

.....

At the time of examination of the patient by me, I did not notice any uncommon smell. The colour of the injuries were red and those injuries were fresh.

.....

[quoted from pages 83 & 84 of the paper book]

23. The conclusions which are impelled from the above referred quotations are as follows :-

(a) The prosecutrix may be unconscious when brought to the hospital, however, PW4 Dr. Tulsidas has deposed that she has answered queries and also told the reason as to how she caught fire.

(b) The doctor's version that he did not notice any smell from her clothes falsifies the story of setting her fire.

(c) A dying declaration was recorded by Magistrate. This has not been brought forward by prosecution. Rather it is suppressed.

(d) Accused no.3 brought the prosecutrix to the hospital and attended to her, would be a circumstance in favour of the defence.

(e) The version of the prosecutrix that she was unconscious and the deposition of PW4 Dr. Tulsidas that she told everything to the doctor brings her testimony under shadow of doubt.

(f) True and untrue versions contained in the testimony of PW 5 Mangal are not separable. Therefore, her whole testimony comes under shadow of doubt.

(g) The collective effect of the worth of evidence brought by the prosecution on record thus leads to inferences as follows :-

(i) Illtreatment is suggested;

(ii) Illtreatment is not proved;

(iii) Extent of illtreatment of the nature as required by Section 498-A of Indian Penal Code is not proved;

(iv) Independent witnesses are named by PW5 Mangal, but the prosecution has not examined those witnesses;

(v) Thus, the charge u/s 498-A of the Indian Penal Code is not proved, much less beyond shadow of doubt;

(h) Attempt to murder gets ruled out due to the circumstances, namely :-

(i) Story of pouring kerosene is ruled out as the clothes on her person were seen by doctor to be the same which were burnt partly and did not suggest smell of kerosene.

(ii) The dying declaration recorded by the Executive Magistrate is withheld. It leads to the inference that it has not favoured the prosecution and rather has favoured the defence.

(iii) Dr. Tulshidas is a prosecution witness. His testimony is the evidence of the prosecution. He is not cross examined by the prosecution by declaring him hostile. The prosecution has not re-examined him for any clarification. His evidence which is for all purpose the evidence of prosecution has to be considered in entirety, and hence, the prosecution case that Mangal was set ablaze itself is falsified.

(iv) The case of attempt to murder is thus not proved much less is beyond shadow of doubt.

24. The result is that appeal succeeds. The appellants are acquitted. Their bail bonds stand cancelled. Fine, if any, paid be refunded to them.