

A

BANDU

v.

STATE OF MAHARASHTRA

MARCH 9, 2007

B

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Penal Code, 1860:

C

s. 302—Evidence of wife that husband killed their daughter by pressing her neck—Supported by medical evidence—No reason to disbelieve evidence of such eye witness—Conviction under s. 302 upheld.

D

The prosecution case was that the appellant-accused was married to 'S'. Difference arose between them one year after marriage and 'S' had to live with her parents. She gave birth to girl child named 'N' at her parents house. After compromise, parties started living together again. After few days, appellant started saying that 'N' was not his daughter and also prevented 'S' from feeding her.

E

On fateful night, when 'S' and daughter 'N' were sleeping, the appellant killed daughter 'N' by pressing her neck. Trial Court held him guilty under s.498-A IPC and sentenced him to rigorous imprisonment for 2 years. Both State and appellant appealed before High Court; he was - found guilty under s. 302 IPC and convicted to life imprisonment. Hence the present appeal.

F

Dismissing the appeal, the Court

G

HELD: Wife 'S' has deposed that the appellant killed his daughter 'N', who was only 1-1/2 years old, by strangling her. It has come in evidence that the appellant suspected the fidelity of his wife 'S' and thought that 'N' was not his child at all. There had been differences between the husband and wife as a result of which she was made to leave her husband's house, but she returned to the appellant after giving birth to her daughter 'N'. The appellant did not allow her to feed her daughter and ultimately killed her by strangling her. There is no reason to disbelieve PW-6. She is an eye witness to the incident and thus there is direct evidence in this case. She has stated that her husband was not allowing her to give milk and feed her child, 'N' and

H

that her husband killed the child by pressing her neck. Her evidence is credible and also stood corroborated by the post mortem report and other evidence on record. There are injuries on the neck, cheek and eye of the child 'N' and the doctor has given her evidence that the probable cause of death might be due to asphyxia due to suffocation. There is no reason to disbelieve the prosecution case as it is consistent with the medical evidence.

[Para 5, 6 and 7] [850-D, E, G, F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 502 of 2006.

From the Judgment and Order dated 6.10.2005 of the High Court of Judicature at Bombay, Bench at Nagpur in Criminal Appeal No. 13/1996.

S.V. Deshpande for the Appellant.

Ravindra K. Adsure for the Respondent.

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. This appeal has been filed against the impugned judgment & order of the High Court of Bombay in Criminal Appeal No. 115 of 1996.

2. Heard learned counsel for the parties and perused the record.

3. In this case the appellant Bandu had been found guilty under Section 498-A of the Indian Penal Code and was sentenced to rigorous imprisonment for 2 years and a fine of Rs. 500/- by the trial court. However, on appeal by the State Government as well as Bandu, the High Court while setting aside the conviction of the appellant under Section 498A, held him guilty under Section 302 IPC and convicted him to life imprisonment and a fine of Rs. 500/-.

4. According to the prosecution case PW6 Shanta Kotangale was married to accused Bandu on 10.5.1985. After happy cohabitation for initial 12 months, the parties started having differences. Accused Bandu used to say that he did not like Shanta and that she should go back to her parent's place. She conceived, but continued to face ill-treatment. Eventually, her brother took her to the parental house. She filed a petition for maintenance before the learned Judicial Magistrate First Class Hinganghat, in which a compromise was reached on 2.10.1990, and the parties resumed cohabitation. Thereafter she gave a

A birth to a daughter, named Nita, at her parent's place. Accused Bandu brought back his wife and daughter to his matrimonial home. For a few days everything was all right, but thereafter the accused started saying that Nita was not his daughter and, therefore, he prevented Shanta from feeding Nita. On 1.1.1991 at about 3 A.M., when Shanta and accused Bandu were sleeping with their daughter, the accused killed daughter Nita by pressing her neck and threw
B Nita from the cot. Shanta started crying which attracted quite a crowd and Pulgaon Police Station was informed about the incident. The police came to the spot, took the dead body of 1-^{1/2} year old Nita and sent it for post mortem examination. After the inquest, the police performed panchanama on the spot, examined the witnesses and registered the offence. The accused was arrested
C on completion of the investigation and charge-sheet was sent to the learned Judicial Magistrate First Class, Pulgaon. The learned Magistrate committed the case to the Court of Sessions at Wardha.

5. On perusal of the facts, it appears that wife Shanta has deposed that the appellant killed his daughter Nita, who was only 1-^{1/2} years old, by strangling her. It has come in evidence that the appellant suspected the fidelity of his wife Shanta and thought that Nita was not his child at all. There had been differences between the husband and wife as a result of which she was made to leave her husband's house, but Shanta returned to the appellant after giving birth to her daughter Nita. The accused-appellant did not allow her to feed her daughter Nita and ultimately on 1.1.1991 killed her by strangling
D her. We see no reason to disbelieve Shanta.
E

6. We have seen the post mortem report. There are injuries on the neck, cheek and eyes of the child Nita and the doctor has given her evidence that the probable cause of death might be due to asphyxia due to suffocation. We see no reason to disbelieve the prosecution case as it is consistent with the
F medical evidence.

7. We have carefully gone through the evidence of Shanta. She is an eye witness to the incident and thus there is direct evidence in this case. She has stated that her husband was not allowing her to give milk and feed to her child, Nita and her husband killed the child by pressing her neck. Her
G evidence is credible and also stood corroborated by the post mortem report and other evidence on record.

8. Thus, we see no reason to interfere with the impugned judgment of the High Court. The appeal is accordingly dismissed.