

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.889 OF 1998

Shaniwar Kathod Bhoir, }
Age 24 Yrs., }
R/o. Mangrulgaon, }
Chinchpada, Taluka Ulhasnagar, }
Dist. Thane. } Appellant
} (Orig. Accused)

Versus

State of Maharashtra } ...Respondent

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Shri A. S. Rao, for the Appellant.

Shri Hitendra J. Dedhia, for the Respondent - State.

CORAM : R.M. JOSHI, J.

DATE : 04/11/2025

ORAL JUDGMENT :-

1. This appeal takes exception to the Judgment and Order dated 12.11.1998 passed by Additional Sessions Judge, Kalyan in Sessions Case No.1106 of 1996 convicting the appellant for the offence punishable under Section 304-B and 498-A of the Indian

Penal Code and sentencing him to suffer rigorous imprisonment of 10 years and 2 years respectively with fine.

2. For the sake of convenience, parties are referred to by the nomenclature in the original proceeding i.e. Sessions Case No.1106 of 1996.

3. First Information Report came to be lodged by the mother of Rekha (deceased). It was her contention that Rekha was married to accused on 25.03.1994 and she died on 01.05.1994. The death of deceased Rekha was intimated by their relatives stating that she vomited and died thereafter. It was also stated in the First Information Report that as per custom, the bride was required to live in the parental house for 5 days after marriage. Similarly, there is also a custom to offer gold ornaments on the eve of festival Holi. It is stated that Rekha came to parental home and lived with them for about 5 days and thereafter, she was taken by accused to matrimonial home. It is claimed that Rekha complained to her about she being beaten by the accused for not being offering gold chain. Since there were allegations in respect of subjecting the deceased with cruelty for non-fulfillment of illegal demand, and deceased died in short time of marriage, offence came to be registered against the accused punishable under Section 302 and 498-A of the Indian Penal Code. Investigation was carried out which has culminated in filing of

charge-sheet before the competent Court.

4. Ld. Trial Court framed the charge for the offence punishable under Section 302 of the Indian Penal Code so also under Section 498-A. Prosecution examined following 4 witnesses to bring home guilt of the accused.

1. Shantabai Patil (Exhibit 15)
2. Pundlik Patil (Exhibit 17)
3. Dr. Hiremath (Exhibit 20)
4. Medical Officer (Exhibit 21)

On conclusion of the trial, Ld. Trial Court held accused to be guilty for the offence punishable under Section 304-B and 498-A of the Indian Penal Code. Hence, this appeal against conviction.

5. Ld. Counsel for the accused / Appellant contends that the Trial Court has committed error in convicting the accused under Section 304-B of the Indian Penal Code in absence of any evidence indicating subjecting the deceased with cruelty or harassment by her husband in connection with any demand of dowry. In this regard, reference is made to the testimony of Shantabai PW1, more particularly to the cross-examination of this witness indicating that the accused did not make any demand with regard to any ornament on the day of Holi when he came to

the parental home of the deceased. It is also argued that if it was the case of harassment being caused by the accused to his wife, she would have refused to go and live with her husband but in view of admission of this witness in the cross-examination that deceased never refused to go along with husband, it can be held that there was no harassment. It is his further submission that except for the mother and father, no other witness such as neighbour, is examined in order to prove the alleged harassment caused by the accused to the deceased. Reference is made to the cross-examination of this witness who has denied who have made statements portion marked 'A' to the Police. It is argued that in order to prove the offence, it ought to have been proved that death of the deceased is homicidal or suicidal. It is his submission that from the testimony of Medical Officer, Vishwanath Hiremath, PW 3 (Exhibit 90) it cannot be said that the prosecution has proved the nature of death. According to him in view of the admission given by the Medical Officer, it cannot be said that the death of the deceased is homicidal or even suicidal. According to him, the answers given by the Medical Officer in the cross-examination on the contrary creates possibility of the accidental or natural death of the deceased. Finally it is argued that in absence of any evidence to indicate even presence of the accused in the house at material time, conviction cannot sustain.

6. Ld. APP supported the impugned judgment of conviction. In this regard he made reference to the evidence of parents of the deceased who according to him in no uncertain terms have stated about deceased being harassed by accused for non-fulfillment of demand of dowry. It is submitted that the evidence of these witnesses also indicates about deceased receiving beating at the hands of accused.

7. At the outset, it needs to be recorded that the Ld. Trial Court has come to the conclusion that the accused has not committed murder of the deceased. It is however held by the Trial Court that the deceased was subjected to cruelty and was harassed to coerce her to meet unlawful demand of gold chain. On the basis of the said findings conviction came to be recorded.

8. There is no dispute about the fact that the marriage between deceased and accused was performed on 25.03.1994 and the deceased died on 30.04.1994. Insofar as demand of dowry before marriage is concerned, there is absolutely no evidence on record to indicate so. On the contrary, Shantabai PW 1 mother of the deceased has admitted about the marriage being performed with approval of the deceased and that there was no dispute over the dowry or offerings in the marriage. Insofar as the alleged demand of gold chain is concerned, though it is stated by the parents of the deceased about it being custom to

offer gold ornaments to the son-in-law on the eve of festival of Holi, mother in no uncertain terms admits that on the day of Holi when accused came to their house, did not make any demand of ornament.

9. Asfar as the harassment caused to the deceased by the husband is concerned, the evidence of parents is not supported by any other material such as examination of neighbouring witnesses. Though the parents claim before the Trial Court that deceased was beaten and harassed by the husband, the mother admits the fact that deceased never refused to go to live with her husband. In case she was being harassed and beaten by the husband she would have resisted for going alongwith the husband and to reside with them for at least such resistance would have been indicated to the parents. There is absolutely no evidence in this regard.

10. The above evidence clearly indicates that the prosecution has failed to prove beyond shadow of reasonable doubt that there was any demand made by the accused and for non-fulfillment of the same, deceased was harassed and beaten.

11. At this stage, it would be material to take note of the evidence of the Medical Officer. Dr. Hiremath in his Chief-examination was unable to give any specific opinion with regard

to the cause of death. He states that the cause of death may be due to asphyxia, due to suffocation. In the cross-examination he admits that it is difficult to conclude the cause of death. He further admits that the asphyxia could be possible by diseases and in different circumstances. It is further accepted by him that it is possible that smothering the operation in the region of nostril face may possibly occur. He accepts of having not found any such injury in said region. Finally, he admitted the fact that he could not opined that the suffocation is due to accidental, homicidal or suicidal.

12. The evidence led before the Trial Court does not prove the presence of the accused at the house when the alleged incident has occurred. The burden would always be upon the prosecution to prove the guilt of the accused beyond reasonable doubt and having regard to the evidence on record, it cannot be said that said burden is discharged. Even Trial Court has held that accused was not responsible for the death of the deceased. The inference drawn by the Trial Court to hold that the death is not natural or accidental is contrary to the evidence on record. Such findings are not in consonance with the testimony of the Medical Officer and hence cannot sustain. The Trial Court has also accepted the fact that the accused was not present at the spot and hence acquitted him from the charge of the offence under Section 302 of the Indian Penal Code.

13. It would be relevant to take note of provision of Section 304-B of the Indian Penal Code :

304-B. Dowry death. - (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation. - For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

14. Perusal of the said provision indicates that this provision would attract only in case where it has been shown that soon before the death deceased was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand for dowry and such death is due to any burns or bodily injuries or otherwise than normal circumstances. It is only if these ingredients are fulfilled such death would be called as dowry death and presumption would get attracted. As discussed hereinabove, there is no conclusive evidence to hold that the deceased was subjected to cruelty or harassment by the accused in

connection with any demand of dowry nor there is evidence to show that the deceased died by burns or bodily injuries or otherwise than normal circumstances. When the Medical Officer is not in a position to conclude nature of death and since there is no evidence on record to hold that death is otherwise than in natural circumstances, question of attracting the presumption under Section 304-B of the Indian Penal Code would not arise.

15. The entire consideration of entire evidence on record leads to the only conclusion that the prosecution has failed to prove the offence punishable under Section 304-B and Section 498-A, beyond reasonable doubt. Consequently, appeal deserves to be allowed and accordingly allowed.

16. Impugned Judgment and Order passed by the Trial Court in Sessions Case No.1106 of 1996 is set aside. Accused stands acquitted from the charges. Fine paid if any, be refunded to the accused.

(R.M. JOSHI, J.)