

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL APPEAL NO. 343 OF 2012

Gorakh s/o Kisan Mhaske,
age 30 years, occ. service,
R/o Dhondkheda, Dist. Aurangabad

...Appellant

VERSUS

1] The State of Maharashtra

...Respondent

.....
Shri N.S.Ghanekar, advocate for the appellant
Smt. P.J.Bharad, A.P.P. for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATE OF RESERVING

THE JUDGMENT

: 26.03.2015

DATE OF PRONOUNCEMENT

OF THE JUDGMENT

: 21.04.2015

J U D G M E N T : -

1] Being aggrieved by the judgment and order of conviction, passed by the learned Additional Sessions Judge-4, Aurangabad, dated 27.4.2012, in Sessions Case No. 87 of 2008, convicting the appellant for the offence punishable under Section 498-A of the Indian Penal Code and directing him to suffer rigorous imprisonment for two years and to pay fine of Rs.2,000/-, in default to suffer rigorous imprisonment for two months; and also convicting him for the offence punishable under Section 304(B) of

the Indian Penal Code and directing him on that count to suffer rigorous imprisonment for ten years, the appellant is before this court.

2] The prosecution case, as it is disclosed during the course of the trial, is stated herein under :-

Milind Gajanan Bagul (PW 5) the Police Inspector was attached to Phulambri police station on 29.9.2007. On the said day, he received a M.L.C. No. 18794/MEV (Exh.47). Head Constable Devare inquired into the said Case. Head Constable Devare requested the doctor for recording statement of Amrapali (Exh.48), however, Amrapali was not in a position to give her statement. Subsequently, on 30.9.2007 another M.L.C. was received intimating death of Amrapali (Exh.49).

Father of Amrapali by name Prabhat Salve lodged report with police station Phulambri (Exh.33).

The complaint (Exh.33) shows that the first informant works as a Watchman. He is having one son Rahul and two daughters Amrapali and Manjiri. Elder daughter Amrapali's marriage was performed at Kanchanwadi on 9.3.2007 with the present appellant. According to the first information report, in the said marriage he gave Rs.14,000/- cash and a golden chain worth Rs.10,000/-. After the marriage, the couple started residing at Sanjaynagar. That time, appellant was working in a car company SKODA at Shendra.

As per the first information report, after the marriage, the family life of the couple was well for two months, however, after two months when the appellant and Amrapali had been to her house, that time first informant gave a dress to the appellant, which was not to the test and liking of the appellant, and therefore, he demanded Rs.1,000/- from him for purchasing another dress, however, since financial position of the first informant was not good, the same was given.

Within eight days of that, appellant gave beating to Amrapali. This fact was disclosed by Amrapali to her sister Manjiri (PW 3). Amrapali stayed for 2-3 days. Appellant came to take Amrapali back to the matrimonial house and that time he demanded Rs.One Lac for purchasing ready made house, however, for want of money the said demand of the appellant was not fulfilled. Thereafter on that count Amrapali was beaten by the appellant and said fact was informed by her to Pravin the nephew of the first informant.

3] For Raksha Bandhan festival Amrapali had been to her parental house. After three days of Raksha Bandhan, both appellant and Amrapali had been to the house of the appellant and that time appellant demanded Rs.40,000/- for purchase of plot. That time, it was informed by the first informant to appellant that his monthly salary is Rs.1,000/- only, and therefore, he was unable to fulfill the demand of the appellant. Thereafter the appellant and Amrapali went to their house.

4] After eight days, appellant was admitted to Ghati Hospital at Aurangabad. The first informant had been to see appellant at Ghati Hospital. The appellant was discharged from the hospital after two days. Thereafter appellant and Amrapali went to Dhondkheda the village of the appellant. After 2-3 days there was a dispute between Amrapali and appellant on account of money.

5] On 29.9.2007 at 8.30 in the morning, the first informant received a phone call from the appellant intimating that due to convulsions Amrapali is admitted in the Ghati Hospital, Aurangabad, and therefore, the first informant was called. According to the first information report, Amrapali was admitted in the name of Amrapali Arun Patil and though

Satyajeet Salve his nephew was present his name was appearing in the M.L.C. On these allegations the first information report was lodged.

The crime was registered vide Crime No.116 of 2007 for the offences punishable under Sections 302, 498 r/w 34 of the Indian Penal Code by the investigating officer Milind Bagul (PW 5). During investigation, he carried inquest panchanama (Exh.29) and also obtained the provisional death certificate (Exh.50). Appellant was arrested on 30.9.2007 itself vide arrest panchanama (Exh.51). Spot panchanama (Exh.34) was drawn. The investigating officer arrested other accused persons. Further investigation was handed over to Police Inspector Alsatwar (PW 4). He recorded supplementary statements of the witnesses and also recorded statements of the neighbours. After completion of the investigation, he filed charge sheet on 16.1.2008.

6] Since the offence was exclusively triable by the Court of Sessions, the case was committed to the court of Sessions.

7] On 29.8.2008 a charge was framed against the appellant, his brother Siddarth, Baban, wife of Baban Salubai, his mother Chandrakalabai and his married sister Kadubai and her husband Devidas for the offence punishable under Sections 498-A, 306 and in alternative under Section 304(B) of the Indian Penal Code.

Charge was altered and charge was also framed for the offence punishable under Section 302 r/w 34 of the Indian Penal Code against all the accused persons.

8] In order to bring home the guilt of the accused persons, the prosecution has examined in all 7 witnesses. They are :-

PW 1 Prabhat Salve the father of deceased Amrapali and first informant.

- PW 2 Satyajeet Salve cousin of deceased Amrapali.
- PW 3 Manjiri sister of deceased Amrapali.
- PW 4 Police Inspector Chandrakant Alsatwar who filed charge sheet.
- PW 5 Milind Bagul who conducted the major part of investigation.
- PW 6 Dr. Kailas Zine who performed postmortem.
- PW 7 Dr. Vishal Dhakre who firstly attended Amrapali when she was admitted in the hospital.

The defence also examined two witnesses DW 1 Chandrakant Ghuge and DW 2 Kakaji Bangar.

9] After a full dressed trial, the learned Additional Sessions Judge, Auranabad acquitted all other accused persons from all the offences with which they were charged. The appellant, however, was convicted and was sentenced as observed in the opening paragraph of this judgment.

10] I have heard Shri N.S.Ghanekar, learned counsel for the appellant and Smt. P.J.Bharad, learned Additional Public Prosecutor for the respondent/State in extenso. Both the learned counsel and the learned Additional Public Prosecutor for the State strenuously urged and submitted their respective case in detail by taking me through the notes of the evidence of all the prosecution witnesses and various proved documents.

11] In order to prove the offence punishable under Section 498-A of the Indian Penal Code, the prosecution has examined close relatives of deceased Amrapali namely her father Prabhat, cousin Satyajeet and sister

Manjiri. Merely because the witnesses are in close relation of deceased Amrapali, their evidence cannot be discarded as an interested version. The evidence of these witnesses will have to be scrutinized with more care and caution.

It is appearing in the evidence of PW 5 Alsatwar, who has filed the charge sheet, that he has recorded the statements of the neighbours of the appellant, however, no such neighbour is examined by the prosecution.

12] The first information report is at Exh.33. The first information report is not a substantive piece of evidence. It can be used for the purposes of corroboration and contradiction.

From the first information report and also from the substantive evidence from the witness box of PW 1 Prabhat, it appears that on three occasions there was a demand from appellant to PW 1 Prabhat. The first demand was for Rs.1,000/- to purchase a dress; the second demand was for Rs. One Lac for purchase of a ready made house and third demand was for Rs.40,000/- for purchasing the plot. The aspect of these demands made by the appellant to PW 1 Prabhat is corroborated by his daughter PW 3 Manjiri.

In so far as demand is concerned, the evidence of PW 2 Satyajeet is of no use, since according to his version from the witness box he disclosed that his uncle Prabhat (PW 1) told him that the appellant has demanded Rs.One Lac to purchase a house.

Thus, on three different occasions, three different amounts were demanded was the case of the prosecution against the appellant.

The evidence of Prabhat and Manjiri disclosed that these three demands for Rs.1,000/-, Rs. One Lac and Rs.40,000/- were for reasons : - (1) to purchase a new dress; (2) to purchase a ready made

house; and (3) to purchase a plot.

13] According to the prosecution witnesses, the deceased was subjected to cruelty at the hands of the appellant for non-fulfillment of his afore said three demands.

The issue, whether on the basis of the evidence available on record, could it be said that the prosecution is successful in proving that the appellant has made demands as alleged, is to be answered by the court.

14] Prabhat (PW 1) was working at Water and Land Management Institute since last 25 years. His salary is Rs.1,000/- per month after the deductions.

PW 2 Satyajeet and appellant studied together. Satyajeet (PW 2) also corroborates his relation with the appellant. His evidence would disclose that whenever he used to visit house of Amrapali on occasions of festival, appellant Gorakh used to accompany him.

As per the evidence of Prabhat, appellant was working in SKODA company as an apprentice, however, at the time of marriage he was told that he is in service.

Satyajeet (PW 2) is candid in admitting that he was knowing appellant prior to 7-8 years of his marriage with Amrapali and her mother has pleaded a pivotal role in settling the marriage, as according to her, appellant was a proper match for Amrapali. It is also brought on record that prior to fixing of the marriage with appellant, the marriage proposal of Amrapali with some other person was not materialized. This fact was within the knowledge of the appellant, however, the appellant agreed to marry with Amrapali.

Satyajeet has disclosed from the witness box that appellant was working at SKODA company on temporary basis. Therefore, it would be

hard to believe that anything was withheld in respect of his service from Prabhat, looking to the fact that Satyajeet was knowing about his employment status and in spite of that, Satyajeet, a close relative of first informant Prabhat has suggested his name.

Further, it is not the case of the prosecution that since the appellant was knowing that the first marriage proposal of Amrapali with another person was not materialized, and therefore, after the marriage with appellant, he started giving any illtreatment.

15] Prior to fixing of the marriage with appellant, the appellant was knowing the condition of the house of Amrapali is the version of Satyajeet (PW 2). Further, first informant himself has admitted that appellant was aware of his financial condition.

It is brought on record that prior to marriage, Prabhat (PW 1) visited the agricultural land of appellant at Dhondkheda and also visited their house at the said village. Prabhat is not having any agricultural land.

Thus, it is clear that prior to fixation of marriage between the appellant and Amrapali, appellant was well aware that the financial condition of Prabhat (PW 1) is not sound. He was knowing that Prabhat is working as Watchman and is drawing a monthly salary of Rs.1,000/- after the deductions.

16] One and half months from the marriage, according to Prabhat, which is also corroborated by Manjiri that a new dress was purchased by the first informant for appellant. According to these witnesses, the said dress was not liked by the appellant, and therefore, he demanded Rs.1,000/- for purchasing the new dress. The said demand was not fulfilled due to paucity of funds.

Thus, in the backdrop of this, when Prabhat (PW 1) was unable to

fulfill the demand of Rs.1,000/-, it is really hard to believe that the appellant will demand Rs.One Lac and Rs.40,000/- from Prabhat.

Once appellant was knowing that the financial position of his father-in-law is so weak that he cannot fulfill the demand of Rs.1,000/-, merely because Prabhat and Manjiri claim that there was a demand of Rs.One Lac and Rs.40,000/- on two different occasions, their version cannot be readily accepted by the court.

17] In respect of illtreatment, according to the prosecution, Amrapali was subjected to cruelty since the demand was not fulfilled.

The evidence of PW 1 Prabhat would disclose that at no point of time Amrapali has disclosed to him about illtreatment. Even in the first information report, it is not the claim of Prabhat that it was disclosed to him. In the first information report in respect of illtreatment it is stated that it was disclosed to Manjiri and on one occasion to his nephew Pravin.

Pravin Salve, to whom illtreatment was disclosed by Amrapali, is not examined by the prosecution.

18] Prabhat has stated in his evidence as under : -

“ Amrapali has never disclosed directly to me about harassment to her. My daughter Manjiri told me about harassment to Amrapali, as told to her by Amrapali, on 1.10.2007 for the first time. “

Thus, it is clear that the evidence in so far as illtreatment to Amrapali is concerned, the evidence of Prabhat is of no consequence.

19] The evidence of Manjiri does not disclose that on 1.10.2007 she disclosed to her father Prabhat (PW 1) about the information of illtreatment as claimed by him.

The evidence of PW 1 Prabhat discloses that he received a phone

call from his daughter Amrapali from Dhondkheda, wherein she disclosed to him about the incident at Dhondkheda. The evidence of Prabhat is totally silent about the details of the said phone call. Further, if his evidence is to be believed, that time Manjiri (PW 3) was present when Prabhat discussed the said issue with his wife, however, Manjiri did not participate in the discussion is the evidence of Prabhat.

Amrapali might not have stated about her harassment to Prabhat. We cannot disbelieve Manjiri that Amrapali disclosed her about harassment, however, it is really hard to digest that Manjiri will not disclose the harassment caused to her sister, to her father, if not immediately. According to Prabhat, the harassment was disclosed by Manjiri to him only on 1.10.2007 i.e. after the death of Amrapali.

Further, a daughter will always disclose what is happening to her in her matrimonial house to the mother, if not to the father. In the present case, though Prabhat's evidence discloses that he had a discussion with his wife after he received a phone call from Dhondkheda, for the reasons best known to the prosecution, Amrapali's mother Savitabai is not examined. Had there been any illtreatment to Amrapali, looking to the relation as daughter and mother, Amrapali would not have missed to disclose the harassment to her and it would have been most natural on her part to share the same with her mother.

20] Satyajeet, a nephew of Prabhat, claims from the witness box that once he had gone to Dhondkheda to take Amrapali and while coming along with her she disclosed to him that she is being harassed by the appellant, however, the said claim of Satyajeet is found to be made for the first time in the court. Such an important fact was not disclosed by him before the police when his statement was recorded.

Further from the evidence of investigating officer, it is clear that the

claim of Satyajeet that his uncle PW 1 Prabhat has told him that appellant is demanding Rs.One Lac is an omission. Further, the investigating officer has also stated that Satyajeet never stated before him during the course of the investigation that he will convince the appellant that the financial position of Prabhat is not good. It is also found to be an omission in respect of the claim of Satyajeet that Prabhat intimated him that appellant has demanded Rs.40,000/- from him.

21] Prosecution witness Satyajeet has stated in his evidence that when he reached to the hospital, that time he noticed injury on the lips of deceased, however, the same is also an omission.

22] PW 3 Manjiri, though claimed in her evidence that Amrapali told her that since Rs.1,000/- was not given for dress, that time she was beaten by belt, this was never stated by Manjiri when her police statement was recorded.

According to Manjiri, Amrapali disclosed her that illtreatment should not be disclosed to their father, since the brother of the appellant by name Baban is a dangerous person and he would beat their father Prabhat if illtreatment is disclosed to Prabhat. This claim made by Manjiri from witness box is also a proved omission. In her evidence Manjiri claims that Gorakh is having love affair with one girl, however, the said claim is also found to be a proved omission.

Thus, it is clear that in so far as the illtreatment at the hands of the appellant to deceased is concerned, the available evidence is of only Satyajeet (PW 2) and Manjiri (PW 3). Since Prabhat himself has stated that at no point of time Amrapali has disclosed to him about her illtreatment directly, however, the evidence of Manjiri (PW 3) and Satyajeet (PW 2), as observed herein above, is found to be full of

omissions. Therefore, such evidence is of little use for the prosecution.

23] In order to secure conviction for the offence punishable under Section 304(B) of the Indian Penal Code, the court has to analysed the facts and circumstances leading to the death of victim and to decide if there is any proximate chain between the demand of dowry and act of cruelty and/or harassment and the death. In the present case, as observed above, the prosecution has utterly failed to prove that there was any demand and/or harassment soon before the death of Amrapali.

24] So far as death of Amrapali is concerned, according to the prosecution, Amrapali has consumed poison and has cut short her life. In order to prove the said claim, we have the evidence of PW 6 Dr. Kailas Zine and PW 7 Dr. Vishal Dakhare.

Provisional death certificate is at Exh.50. The opinion, as given in the said provisional postmortem report/death certificate is, "poisoning", however, viscera was kept for chemical analysis. Viscera, i.e. (1) stomach and pieces of small intestine with contents; (2) pieces of liver, spleen and kidney; and (3) blood, was sent to the Chemical Analyser for examination. Chemical Analysis report (Exh.138) shows as under : -

“ RESULTS OF ANALYSIS

General and specific chemical testing does not reveal any poison in Exhs. 1, 2 and 3. These Exhs. 1, 2 and 3 contain stomach, pieces of intestine with their contents, pieces of liver, spleen, kidney and blood. “

Thus, the report in respect of the chemical analysis is negative, however, the report of Dr. Zine, who performed the postmortem, states that in spite of negative chemical analysis report, he maintains that the cause of death was due to consumption of poison. According to him, the poison already absorbed is metabolized, and therefore, in the viscera no

trace of poison is found.

25] PW 7 is Dr. Vishal Dhakre. On 29.9.2007 he was attached to Ghati Hospital as resident doctor. Patient Amrapali was admitted. That time she was serious. His evidence would disclose that on the said date at 10.00 a.m. he had taken out sample from gastric lavas and it was sent to the CMO. This particular aspect is also admitted by Prabhat (PW 1), who has stated in his evidence that the doctor took out fluid by inserting tube.

From the evidence of Dr. Vishal Dhakre, therefore, it is clear that on the very first time of admission of Amrapali a step was taken by him by collecting gastric lavas, obviously to ascertain about the poisoning, because according to Dr. Vilas she was admitted in M-ICU meant for the patients suffering from poisoning. Not only that, he also sent a call to CMO for recording MLC as suspected poisoning. In spite of the said positive step taken by Dr. Vishal, nothing is available on record about the result of the sample which he has taken from gastric lavas. Thus, the primary evidence is either not coming on record or it is suppressed.

He has further stated that the history of the patient is taken in his hand writing. In the present case, the original case papers of Amrapali are not filed on record. The photo copies are filed on record and it is at Exh.77. In that behalf, the following version from Dr. Vishal Dhakre is important.

“ Our Ghati Hospital has a separate record department. I have not received letter from record department informing me that, the papers in respect of the deceased are missing.”

26] Further, PW 5 Milind Bagul, who has visited spot of incident and recorded spot panchanama could not find any bottle containing poison on the spot. PW 4 Chandrakant Alastwar, who carried the further

investigation and filed the charge sheet has disclosed in his evidence that he has not secured the case papers in respect of Amrapali since he did not feel it necessary to secure the said admission record and case papers from Ghati Hospital.

27] The learned author Jaising P Modi, after his research, found that there are certain vegetable poisons which may not be detected in the viscera, as they have no reliable tests; while some organic poisons, especially the alkaloids and glucosides, may, by oxidation during life or putrefaction after death, be split up into other substances which have no characteristic reactions sufficient for their identification.

However, it is the duty of the prosecution to identify and prove what type of poison was consumed by the deceased. Merely because some vegetable poisons cannot be detected in the chemical analysis report that does not mean that in the present case “such poison” may have been consumed.

Criminal case cannot be decided on guessing. In that backdrop, the defence of the appellant that on a fateful day deceased suffered convulsions and for that she was admitted in the hospital cannot be completely ruled out.

28] Thus, when the prosecution has utterly failed that soon before the death of the deceased, which occurred within a period of seven years, when the prosecution could not prove that Amrapali was subjected to cruelty and there was any demand either to her or to her relatives, and when the nature of death itself is in doubt, in my view, it will be hazardous to convict the appellant for the offences punishable under Sections 498-A and 304 (B) of the Indian Penal Code. That leads me to pass the following order.

ORDER

- (i) Criminal Appeal is allowed.
- (ii) The judgment and order of conviction, passed by the learned Additional Sessions Judge-4, Aurangabad, dated 27.4.2012, in Sessions Case No. 87 of 2008, convicting the appellant for the offence punishable under Section 498-A and Section 304(B) of the Indian Penal Code is hereby quashed and set aside.
- (iii) The appellant is acquitted of the offences with which he was charged and convicted.
- (iv) The appellant, who is in jail, shall be released forthwith, if not required in any other case.
- (v) Fine amount, if any paid by the appellant, be refunded to him.

(V.M.DESHPANDE, J.)