

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.246 OF 2000

Dattatray s/o. Prabhu Mangale
Age : 31 years, Occ.Professor,
r/o. Kokarwadi, Tq.Paranda,
Dist.Osmanabad ..Appellant

Versus

State of Maharashtra ..Respondent

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Mr.R.N.Dhorde, Senior Counsel i/b. Mr.A.S.More,
advocate for appellant

Mr.S.R.Palnitkar, APP for respondent – State

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CORAM : M.T. JOSHI, J.
JUDGMENT RESERVED ON : AUGUST 12, 2015
JUDGMENT PRONOUNCED ON : AUGUST 28, 2015

JUDGMENT :

Heard both sides.

2] Aggrieved by recording of conviction by
learned IInd Addl. Sessions Judge, Osmanabad in
Sessions Case No.77 of 1997 for the offences

punishable under Section 498-A, 304-B and 306 of Indian Penal Code and consequential sentences of rigorous imprisonment for one year, seven years, and five years, respectively, on each count, with direction to pay fine, present appeal is preferred by original accused.

. The admitted facts would reveal that appellant - Dattatray Mangale was working as Lecturer in a College at Paranda, Dist.Osmanabad while, his wife - deceased Asha was working as teacher in a school at Bhoom, Dist.Osmanabad, during the relevant period. Both of them married each other in the month of November, 1995. Asha suffered burn injuries and died on 2nd August, 1996. In the circumstances, her mother PW 1 - Antikabai, filed FIR on 3rd August, 1996 at Exhibit 16.

3] According to the complainant, in the marriage, the bride side had gifted nine tolas gold to the

appellant. The complainant along with deceased Asha were already residing at Bhoom along with two children of brother of the deceased Asha. Brother of the deceased i.e. PW 3 – Shrimant Machindra was residing at Ratnapur, Tq. Paranda, Dist.Osmanabad. Therefore, for the purpose of taking education his two children were residing with Asha and her mother in a room taken on rent from one Devidas. The appellant also started residing with them. To have facility to the newly wedded couple, Antikabai, complainant, used to sleep in another room of the landowner along with her two grandsons.

. The couple resided happily for two months. Thereafter, however, the appellant started beating the deceased in the night on the ground that no dowry was given to him. Though the complainant tried to give understanding by saying that he would have regular dowry in view of the job of the

deceased, the appellant did not pay heed to it. In the circumstances, PW 3 – Shrimant along with one Mediator Baban Chorge came to Bhoom. They also tried to give understanding to the appellant. The appellant, however, insulted them by saying that he knows the law and the ways to overcome the clutches of law. In view of this dispute, the complainant – mother started residing separately with her two grandsons in an independent room of the landlord.

. Thereafter, the appellant started making demand of a motorcycle for the purpose of commutation between Paranda and Bhoom. He started beating the deceased over the said demand. In the circumstances, the complainant took both her grandsons to village Ratnapur and resided there. In the month of July, 1996, when the appellant and his parents were invited to celebrate a customary festival, necessary gifts were given to them. At

that time, deceased – Asha told her mother i.e. complainant that the appellant continued to beat her over a demand of Rs.25,000/- for the purpose of purchasing a motorcycle. Thereupon, the complainant tried to prevail by saying that the family was in a financial crisis and lateron, the amount would be arranged. Thereafter, on 28th July, 1996, the complainant visited deceased Asha at Bhoom. At that time also, she repeated the facts of illtreatment and about the demand of motorcycle from the appellant or money for purchase of the same. The complainant again tried to give understanding to the appellant and returned back on the next date i.e. 29th July, 1996.

. On 2nd August, 1996, the complainant received a message of death of Asha due to burning and after funeral, the complainant filed the complaint at Bhoom Police Station.

4] PW 5 – Bapu Sangle, the then P.S.I. of Bhoom Police Station conducted investigation of the case. He recorded panchnama of spot of occurrence and inquest panchnama, seized relevant articles, collected post mortem notes, recorded statements of the relevant witnesses including that of Mediator – Baban Chorge and filed the charge sheet.

5] Before learned Addl. Sessions Judge, the prosecution examined five witnesses. The appellant examined his brother who is a practising advocate at Bhoom i.e. DW 1 – Nagnath Mangale. The appellant, during cross-examination of the prosecution witnesses, suggested that in fact, the complainant – mother of deceased, always used to raise quarrel with deceased Asha by making demand of money. She wanted the salary of the deceased for her family. Therefore, deceased Asha always

used to remain nervous. One month prior to the death of deceased, the defence witness – Nagnath had told the brother of deceased that they should not harass deceased Asha over money matter and they may accept her entire salary. In fact, the Investigating Officer was instrumental in getting the FIR registered. He first arrested the appellant and thereafter, got prepared the false FIR.

. While answering to the questions put to the appellant under Section 313 of the code of Criminal Procedure, the appellant merely stated that the prosecution evidence is false and did not put above defence. He also told learned Addl. Sessions Judge that he does not want to examine himself on oath or to lead any evidence. Lateron, however, he examined his elder brother Advocate Nagnath Mangale, who deposed the above facts.

6] Before learned Addl. Sessions Judge, to prove the allegations of illtreatment, PW 1 – Antikabai and PW 3 – Shrimant, brother of deceased, were examined. Baban Chorge, the Mediator, was not examined. Learned Addl. Sessions Judge refused to accept the arguments from the side of the defence that the testimony of these interested witnesses should not be believed. Learned Addl. Sessions Judge, however, took into consideration the somersault taken by the defence, as detailed supra.

. Learned Addl. Sessions Judge found that the defence made by the appellant, that the mother of deceased and her family members used to harass deceased Asha, is improbable. Further, as the towns Paranda and Bhoom are in the vicinity, the demand of motorcycle, allegedly made by the appellant, was found to be probable one. In the circumstances, the conviction and sentence, as

detailed supra, came to be recorded against the appellant.

7] Mr.Dhorde, learned Senior Counsel for the appellant, submitted that in fact, the evidence of the relatives of the deceased, though cannot be thrown away, but closer scrutiny of the same is required. He submitted that the independent witness i.e. Baban Chorge, Mediator was not examined. On the other hand, statement of PW 2 - Mira Halnor, colleague of deceased, would show that deceased Asha was severely in debt by raising loan from the Teachers Co-operative Society, much prior to the solemnisation of her marriage with the appellant and she, all the times, used to remain nervous since she started serving in the school i.e. much prior to the marriage. In the circumstances, Mr.Dhorde submitted that it is highly probable that the complainant - mother of deceased or PW 3 - Shrimant, who is an

agriculturist, always used to prevail Asha for money from her salary. Even the two children of PW 3 – Shrimant were kept with her.

8] Mr. Dhorde further submitted that on the other hand, the appellant was working as Lecturer in a college. His brother i.e. DW 1 – Nagnath is a practicing advocate. All these facts would fortify the defence made by the appellant. He further submitted that learned Sessions Judge ought not to have commented on the conduct of the appellant in giving suggestions of the positive defence during the cross-examination of the prosecution witnesses; keeping mum during his statement under Section 313 of the Code of Criminal Procedure; and thereafter, again positively examining the defence witness.

9] Mr.Dhorde further submitted that a glaring fact would be that the deceased along with her

mother, two nephews and the appellant used to reside in one room of a compact building of four rooms, and still the complainant - mother of deceased, recited that she had heard about the illtreatment from the mouth of deceased Asha and had personally witnessed nothing. Not only this, the witness to the panchnama of spot of occurrence i.e. PW 4 - Bharat Gajdhane, who was also a tenant in the same building, during the cross-examination, has positively admitted he had not heard any quarrel between the appellant and the deceased.

. He further submitted that it is not the case of prosecution that any dowry was agreed and for the the demand of dowry, any illtreatment was caused by the appellant to the deceased. Therefore, the ingredients of offence punishable under Section 304-B of Indian Penal Code were not even made out. He therefore submitted that the

appeal may be allowed and the appellant may be acquitted.

10] On the other hand, learned A.P.P. submitted that the evidence of the mother and brother of the deceased, is reliable. The defence is illogical and hence, he supported the reasons forwarded by learned Addl. Sessions Judge.

11] On the basis of this material, following points arise for my determination :-

I) Whether the prosecution has proved that from January, 1996 onwards, present appellant has subjected his wife Asha to cruelty at Bhoom during their cohabitation with each other ?

II) Whether the prosecution has further proved that the appellant, during above

period and place, has caused dowry death of the deceased ?

III) Whether the prosecution has further proved that present appellant has abetted commission of suicide by deceased Asha on 2nd August, 1996 at Bhoom ?

. My findings to the above points are in the negative and the appeal is, therefore, allowed and the appellant is acquitted of all the offences, for the reasons to follow.

R E A S O N S

12] The offence punishable under Section 304-B of Indian Penal Code is made out only when any dowry is agreed between the parties and over said dowry, death in unnatural circumstances of the wife, is

caused. Here, as per the prosecution case itself, no dowry was agreed in the marriage and therefore, the offence punishable under Section 304-B of Indian penal Code could not have been attracted in the present case.

13] As regards rest of the offences, we have statements of the mother and brother of the deceased. The issue is, whether their statements should be accepted for coming to the conclusion that the prosecution has proved its case beyond the reasonable doubt.

14] The panchnama of the spot of occurrence at Exhibit 20 proved by panch witnesses PW 4 – Bharat Gajdhane, would show that the building consisted of four rooms. The room occupied by the deceased and the appellant was ad-measuring 13 ft. x 8 ft. and had a door on Western side. The room in occupation of PW 4 – Bharat is somewhat away from

the said room and in between the two rooms, an open place was there. The room of another tenant was just adjoining to the room in question, on the southern side while, the room of landlord namely, Devidas was adjoining towards the northern side. As per the prosecution case, in this northern side room, the complainant along with her grandsons used to go for sleep in the night. Still, the complainant does not depose that at any point of time, she has either heard any quarrel or noise due to beating to the deceased by the appellant, either in the day time or night time. Her statement in the FIR would show that deceased Asha made complaints of illtreatment to her.

15] PW 4 – Bharat, panch witness i.e. one of the neighbors, has deposed in cross-examination that he never had opportunity to see any quarrel between the deceased and the appellant. He denied the suggestion that on 2nd August, 1996, there was

quarrel between deceased Asha and her mother – complainant.

16] PW 2 – Mira is colleague of deceased Asha. She deposed that deceased Asha used to be in pensive mood and therefore, when she had made a query to the deceased, deceased Asha refused to divulge anything by saying that the tendency of the women is to hear sad things of others by making sad face and to report it to others with smiling face. It is to be noted that this colleague was a surety-cum-guarantor for the loan obtained by deceased from the Teachers Co-operative Society. Thus, PW 2 – Mira was somewhat nearer to deceased Asha, still she did not disclose the cause of her sadness to PW 2 – Mira. Learned Addl. Sessions Judge, however, has taken this statement as one of the corroborations.

. On the other hand, if we probe the cross-examination of this witness on the basis of the pass book of the deceased Asha issued by Teachers Co-operative Society, it would show that deceased Asha had obtained loan of Rs.1,16,867/- during three years from 1993 to 1995 i.e. prior to marriage of Asha with the appellant.

17] PW 2 – Mira further deposed that deceased Asha always used to be nervous all the times since she was serving in the school. The nervousness of deceased Asha was not since the time of her marriage with the appellant in November, 1995, but it was since she had started working in the school.

18] In the light of all these facts, it was necessary for the learned Addl. Sessions Judge as well as for me to scrutinise the oral evidence of mother and brother of the deceased. As already

pointed out, the mother of deceased could have directly witnessed illtreatment at the hands of the appellant, still she has deposed that there was oral dying declaration from Asha regarding illtreatment to her at the hands of the appellant. The facts, further would disclose that deceased Asha was not residing only with her husband i.e. appellant all along, but even with her mother and two children of her brother, who were taking education at Bhoom. She was already indebted to the Teachers Co-operative Society and was nervous all the times, even prior to her marriage with the appellant.

19] The independent witness i.e. Baban Chorge was not examined. In the circumstances, for some defect in the defense, learned Addl. Sessions Judge ought not to have concluded that the prosecution has proved its case beyond the reasonable doubt. In my view, therefore, the

appeal deserves to be allowed and the appellant deserves to be acquitted.

20] Hence, the following order :-

A) The appeal is hereby allowed.

B) The impugned judgment and order dated 31st May, 2000 passed by learned IInd Addl. Sessions Judge, Osmanabad, in Sessions Case No.77 of 1997 convicting and sentencing the appellant for the offences punishable under Section 498-A, 304-B and 306 of Indian Penal Code, is hereby set aside.

. Instead the appellant is acquitted of all the offences.

C) Fine amount deposited by the appellant, if any, be refunded to him.

D) Bail bonds of the appellant shall stand cancelled.

E) Muddemal property be disposed in the light of the directions issued by learned Addl. Sessions Judge.

[M.T. JOSHI, J.]

kbp