

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 290 OF 2001

Bibhishan S/o Eknath Shinde,
Age — 35 years, Occu.: Service,
R/o Pishore, Tq. Kannad,
District Aurangabad

.. APPELLANT

Vs.

The State of Maharashtra
Through Police Station, Pishor,
Tq. Kannad, District Aurangabad

.. RESPONDENT

Mr. S.G. Ladda, Advocate for the appellant
Mr. P.N. Muley, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.

RESERVED ON : 28/09/2015

PRONOUNCED ON : 06/10/2015

JUDGMENT :

. Heard both sides.

2. The present appellant was convicted by the learned Additional Sessions Judge, Aurangabad in Sessions Case No. 204 of 1997 vide judgment and order dated 22/06/2001, for the offences punishable under section 498-A and 306 of the Indian Penal Code.

. He was sentenced to suffer rigorous imprisonment for three years and to pay fine of

Rs.300/-, in default to suffer rigorous imprisonment for three months for the offence punishable under section 306 of the Indian Penal Code. Further, he was sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.200/-, in default to suffer rigorous imprisonment for two months for the offence punishable under section 498-A of the Indian Penal Code.

. Rest of the accused i.e. original accused no.2 - Eknath and original accused no.3 - Sugandhabai, the parents of the present appellant were acquitted.

. All these accused were also acquitted from the offences punishable under section 304-B r/w. 34 of the Indian Penal Code.

3. The prosecution case in short, is as under:-

. That the appellant / original accused no.1 - Bibhishan, had upon death of his first wife, who left behind her three issues, married to deceased Shila, daughter of Kisanrao Padul, R/o Ladsavangi, Tq. and Dist. Aurangabad sometime in the year 1995. Dowry of Rs.32,000/- was given in the marriage ceremony. After

the period of one year of happy married life, the appellant started beating the deceased under the influence of liquor. Rest of the accused also used to abuse and ill-treat the deceased. The deceased told her relatives that the appellant was making a demand of Rs.12,000/- for facilitating his permanency in the job. He was a temporary employee of the Forest Department. Over the said unlawful demand, he used to beat the deceased. The elder sister of the deceased, namely, Meenabai (PW3) and her husband Bhaksar (PW4) are also from the same village of the appellant i.e. Ladsavangi. The deceased also therefore used to tell about the ill-treatment to them. Ultimately, the appellant had taken the deceased to her parental home with a warning that she should not return without money. After a period of two months, the complainant – PW1 – Madan, the brother of the deceased brought the deceased to the house of the appellant on the basis of the guarantee given by PW4 – Bhaskar, of the payment of the amount. Later-on, PW4 – Bhaskar paid the amount to the appellant. Thereafter, for a period of 7-8 months, the ill-treatment was reduced. However, from the month of March, 1997, again

the ill-treatment was aggravated. The appellant started beating the deceased under the influence of liquor. He used to say that as regards his employment, a Court case was going on and for that purpose, he required certain amount and the deceased should bring the same. PW3 – Meenabai and PW4 – Bhaskar were also informed of the same by the deceased. PW4 therefore gave understanding to the appellant and his parents but they did not pay any heed. In the situation, on 21/7/1997, the deceased died due to poisoning and, therefore, her brother PW1 – Madan filed the complaint at Exhibit 18.

. Appellant – Bibhishan had already informed about the said death to Pishore Police Station. PW8 – PSI Balaji Sontakke made enquiry in the accidental death case. He made regular exercise of conducting the inquest panchanama, panchanama of the spot of occurrence and caused the dead body to be removed for post-mortem examination. PW 9 – Dr. S.V. Deshpande, Medical Officer, Primary Health Centre, Nachanwel, Tq. Kannad, Dist. Aurnagabad conducted the post-mortem examination. The post-mortem examination confirmed that the death has occurred due to the poisoning and the chemical analysis

report at Exhibit 36 regarding the viscera confirmed that the death has occurred due to organo phosphorous poisoning. PW8 recorded the statements of the witnesses. It was gathered during the investigation that on 3/7/1997 i.e. about three weeks prior to the death, the deceased was beaten by the appellant by striking her head to a grinding stone. Deceased had therefore approached the house of PW4 – Bhaskar, who had tried to mediate but the same failed. The said incident was witnessed by two witnesses i.e. PW5 – Ramdas and PW6 – Pandurang. PW7 – Hari had occasion to watch the ill-treatment of the deceased. All these three witnesses are from the same village of the appellant.

4. Before the learned Additional Sessions Judge, Aurangabad, nine witnesses were examined as detailed supra alongwith the panch witnesses, carrier of the property etc. The learned Additional Sessions Judge came to the conclusion that the case of dowry death is not proved. Further, the case of cruelty and abetment to cause suicide as against the parents of the appellant was not proved. It was however found that the present appellant has treated the deceased with cruelty, which

has ultimately driven her to commit suicide and, therefore, the conviction and the sentences, as detailed supra came to be recorded. Hence, the present appeal.

5. The defence of the appellant was that in-fact, no amount was given in dowry. There was no unlawful demand of money. PW4 – Bhaskar is a political leader of the village. He had exercised influence on the father of the deceased to marry the deceased with the appellant as against the wishes of his rest of the family members. In-fact, on the date of death of the deceased, PW3- Meenabai, his wife and the sister of the deceased had already gone to Ladsavangi to her parents home. In the circumstances, the deceased all alone went to the house of PW4 – Bhaskar. Thereafter, PW4 – Bhaskar closed the door. Mother of the appellant was all along following the deceased. Thereafter, the mother of the appellant i.e. original accused no.3 questioned the deceased about her behaviour. Thereupon, the deceased without giving any answer went in the field for sowing cotton and after sometime, she returned to the house and complained of stomach pain and went to bed. When accused no.2 – Eknath returned to the house, the accused no.3 asked him

to make arrangement for bullock-cart to take the deceased to the hospital. On the way to the hospital however the deceased died in the bullock-cart itself. PW4 – Bhaskar however being an influential person, managed to frame a false case by arranging for false witnesses. Hence, he claimed acquittal.

6. Mr. S.G. Ladda, learned counsel for the appellant took me through the evidence and submits that the learned Additional Sessions Judge brushed aside the substantial dents made in the prosecution case during the cross-examination of the witnesses. He further submitted that under the strain of cross-examination, it was deposed that an amount of Rs.12,000/-, allegedly paid to the appellant was merely a hand-loan. Further as against the prosecution case that "some amount" was again asked by the appellant for the expenses of Court case. The amount has been specified by the witnesses in their evidence sometime at Rs.6000/- and sometime at Rs.8000/-. The evidence also would suggest that no dowry was paid in the marriage. He also points towards the fair conduct of the appellant in approaching the Police Station and filing the report of the death of the

deceased. In the circumstances, he submits that the appeal be allowed.

7. On the other hand, learned A.P.P. Mr. P.N. Muley, took me through the evidence on record, the reasoning of the learned Additional Sessions Judge and submits that the prosecution has proved its case beyond reasonable doubt and, hence, no interference in the impugned judgment and order is required.

8. On the basis of this material, following points arise for my determination:-

I) Whether the prosecution has proved that on 21/7/1997 at village Shahu Takali, Tq. Kannad, Dist. Aurnagabad, the deceased met with suicidal death ?

II) Whether the prosecution has proved that for the period from 1995 till 21/7/1997, the appellant had subjected the deceased to cruelty for unlawful demand of money at village Shahu Takali ?

III) Whether the prosecution has proved that the present appellant has abetted the commission of suicide of deceased Shila ?

My findings to all the above points are in the negative. The appeal is therefore allowed for the reasons to follow.

R E A S O N S

9. Death of the deceased due to organo phosphorous poison has been satisfactorily proved by PW9 – Dr. Sanjay Deshpande, the then Medical Officer of Primary Health Center, Nachanwel as well as the chemical analysis report of the viscera at Exhibit 36. The issue, however, is as to whether, it was a case of suicidal death. There is no direct evidence on this issue and, therefore, the same would depend on the appreciation of other evidence regarding the alleged cruelty leading to the death of the deceased.

10. As regards the complaints of the deceased during her co-habitation with the appellant, we have the statements of the complainant PW1 – Madan, his mother PW2 – Godavaribai, his sister – PW3 – Meenabai and his brother-in-law i.e. husband of Meenabai, namely, PW4 –

Bhaskar Shelke. As regards the specific incident dated 3/7/1997, besides the evidence of PW4, we have the statement of PW5 – Ramdas, PW6 – Pandurang coupled with statement of PW7 – Hari.

11. The evidence of PW1 to PW4 would show that PW4 – Bhaskar had married to PW3 – Meenabai about 2-3 years prior to the marriage of deceased Shila with the appellant. PW4 – Bhaskar was earlier married having one daughter and two sons from the said marriage. Thereafter, PW3 – Meenabai was married with PW4 – Bhaskar. Both these wives resided together for 2-3 years and, thereafter, the first wife of PW4 – Bhaskar left him. PW4 – Bhaskar during the relevant period was the leader of Shivsena, a political party at the village.

. The parental family of deceased – Shila was poor having only three acres of dry crop land and, therefore, they used to maintain themselves by carrying labour work. Though, the family of PW4 – Bhaskar is somewhat affluent, no dowry was given to PW4 – Bhaskar while marrying with PW3 – Meenabai.

12. Admittedly, the marriage of the appellant with the deceased is also the second marriage. It was admitted by the witnesses that there was age difference of 10-15 years between the age of the appellant and the deceased and the deceased was required to look after his three children from the first marriage. The witnesses also admitted that they were not ready for settlement of the marriage of deceased – Shila with the appellant but due to the insistence of PW4 – Bhaskar, who prevailed over the father of the deceased – Shila, the marriage was performed. PW1 – Madan, the brother of the deceased admits that in their community, dowry is never paid to a person, who enters in the marriage for the second time. Appellant – Bibhishan admittedly was serving as a temporary watchman with the Forest Department and was not able to maintain his family properly on agricultural income. His father was suffering from paralysis. PW1 – Madan admits that deceased Shila was good looking and an unmarried suitable boy could have been found for settling her marriage with him, however, due to the insistence of PW4 – Bhaskar, the family did not refuse the proposal of the present appellant.

13. In this scenario, while the FIR as well as the examination of the prosecution witnesses is to the effect that there was ill-treatment to the deceased for the unlawful demand of Rs.12,000/-; during cross-examination, they admitted that it was asked as a hand-loan by the appellant. This non-disclosure of the transaction would certainly cast doubt on the prosecution case of the unlawful demand of money or payment of dowry in the background, as detailed supra.

. There is also much variance regarding payment of Rs.12000/-. While PW4 – Bhaskar deposed that he paid the amount of Rs.12000/- to the appellant in presence of PW1 – Madan, the brother of the deceased, according to PW1 – Madan, PW4 – Bhaskar has given guarantee for payment of the said amount and later-on PW4 – Bhaskar paid the said amount to the appellant.

14. As regards the second demand, the FIR at Exhibit 18 speaks about "certain amount". This "certain amount" has been crystallized into Rs.6000/- by PW1 – Madan in the witness box and at Rs.8000/- by his mother PW2 – Godavaribai. Statement recorded by the Police of

PW2 – Godavaribai, however, is silent about this figure.

15. Any letters sent by the deceased to PW1 – Madan are not forming part of the chargesheet. PW1 – Madan however admitted that whichever letters were received by his family members from deceased – Shila, they were with the message of happy married life.

16. The learned Additional Sessions Judge generally adverted to their statements and found that the evidence would show that there was demand of money. The learned Additional Sessions Judge had not appreciated this material on record and had remarked that the evidence would show that there was some inconsistency about the payment. The learned Additional Sessions Judge failed to appreciate that all these witnesses were the relatives of the deceased and, therefore, their evidence required a closer scrutiny.

17. As regards the next set of evidence, we have the evidence of PW4 – Bhaskar and PW 5 to PW 7, the residents of the same village where the appellant as well as PW4 – Bhaskar reside.

. The evidence of these witnesses would show that about three weeks prior to the death of the deceased and more particularly, on 3/7/1997, as deposed to by PW6 – Pandurang, there was physical violence against the deceased. This attack, according to all these witnesses was not for unlawful demand of money but on the allegation of the appellant that the deceased did not use to properly treat her step daughter and son and was not behaving properly with the parents. According to these witnesses, the appellant has hit the head of the deceased with a grinding stone and, therefore, there was swelling to her temporal region and the deceased reached the house of PW4 – Bhaskar challenging him as to why he had arranged marriage with the appellant. Therefore, PW4 – Bhaskar went to the house of the appellant and the deceased to mediate but the appellant picked quarrel.

. Thus, it was a serious incident. As per the prosecution case, PW3 – Meenabai, the wife of PW4 – Bhaskar and the sister of PW1 – Madan was not at her matrimonial home but at the house of the complainant PW1 – Madan on the date of the death of the deceased. She returned with PW1 – Madan, PW2 – Godavaribai and other

relatives to village Shahu Takali upon receiving the information of the death of the deceased in the early morning of 21/7/1997. The FIR came to be filed by PW1 – Madan on 22/7/1997 at 5:45 pm. Still, this incident dated 3/7/1997 is conspicuously absent though the said FIR contains the general statement that the deceased used to narrate about her ill-treatment to PW3 – Meenabai and PW 4 – Bhaskar. This again is despite the admission of PW1 – Madan that the FIR was filed by him after deliberation with his family members and after keeping silence in presence of the Police for about 12 hours, though they were present in the village for drawing the panchanamas and sending the dead body for post-mortem examination.

18. Mr. Ladda points towards the exaggerations made by these prosecution witnesses beyond the prosecution case. PW2 – Godavaribai, the mother of the deceased has deposed that the accused no.3 i.e. mother of the appellant used to cause burn injuries to deceased Shila and was not giving food to her. She further deposed that even after payment of Rs.12000/-, the harassment was not reduced as against the contents of the FIR that

the harassment was reduced after the said payment.

19. In this set of affair, PW5 – Ramdas the village of Takli Shahu deposed that PW4 – Bhaskar had called him about 7-8 days prior to the death of deceased – Shila to his house. At that time, deceased Shila told that she was beaten by the appellant in the last night and she was hit a grinding stone on her head. He found swelling on her head. Therefore, he with PW4 and one Sakahari Shelke reached the house of the appellant. They tried to give understanding to the appellant. He however challenged that the deceased being his wife, he would even kill her and when deceased Shila took a suitcase to go to her parents, the accused snatched the same and hit the same to the head of the deceased. Thereafter, he gave 3-4 slaps in which the witness mediated.

. During cross-examination, he admitted that he being in the business of selling animals, he purchased a pair of bullocks from the father of the appellant for Rs.7000/- and paid Rs.4000/- in cash and, thereafter, the said father asked him to pay the remaining amount of Rs.3000/-. He however denied that over the said

transaction, the quarrel had arisen and, therefore, PW4 – Bhaskar had set up him as a witness. Certain other motive was suggested to this witness. The same however was denied by him. However, the very fact that PW4 – Bhaskar thought it fit to call this witness to his house when deceased Shila came to his house, would speak about the relations between PW4 – Bhaskar and this witness.

20. PW6 – Pandurang has deposed that he was a chance witness. While he was on his duty of collection of house taxes, he saw crowd outside the house of the appellant on 3/7/1997. He went inside the house. PW4 – Bhaskar and other witnesses were asking all the accused not to harass and beat the deceased. However, the incident as stated by PW5 has occurred in his presence. During cross-examination, he initially admitted that for the first time in the Court, he was saying about the said incident. Later-on, he resiled from the said statement. He further warded off the questions regarding the fraction in the village by saying that he did not remember as to whether somebody from the relative of the appellant has contested the Gram Panchayat election or shown ignorance regarding the

relations between some of those group members. Lastly, he again deposed that for the first time in the Court, he told about the incident of hitting of suitcase by the appellant on the head of the deceased. He went on to say that the Police had never come to him and, therefore, there was no occasion for recording his statement. Further, though earlier he has refused to subscribe to any fact of groupism in the village, he later-on admitted that the group of PW4 – Bhaskar and his relatives i.e. Sarpanch Sakahari Shelke has influence on the Gram Panchayat and so he is required to act as per their instructions.

21. PW7 – Hari Kaduba Shelke has generally deposed that since the appellant resides in front of his house, he knew that there used to be quarrel between the appellant and the deceased and that all the accused were beating the deceased. During cross-examination, he deposed that he contested the Gram Panchayat election from the same ward where the accused resided but was defeated by 22 votes. He however denied that accused no. 2 i.e. father of the present appellant helped the opposite party and, therefore, he was deposing falsely

against the accused persons. He however admitted that PW4 – Bhaskar is his relative and since he heard the sound of weeping of the deceased from the house, he inferred that the deceased was beaten by all the accused.

22. The learned Additional Sessions Judge while appreciating the evidence of these villagers, did not advert to all the above facts, as detailed supra but remarked that in their evidence, there is little bit of inconsistency regarding the period of evidence but on material parts, they have fully supported the prosecution case. As the defence has suggested to PW7 that the deceased was weeping due to stomach pain, according to the learned Additional Sessions Judge, the defence has indirectly admitted that the deceased – Shila was weeping and crying in the house and the same must have been due to the beating to her.

23. The learned Additional Sessions Judge thereafter adverted to the defence that the deceased was caught red-handed while having illicit relations with PW4 – Bhaskar. Except the suggestion given to the

relevant witnesses, there is nothing on record to probabalize the said defence. The learned Additional Sessions Judge has observed that if really the deceased was caught red-handed by accused no.3 i.e. mother of the appellant, she would not have allowed the deceased in the house. The learned Additional Sessions Judge however failed to appreciate the conduct of accused no.3 that she waited for the male members to return to the house, who were away at that time. She further has stated that she asked the deceased about her behaviour and character but the deceased without answering, went to the field and thereafter returned complaining the stomach pain and thereafter died. Besides this, the failure to probabalize the defence would not have any bearing on the appreciation of evidence on record and the prosecution is required to prove its case beyond the reasonable doubt.

24. Taking into consideration all these facts, as detailed supra, in my view, the prosecution has failed to prove its case beyond reasonable doubt. In the result, the following order:-

25. The Appeal is hereby allowed.

26. The impugned judgment and order of the learned Additional Sessions Judge, Aurangabad, convicting the present appellant for the offences punishable under section 498-A and 306 of the Indian Penal Code is hereby set aside.

. Instead, the appellant is acquitted of both the offences.

27. Fine amount, if any, deposited by the appellant, be refunded to him, after a period of sixty (60) days from the date of this judgment.

28. Bail bonds of the appellant shall stand cancelled.

29. Criminal Appeal stands disposed of accordingly.

[M.T. JOSHI]
JUDGE

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