

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 171 OF 1995

- 1 Sidharam Shivsharnayya Hiremath.
Age : 30 years.
- 2 Nilavvabai Shivsharnayya Hiremath.
Age 50 years.
Both R/o. 632/33, Shukrawar Peth,
Solapur. ... Appellants.

Versus

State of Maharashtra. ... Respondent.

WITH

SUO MOTO APPLICATION NO. 3 OF 1995
IN
CRIMINAL APPEAL NO. 171 OF 1995

The Court on its own motion. ... Applicant.

Versus

- 1 Sidharam Shivsharnayya Hiremath.
- 2 Nilavvabai Shivsharnayya Hiremath.
Both R/o. 632/33, Shukrawar Peth,
Solapur. ... Respondents.

Mr. M.V. Thorat, advocate for appellants in Cr. Appeal No. 171/95
and for respondents in Suo Moto Application No. 3/95.

Ms. Trupti Khamkar, advocate appointed as amicus curiae.

Mrs. A.A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : DECEMBER 11, 2015

JUDGMENT :

1 The Appellants/Respondents herein are original accused Nos. 1 and 2 in Sessions Case No. 111 of 1994. The learned Additional Sessions Judge, Solapur vide Judgment and Order dated 16/2/1995 was pleased to convict the accused for offence punishable under Section 498A and 304 B read with Section 34 of the Indian Penal Code. The appellants/Respondents are sentenced to suffer R.I. for one year each and to pay fine of Rs. 500/- each i.d. R.I. for 2 months for offence punishable under Section 498A read with Section 34 of the Indian Penal Code. They are also sentenced to suffer R.I. for 3 years each and to pay a fine of Rs. 500/- each i.d. to suffer R.I. for 2 months for offence punishable under Section 304-B read with Section 34 of the Indian Penal Code. Hence, the appellant has filed Criminal Appeal No. 171 of 1995.

2 At the time of admission of the Appeal, this Court had taken Suo Moto cognizance of insufficiency of the sentence awarded to the appellants and had issued notice of enhancement, which is registered as Suo Moto Application No. 3 of 1995, which is being heard alongwith Criminal Appeal No. 171 of 1995.

3 Such of the facts necessary for the decision of the appeal and Suo Moto Application are as follows :

- (i) The appellant No. 1 happens to be son of the appellant No.2. The appellant No. 1 was married to Renuka 3 and half years prior to 27th March, 1994. At the time of marriage, the appellants had received dowry of Rs. 5000/- from the parents and brother of Renuka.
- (ii) After marriage, Renuka was treated properly for few days. Thereafter, she was being ill-treated on the ground that the in-laws of Renuka and other relatives were not given proper honour at the time of marriage. Renuka had conceived pregnancy, but she had suffered mis-carriage. After few days she had conceived and delivered a male

child in her maternal house. The mother-in-law of Renuka i.e. the appellant No. 2 was insisting upon the parents and brother of Renuka to give one Tola gold ring. Brother of Renuka had informed that due to poverty, he would not be able to fulfill their demand and on the said count Renuka was ill-treated.

(iii) After that the accused persons sent Renuka alone for her delivery to the maternal house. She had given birth to a male child. After 3 months the appellant No. 2 had taken Renuka to maternal house. Her brother had been to the house of the appellants to visit Renuka. At that time, he was informed that she was meted with physical and mental treatment at the hands of the accused persons. They are coercing her to fetch gold ring. Upon failure of her brother to give gold ring, it was decided by the appellants that Renuka would not be sent to her maternal house.

(iv) On 26th March, 1994 at about 5 a.m. C.M.O. Dr. Jadhav informed the police Station that a burnt patient namely Renuka is admitted in Civil Hospital. The Police had been to the hospital to record the statement. At that time, the appellant No. 2 was present

alongwith burnt patient. The police had enquired with the doctor about the state of patient and they were informed that she was not in position to give statement. Renuka had sustained 100% burn injuries. Upon enquiry by the police, the accused No. 2/appellant No. 2 had informed the police that Renuka had sustained accidental burns while cooking food on the stove. That Renuka succumbed to the burn injuries on 26th March, 1994.

(v) On 27th March, 1994 the brother of Renuka lodged a report at Sadar Bazar Police Station alleging therein that Renuka was harassed and ill-treated in her matrimonial house. That there was a demand of one tola gold ring. On 26th March, 1994 he had received a telegram informing him that "Renuka is serious." He and his brother Basayya had rushed to Civil Hospital, Solapur. They were informed that she has succumbed to burn injuries on 26th March, 1994 at about 3 p.m. He had specifically contended that being fed up with the ill-treatment meted out to her, she had committed suicide in the lavatory. On the basis of his report, Crime No. 106 of 1994 was registered at Sadar

Bazar Police Station against the accused for offence punishable under Section 498A, 306 read with Section 34 of the Indian Penal Code.

(vi) After completion of investigation, the charge-sheet was filed. Case was committed to the Court of Sessions which is registered as Sessions Case No. 111 of 1994.

(vii) The prosecution examined as many as 6 witnesses to bring home the guilt of the accused. The defence of the accused is of total denial. Besides, defence is made that Renuka had sustained accidental burns.

4 P.W. 1 is Chandrasherayya Amrayya Ganachari, who happens to be brother of the deceased Renuka. P.W. 1 was working as coolie. He has deposed before the Court in consonance with the FIR lodged by him. He has specifically deposed before the Court that he had been to the house of Renuka. She had informed that he should give one tola gold ring to her husband or else there is danger to her life. He had informed to his sister that it is not possible for him to give one

tola gold ring to accused No. 1 and that he would make an attempt to give the same later on.

5 In his examination-in-chief, he has stated that after the death of Renuka, he had learnt that her husband had set her on fire. It is pertinent to note that charge is framed under Section 304B, 306 and 498A of Indian Penal Code. The witness has not been shattered in the cross-examination and his substantive evidence is sufficient to hold that he had been informed by Renuka that she was being ill-treated and harassed at the hands of the accused.

6 P.W.2 Kalappa Doulappa Bansode is police constable attached to Sadar Bazar Police Station. He has deposed before the Court that on 26th March, 1994 at about 5 p.m. Dr. Jadhav had informed about the burnt patient Renuka. He had taken station diary entry. He had been to Civil Hospital, Solapur. He has seen that the patient had sustained burn injuries and a lady was sitting near her. The said lady had disclosed her name as Nilawwabai and had disclosed her identity

as the mother-in-law of burnt patient. She had informed P.W. 2 that Renuka had sustained burn injuries while preparing food on stove. He had accordingly informed the Police Station, Solapur. He has further deposed that on the same day afternoon at about 3 p.m. she had succumbed to burn injuries. He had attempted to record the statement, but the doctor had informed him that the patient is not in a position to give statement. P.W. 2 has identified the accused No. 2 as the lady, who had disclosed her name as Nilawwabai.

7 The evidence adduced in the examination-in-chief has not been seriously challenged in the cross-examination. Exh. 19 is the police station diary. Entry No. 85/1994 which clearly indicates that the accused No. 2 Nilawwabai had informed that her daughter-in-law Renuka had sustained burn injuries while she was cooking food on the stove in the house.

8 P.W. 3 Shashikala Suresh Gavali is the neighbour of accused persons. She is a co-tenant residing with the accused persons in the

house owned by Gajkumar Shaha. P.W. 3 had resiled from the earlier statement and witness is declared as hostile by the prosecution.

9 P.W. 4 Basayya is the brother of deceased Renuka. He has corroborated with the substantive evidence of P.W. 1.

10 P.W.5 Vijaysing Rajput was working as PSO in Fouzdar Chawadi Police Station on 26th March, 1994. After he had been informed about the death of Renuka, he had registered A.D. No. 25 of 1994.

11 P.W. 6 Lingappa Dhasade was officiating as API in Foujdar Chawadi Police Station at the relevant time. He has deposed before the Court that he was given the copy of entry No. 85 of 1994. He had rushed to Civil Hospital and has seen the injured patient. He has found that the injured was seriously injured by burns and she was not in a position to talk. He had immediately rushed to the spot of incident and had conducted the spot panchanama on the same day,

which is at Exh. 6. During the course of the day, he had received an information that the injured had succumbed to the burn injuries. He has also registered accidental death case. He had then conducted inquest panchanama in A.D. enquiry, which is at Exh. 7. P.W. 1 has approached the police station on 27th March, 1994. On the basis of which C.R. No. 106/94 was registered. He had arrested the accused on 28th March, 1994.

12 It is pertinent to note that he has deposed before the court that he had not recorded the statement of brothers of deceased Renuka in A.D. enquiry and that he had only recorded statement of only in-laws of the deceased Renuka in the A.D. enquiry. He has also admitted in the cross-examination that the papers of A.D. Enquiry were not attached to the case papers of the matter. He has proved the omissions and contradictions in the evidence of P.W.1 to the extend that P.W. 1 had not disclosed to the police that Renuka was set on fire by the accused persons and her father-in-law. It is an improvement in the substantive evidence.

13 In the statement under Section 313 (2) of Code of Criminal Procedure, 1973 the accused persons specifically stated that the brother of Renuka had not visited her after she returned from delivery. According to the accused persons, Renuka had died of an accidental death and that they are being falsely implicated.

14 Upon perusal of the records, it is clear that the prosecution has also not brought on record the medical case papers i.e. the case papers of Civil Hospital to show the admission of the patient and the treatment meted out to her to verify as to whether Renuka was conscious and oriented at the time of her admission.

15 P.W.4 Basayya, who happens to be brother of the deceased has deposed before the Court that his statement was not recorded by the police. However, on perusal of the list of witnesses annexed to the charge-sheet, it is clear that his statement was indeed recorded by the police in the course of investigation.

16 As far as Accused No. 1 is concerned, there is no cogent and convincing evidence to show that Renuka was ill-treated or harassed by him. The clinching evidence against the accused No. 2 is that she was in the hospital alongwith patient and upon enquiry, she had disclosed that Renuka had sustained burn injuries while cooking on stove. In fact, the record would clearly indicate that the incident has occurred in the lavatory. It is not that the door of the lavatory was closed from inside, as the spot panchanama does not indicate that the door of the lavatory was broken. The accused No. 2 has not only explained the circumstances under which Renuka had sustained burn injuries, but has raised false plea. This is a case of circumstantial evidence. The chain of circumstances has to be established by the prosecution. However, in the present case, the accused has raised false plea. Deceased had died within 7 years of marriage. Death was due to burn injuries and therefore, the accused were charged with an offence punishable under Section 304B of the Indian Penal Code. The

sterling testimony of P.W. 1 would show that Renuka was ill-treated and harassed at the hands of the accused No. 2

17 Section 304 B reads thus :

“[304B. 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 purpose 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.]”

For the purpose of Section 304 B of the Indian Penal Code, the provisions of Section 2 of the Dowry Prohibition Act, 1961 has to be considered. Section 2 of the Dowry Prohibition Act, 1961 reads thus :

“2 Definition of ‘dowry’. —In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or
(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before ¹ [or any time after the marriage] ² [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies. ³ [***] Explanation II.— The expression “valuable security” has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).”

18 In the present case, it is clear that there was demand of one tola gold ring. The deceased had died due to burns not in normal circumstances. Therefore, an inference under Section 113-B of the Indian Evidence Act deserves to be drawn. In such circumstances, the accused may be acquitted under Section 304 B of the Indian Penal Code. However, they can be held liable to offence punishable under Section 4 of the Dowry Prohibition Act. Hence, the appeal deserves to be partly allowed. The accused No. 1 deserves to be acquitted.

19 Learned Counsel for the appellants submits that the appellant No. 2 is woman and she is more than 70 years old. It is prayed that at this ripe age, she could not be taken into custody.

20 Taking into consideration the facts of the case and evidence on record and submissions advanced, the appellant No. 2 deserves to be convicted for an offence punishable under Section 498A of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act. She is sentenced to the period already undergone. She is further sentenced to a fine of Rs. 20000/- under Section 498A of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act. Learned Sessions Judge shall send compliance report. The accused shall deposit the fine amount within 8 weeks from the date of release. Upon non-compliance of the deposition of fine, the accused No. 2 shall be taken into custody.

21 Before parting with the Judgment, this Court appreciate Advocate Ms. Trupti Khamkar, who was initially appointed as amicus curiae in the absence of advocate Shri M.V. Thorat. Today, she has efficiently assisted the Court as well as Advocate Shri Thorat. The

professional fees to be paid to the advocate appointed as amicus curriae is Rs. 1,000/- to be paid within 3 months.

22 Hence, following order is passed :

CRIMINAL APPEAL NO. 171 OF 1995

ORDER

- (i) Appeal is partly allowed.
- (ii) Conviction recorded against the appellant no. 1 by Sessions Judge, Solapur in Sessions Case No. 111 of 1994 is hereby quashed and set aside.
- (iii) Appellant No. 1 is acquitted of all the charges levelled against him.
- (iv) Fine amount, if paid by the appellant No. 1 be refunded.
- (v) Bail bonds of appellant No. 1 stand cancelled.
- (vi) Appellant no. 2 is convicted for offence punishable under Section 4 of Dowry Prohibition Act.
- (vii) Appellant no. 2 is sentenced to the substantive sentence already undergone.

(viii) Appellant no. 2 is sentenced to fine of Rs. 20,000/- to be deposited before Sessions Court within 8 weeks from the date of her release.

(ix) Appellant Nos. 1 and 2 be released forthwith, if not required in any other offence.

(x) Appeal stands disposed of.

CRIMINAL SUO MOTO APPLICATION NO. 3 OF 1995

ORDER

(i) Suo Moto Application is partly allowed.

(ii) The Respondent No. 1/accused No. 1 is acquitted of all the charges levelled against him.

(iii) Fine amount, if paid by the Respondent No. 1/accused No. 1 be refunded.

(iv) The respondent No. 2/accused No. 2 is convicted for an offence punishable under Section 498A of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act. She is sentenced to the substantive sentence already undergone. She is further sentenced to

a fine of Rs. 20000/- under Section 498A of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act.

(v) The respondent No. 2/accused No. 2 is acquitted of the charge under Section 304B of the Indian Penal Code.

(vi) The respondent No. 2/accused no. 2 shall deposit the fine amount before the Sessions Court, Solapur within 8 weeks from the date of release.

(vii) Learned Sessions Judge, Solapur shall sent compliance report. Upon non-compliance of the deposition of fine, the accused No. 2 shall be taken into custody.

(viii) The respondent Nos. 1 and 2 be released forthwith, if not required in any other offence.

(ix) The Suo Moto Application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)