

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 358 OF 2001

- 1) Devendra S/o. Suresh Suvernakar,
Age : 29 years, Occ. Business,
R/o. Gangapur, Dist. Aurangabad.
- 2) Sau. Vijayabai W/o Suresh Suvernakar,
Age : 50 years, Occu. Household,
R/o. As above. (Appeal abated). .. Appellants

Vs.

The State of Maharashtra. .. Respondent

.....
Mr Rajendra S. Deshmukh, Advocate for the appellants
Mr R. B. Bagul, APP for respondent/State
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CORAM : M.T. JOSHI, J.
DATE : 22/02/2016

ORAL JUDGMENT:-

. The present appellant No. 1 along with deceased appellant No. 2 were convicted by the learned I Adhoc Additional Sessions Judge, Aurangabad for the offences punishable under Sections 498A and 304B read with 34 of the Indian Penal Code. 3rd of the accused namely; Suresh i.e. father of the present appellant No. 1 was acquitted from the said offences.

2. Appellant No. 1 — Devendra and deceased appellant No. 2 were sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 1,000/- for the offence punishable under Section 498A read with Section 34 of the Indian Penal Code. They were further sentenced to suffer rigorous imprisonment for seven years for the offence punishable under Section 304A read with 34 of the Indian Penal Code.

. During pendency of this appeal, appellant No. 2 Vijayabai is died and, therefore, said appeal came to be abated as against her.

3. The appellant No. 1 Devendra is the husband of deceased Jayashree. Rest of the accused are his parents. Deceased Jayashree was married to appellant No. 1 Devendra on 1.6.1998 at Malegaon i.e. the native place of her father P.W.1 Purshottam Hiranman Visapute. According to the complainant, it was agreed that an amount of Rs. 21,000/- towards the dowry would be paid. However, at the relevant time the complainant could manage only an amount of Rs. 15,000/- and balance amount of Rs. 6,000/- was promised to be paid later on. After the marriage, the deceased cohabited with the

appellant/accused at Gangapur. The appellant is a goldsmith by profession and has a shop at Gangapur whereas; his father i.e. deceased-appellant No. 2 used to operate a fair price shop from the house. After marriage, the deceased was brought to the house of the complainant at Malegaon for Rakhi Pournima festival. During her stay with the complainant, she told her parents and relatives that the accused persons used to make a demand of balance amount of dowry of Rs. 6,000/-, and over the said demand all of them used to nag her.

. Later on, the complainant went to Gangapur to fetch his daughter for Diwali festival. At that time also, the deceased made similar complaint about the demand of dowry amount by appellant No. 1 and his family members. She further added that appellant – Devendra used to beat her on the same count. The complainant therefore gave understanding to the accused persons and took the deceased to Malegaon. After the festival was over, the appellant – Devendra had come to Malegaon to take the deceased to Gangapur. At that time, he was angry with complainant and his family members and without talking to anybody, took away the deceased to Gangapur.

. In the month of January – 1999, when the complainant made phone call to the deceased, she was weeping over phone and told him that her brother-in-law was behaving like a lunatic and her husband and his parents are blaming her saying she is inauspicious. They also said that, brother-in-law Mahendra had danced in the marriage of the deceased-Jayashri and appellant – Devendra and since then he started behaving like a lunatic. On that count, the appellant – Mahendra had beaten her on 2-3 occasions. She had therefore asked her father to take her back to Malegaon. In this situation, the complainant went to Gangapur in order to attend a marriage ceremony of cousin sister-in-law of deceased Jayashri. At that time also, deceased-Jayashri requested the complainant to take her back with him, however, the complainant did not pay any heed to her.

. In the circumstances, on 19.2.1999, the complainant was required to attend the rites of the tenth day of death of grand mother-in-law of the deceased – Jayashri at Rahuri. Deceased also met him there. At that time also, she complained about the demand of the dowry amount and the blame of the lunacy

of Mahendra. All the accused used to ill-treat her. The appellant used to beat her. Anyhow, the complainant gave understanding to the deceased and promised her to take back to Malegaon. At that time, he made a phone call to deceased appellant No. 3 - Suresh, he however told that the complainant should not come to his house.

. In this situation, on 5.3.1999, the complainant and his family members received a phone call that in the night between 5.3.1999 and 6.3.1999 the deceased had suffered burn injuries and was admitted to a private hospital at Aurangabad. Therefore, on 6.3.1999 when they reached to Aurangabad, they found that the deceased has died due to burn injuries.

. In the circumstances, F.I.R. at Exh. 12 came to be filed on 10.3.1999.

4. P.W.5 - Shri. Muley, Sr. P.S.I. of Gangapur Police Station had conducted the investigation in the crime. He had already conducted investigation in the accidental death whereunder panchanama of the spot of occurrence and inquest panchanama etc were recorded.

The dead body was already examined by the Medical Officer P.W. 6 - Dr. Sunil P. Tapase of Government Medical Hospital at Aurangabad. He had found that the deceased had died due to 100% burn injuries suffered by her.

5. Before the learned Sessions Judge, in all six witnesses were examined besides complainant - P.W.1, Somnath, uncle of the deceased and Shobha, mother of the deceased. All these witnesses deposed before the prosecution.

6. According to all the accused, no dowry was fixed or paid in the marriage. There was no question of having any balance of dowry amount or demand of the same. However, due to sudden death of Jayashri, belated concocted story came to be created and false F.I.R. after a period of 5-6 days from the day of death of deceased came to be registered with the help of press reporter and an advocate. Therefore, merely on suspicion false statements are made by the witnesses. The learned Sessions Judge however, found that their statements are reliable and in the circumstances, the conviction came to be recorded.

7. Mr R. S. Deshmukh, learned counsel for appellant/accused, took me through the record. He submits that, the record would clearly show that, the complainant - P.W. 1 entered into the witness box with some written notes on his palm. The letters sent by him or his relatives to the appellant or his relatives during the cohabitation would not show that there was any ill-treatment or even there was any demand of balance amount of any dowry. He further submits as against the prosecution case that the FIR could not be filed promptly due to the mental instability of the complainant or his relatives, the cross-examination would clearly show that there was an ample opportunity to file F.I.R. and in fact, during the accidental death inquiry, the statement of these witnesses were recorded by the Investigating Officer. These statements are on record, however, Investigating Officer has admitted that none of the statements had disclosed commission of such offence. In the circumstances, he submits that the learned Sessions Judge ought to have extended the benefit of reasonable doubt in the case.

. On the other hand, learned APP submits that, the letters were written within a period of 2-3 months of the marriage and therefore since ill-treatment was not aggravated during the period, no reference of demand of dowry could be found in any of the letter. The filing of the F.I.R. belatedly is clearly explained. The statement of witnesses recorded during the accidental death inquiry might have been only regarding the accidental death and therefore no crime could have been registered. In the circumstances, he submits that no interference in the order of the learned Sessions Judge is warranted.

. On the basis of this material, following points arise for my consideration:

POINTS

- (I) Whether the prosecution has proved that, in the night between 5.3.1999 and 6.3.1999 at Gangapur, the deceased set herself on fire and committed the suicide?
- (II) Whether the prosecution has proved that the present appellant along with the deceased

appellant No. 2 in furtherance of a common intention had subjected the deceased Jayashri to cruelty over a demand of Rs. 6,000/- as a balance of dowry amount?

(III) Whether the prosecution has further proved that the present appellant along with deceased appellant No. 2 had abetted the deceased to commit suicide?

. My findings to point No. 1 is in affirmative and points No. 2 and 3 are in negative. The appeal is therefore allowed and appellant No. 1 is acquitted from the offences referred to above for the reasons to follow:

REASONS

8. The examination-in-chief of P.W. Nos. 1 to 3 would show that, there were four occasions for the deceased to make complaint of ill-treatment at the hands of appellant No. 1 and his family members. Their statement would show that the complainant is working as a Goldsmith on daily wages while the present family of the accused is having two shops at Gangapur. One of the

shop is fair price shop and another was the jewelery shop. It was further admitted that, the accused persons knew the poor financial condition of the complainant.

9. In this background, still there may be a possibility that the greedy person may seek dowry and for remaining part of the dowry, there can be a ill-treatment to the wife. The prominent facts in the case reflect that, though the complainant came to know about the death of deceased Jayashri on 6.3.1999 in the night, he lodged F.I.R. on 10.03.1999. He (P.W. 1) as well as his brother Somnath, uncle of the deceased were cross-examined on this issue.

. Their cross-examination would show that the dead body was taken to Gangapur at the house of the accused persons. The funeral was performed there. Thereafter meal was supplied to the complainant and others and they returned back. For a period of two days thereafter, the complainant did not find it fit to file F.I.R.

. It is an admitted fact that, during the inquiry in the accidental death case, the statement of the

complainant and other witnesses were recorded. The complainant was specific in saying that, though he was angry with the accused persons because of the death of his daughter, at the relevant time he did not think to file F.I.R. and involve the accused persons in the case.

. The witness further admitted that, on 10.3.1999 he along with a press reporter namely; Kailas Mali and Advocate Shri. Satish Kajwadkar went to Gangapur from Malegaon where F.I.R. was filed. He further admitted that, the press reporter Mr Mali had published certain news items in a newspaper about the rape on a particular lady. Due to publication of such news, the lady had committed suicide and in that connection, the said reporter was arrested and was behind the bars for a period of 2½ months.

10. The statement of P.W.2 - Shobha, mother of the deceased, is full of omission and improvements which was brought on record during the cross-examination. According to her, she had stated to the Investigating Officer that, when Jayashri came to her house for Rakhi Pournima, at that time she complained that her mother-in-law was calling her as bad woman as since in the

marriage of deceased, her another son Mahendra had turned lunatic. This statement, however, is absent from the statement recorded by the police.

. Her another statement in the examination-in-chief that deceased had once told her that, her husband and mother-in-law used to beat her, does not find place in the earlier statement recorded by the police. She has also made certain additions in the examination-in-chief regarding the talk on phone with deceased-Jayashri.

. P.W. 3 - Somnath has also made material improvements in his examination-in-chief. He had additionally deposed that, during Rakhi Pournima festival, deceased had made a complaint of beating by the present appellant Devendra over the balance amount of dowry. He disowned the statement in the F.I.R. that from Malegaon to Aurangabad he as well as his wife accompanied the complainant and his family members. This improvement is material to show that, all the family members were at Aurangabad and, therefore, a complaint could have been filed. He also admitted that the dead body was sent to Gangapur where the funeral had

taken place. His statement was also recorded by the Investigating Officer on 6.3.1999 and thereafter on 10.3.1999.

11. Though certain letters sent by the complainant or his family members were pressed into service by the defence, those letters were written just within 2-3 months of the solemnization of marriage and, therefore, naturally there could not have been any reference with respect to the issues raised.

12. The learned APP submits that, the complainant was in disturbed mind at the relevant time and therefore F.I.R. could not be filed as soon as he came to know about the incident. He further submitted that, as the complainant is from Malegaon, Dist. Nashik and the complainant was required to file the complaint at Gangapur only, where the incident took place. As regards earlier opportunity to make the complaint to the Investigating Officer, learned APP submits that, the statement of the relatives were recorded by the Investigating Officer only concerning the accidental death case and therefore the complainant or his

relatives might not have made the statement regarding ill-treatment.

13. He further took me through the statement of P.W.4 - Shamsunder Madanlal Dhoot and the panchanama of spot of occurrence at Exh. 16. Though panchanama would show that, the deceased had suffered burn injuries in the lane of the house and thereafter she entered the house, a can having capacity of 19 litres containing kerosene was found in the lane. In the circumstances, he submits that when the incident had occurred in the midnight, the possibility of having any accident is clearly ruled out. He, therefore, submits that once that possibility is ruled out, the only alternative would be of commission of suicide. In the circumstances, the learned Sessions Judge has rightly drawn the presumption against the accused/appellant.

14. However, considering the rival contentions, the prominent fact is that, P.W.1 - complainant was not confident about the facts as he entered the witness box with certain written notes on his palm, the learned Sessions Judge was required to direct him to wash the

hand and thereafter depose in the witness box. The delay in lodging FIR is not satisfactorily explained. In view of the admission of the complainant and other witnesses, there are vast omissions made by prosecution witnesses. Time and again there is a reference in the F.I.R. about lunacy of Mahendra. According to prosecution, the deceased was being ill-treated due to the lunatic behaviour of Mahendra. Taking into consideration all these facts, in my opinion, the charge that deceased-Jayashri had subjected cruelty over the demand of balance amount of dowry is not proved beyond reasonable doubt. Hence, the following order.

ORDER

(I) The appeal is hereby allowed.

(II) The impugned judgment and order dated 05.09.2001 passed in Sessions Case No. 159 of 1999 by the learned I Adhoc Additional Sessions Judge, Aurangabad, convicting and sentencing the appellant for the offence punishable under Sections 498A, 304B read with 34 of the Indian Penal Code is hereby quashed and set aside.

Instead the appellant is acquitted from the said offences.

(III) Bail bonds of the appellant shall stand cancelled.

(IV) Fine amount, if any, deposited by the appellant be refunded to him after a period of ten weeks.

[M.T. JOSHI]
JUDGE

sgp