

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 707 OF 1995

1. Maruti Anappa Kurade
2. Sou. Sushila Anappa Kurade
3. Anappa Maruti Kurade

.....Appellants

V/s.

The State of Maharashtra

....Respondent

Ms. Swapna Kode Advocate for Appellants
Mrs. A. A. Mane APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : JANUARY 19, 2016.

JUDGMENT:

Appellants herein are convicted for offence punishable under section 304 (B) r/w 34 of Indian Penal Code and sentenced to suffer rigorous imprisonment for 7 years and fine of Rs. 5,000/- in default to suffer further rigorous imprisonment for two years, they are also convicted for offence punishable under section 498 (A) r/w 34 of Indian Penal Code and sentenced to suffer rigorous imprisonment for 3 years each and fine of Rs. 1,000/- in default to suffer further rigorous imprisonment for one

year by 4th Additional Sessions Judge, Kolhapur in Sessions Case No. 180 of 1994 vide Judgment and Order dated 07/12/1995. Hence, this appeal.

2) Such of the facts necessary for the decision of this appeal are as follows.

3) Appellant no. 1 herein was married to Anita on 09/05/1992. That Anita was residing in the joint family. On 20/03/1994, Anita had died in her matrimonial house as she has sustained 100% burn injuries. Husband of Anita had approached the police station and lodged a report about the death of his wife. He had informed the police that it was a Bazar day. He had been to Bazar on 20/03/1994. At the Bazar a boy living in the neighbourhood named Sidhu had informed him that his wife Anita had sustained burn injuries while she was igniting the stove. He rushed to his house. He had noticed that people had gathered near his house. His wife was already dead. He therefore, approached the police station and lodged a report at the police station about the death of Anita. On the basis of his report, A.D. No. 10 of 1994 was registered at Jaysingpur Police Station. Investigation was set in motion.

Spot panchanama, inquest panchanama was recorded in A.D. enquiry. statements of neighbours were also recorded in A.D. enquiry. It was learnt that a message has been sent to the relatives of the deceased. On the next day, i.e. on 21/03/1994, parents and relatives of Anita had reached Jaysingpur in the afternoon at about 2.45 p.m. The dead body was given in their custody after the post mortem was over and thereafter her brother Vijay P.W. 1 lodged a report at the police station that Anita was harassed by her husband and other relatives on account of demand of dowry. At a stage when she could not take ill-treatment anymore, she had committed suicide. Accused no. 1 i.e. present appellant no. 1 while lodging A.D. report had specifically stated that she had sustained accidental burns, however, at that stage except spot panchanama, there was nothing on record to remotely indicate that Anita must have died accidental death. Charge-sheet was filed, case was committed to the court of sessions and registered as Sessions Case No. 180 of 1994. Prosecution examined as many as 11 witnesses to bring home the guilt of the accused. It is a matter of record that accused had not filed any discharge application at that stage.

4) P. W. 1 Vijay Salunke happens to be brother of the deceased and first informant. He has stated before the court that Anita was subjected to cruelty and ill-treatment since there was a failure on the part of her parents to fulfill the demands of the accused. He has further deposed that on several occasions earlier, Anita had not just complained about the harassment and ill-treatment meted out to her on account of demand of golden chain and cash of Rs. 5000/- but she had come to their house and had personally informed them. The plight of the brother can be seen from the tenor of his evidence that due to economic stringency they were fully aware that they could not fulfill the demand of the accused and therefore had convinced Anita that the conditions would improve gradually. She was being sent back to the house of the accused with a hope that the situation would change. Anita had informed her family member frequently about the harassment and ill-treatment. He has further deposed that accused persons used to beat Anita and had also driven her out of their house. She was again convinced and then her parents, uncle and other relatives had sent her to her matrimonial abode. Thereafter, the couple

i.e. Anita and her husband had visited the house of P.W. 1 Vijay and had resided there for a period of 15 days and then returned to Jaysingpur. P.W. 1 has stated that they had subsequently learnt that couple had not returned to Jaysingpur. Anita had then sent a letter to her parents informing them that she is being sent for work in a boarding. She had also stated in the letter that harassment on account of demand of golden chain and Rs. 5000/- had continued. That in-laws of Anita as well as her husband had been to the house of P.W. 1 and requested them to send Anita to the matrimonial home and that they should forget and forgive the past.

5) The step mother-in-law of Anita had dropped her in her maternal house. On 16/03/1994, original accused no. 2 had categorically informed the relatives of Anita that she would not be taken in her matrimonial abode unless the demand of Rs. 5000/- and golden chain is fulfilled. Anita had again informed P.W. 1 and her relatives that she was being physically assaulted and that she could not take the torture anymore. That on 16/03/1994, P.W. 1 and his friend had taken Anita to Jaysingpur and had left her in the company of her husband. On

20/03/1994, Anita had died in her matrimonial house in a suspicious circumstances. It is elicited in the cross-examination that P.W. 1 had not informed the police that Anita was being sent to a boarding school for working at Satara. Certain inherent omissions are elicited in the cross-examination, e.g. an omission mentioned that Anita was being sent to work in a boarding school. It is admitted that Anita has sustained burn injuries on the whole body. A suggestion is given in the cross-examination that Anita had disclosed to P.W. 1 that she had sustained accidental burns. The said omission is unfounded since it is specifically stated in the examination-in-chief that at the relevant time, nobody was at home and one person had peeped from the roof and found Anita in a burning condition. Mother of the deceased Anita has also reiterated the allegations levelled by P.W. 1. P.W. 1 has proved the contents of F.I.R. on the basis of which crime no. 14 of 1994 was registered at Jaysingpur Police Station. Inquest panchanama was recorded in A.D. enquiry no. 10 of 1994. Post mortem notes are admitted by the accused under section 294 of Code of Criminal Procedure, 1973. There is no doubt that wife of appellant no. 1 had died in her matrimonial home due to

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burn injuries. Upon perusal of spot panchanama, it is clear that the theory advanced by the accused that it is an accidental death cannot be substantiated as the floor had turned blackish.

6) P.W. 2 Ramchandra Pawar is paternal uncle of deceased Anita. He was present at the time of settlement of marriage. On more than two occasions, Anita was brought to her matrimonial house by her mother. Letters written by Anita were disposed of by her mother for the reasons best known to her. P.W. 2 has categorically stated that on the day of the incident, they had been to Bazar. Ladies from the village i.e. Solabai and others had met P.W. 2 at the village. They had disclosed to P.W. 2 that Anita has got burnt. They have seen the dead body at about 5.00 p.m. in the evening. After conducting post mortem, F.I.R. was lodged. Witness has not been shattered on material particulars by the defence.

7) P.W. 3 happens to be mother of deceased. She has also reiterated the allegations levelled by P.W. 1 & 2 and therefore, same need not be considered. It is sufficient to observed that accused has not been able to make dent in the substantive evidence recorded by way of examination-in-chief.

8) Learned counsel for the appellants submits that PW. 1 to 3 are interested witnesses in as much as they happen to be close relatives of the deceased.

9) No doubt it is a case of circumstantial evidence. The charge levelled against the appellant is that of section 304 (B) of Indian Penal Code. Section 113 (b) of Indian Evidence Act contemplates as follows:

“When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death”.

10) In the present case all the witnesses have categorically stated that there was a demand of dowry by the accused persons. Defence of the accused is that she had sustained accidental burns and it was not a case of suicide, however since the accused/appellant no. 1 was not present at home, it would not be open for him to assign any cause of death and therefore, the said submission would be unwarranted. The death of a married woman in her matrimonial house within 7 years of marriage

would be taken into consideration for drawing a presumption that it is a case of dowry death. In such cases, it is a statutory mandate that the court shall draw a presumption that it is a case of dowry death unless and until it is proved otherwise, the court shall hold that a present had caused dowry death of a woman where it has been brought on record that soon before her death there was a demand for dowry.

11) In the present case, evidence of Investigating Officer would show that till lodging of F.I.R. in the A.D. enquiry, there was nothing on record to even remotely indicate that deceased was being harassed and ill-treated on account of demand of dowry.

12) Learned counsel for the appellants submits that this is sufficient to hold that presumption would stand rebutted since there was no evidence on record to show that she was being harassed and ill-treated on account of demand of dowry soon before her death.

13) It is a matter of record that all the witnesses have categorically stated that there was a demand of dowry for the peaceful continuance of marriage. Accused/appellants have made no efforts to bring any evidence otherwise. The allegations if proved would make the accused

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liable for offence punishable under section 3 & 4 of Dowry Prohibition Act.

14) Section 304 (B) of Indian Penal Code contemplates as follows:

“[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 purposes 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.]”.

15) There is nothing on record to remotely indicate that it is a case of accidental death as she has succumbed to the burn injuries on the spot.

16) Learned APP submits that in the case of accidental death, the

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deceased would have definitely raised hue and cry and she would have made every attempt to save herself as pitcher of water was just nearby and she had made no efforts to save herself. According to learned APP, it can be safely inferred that Anita could not take the torture, harassment, cruelty and ill-treatment at the hands of the accused any more and therefore has committed suicide or has died in suspicious circumstances due to burn injuries.

17) In view of this, it can be safely said that conviction of the accused under section 498 (A) r/w 34 of Indian Penal Code is justified. Appeal is of the year 1995. Appeal is taken up for final hearing after 20 years. There is no substantive evidence on record to indicate that appellants were not convinced with the poverty of the relatives of the deceased Anita and therefore, they given up the demand after 16/03/1994 and therefore, it cannot be definitely said that she had committed suicide only because of demand of dowry. However, taking into consideration the substantive evidence of P.W. 1, 2 & 3, accused/appellants can be convicted for offence punishable under section 3 & 4 of the Dowry Prohibition Act.

18) Section 4 of Dowry Prohibition Act contemplates as follows:

“If any person demands directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.”

19) Prosecution has proved that there was a demand of dowry and harassment to the victim, however, prosecution has failed to prove that the demand for dowry was so aggravated that victim has died because of harassment on account of demand of dowry and therefore, it can be safely inferred that accused committed offence under the provisions of Dowry Prohibition Act and they deserve to be acquitted for offence punishable under section 304 (B) of Indian Penal Code.

20) Learned counsel for the appellants submits that appellants are poor and are facing economic stringency and he therefore prays for

reduction in fine amount.

21) Since the appeal is of the year 1995 and is being heard after a lapse of 20 years, sentence of fine also needs to be modified.

ORDER

- (i) Appeal is partly allowed.
- (ii) Conviction of appellants for offence punishable under section 498 (A) r/w 34 of Indian Penal Code is maintained. They are sentenced to the period already undergone.
- (iii) Appellants are convicted for offence punishable under section 3 & 4 of Dowry Prohibition Act. They are sentenced to fine of Rs. 5000/- each. In default to the fine amount, appellants shall undergo rigorous imprisonment for one month.
- (iv) Amount of fine is to be paid within 8 weeks from 01/02/2016. Upon failure to deposit fine amount, prosecution would be at liberty to file application before Sessions Judge to issue non-bailable warrant to the accused/appellants.
- (v) Appellants are acquitted of offence punishable under section 304 (B) of Indian Penal Code.

- (vi) Bail bonds of the appellants stand cancelled.
- (vii) Appeal stands disposed of.

(SMT. SADHANA S. JADHAV, J.)