

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.208 OF 2004

The State of Maharashtra
through M.I.D.C. Police Station
(Cr. No.I-25/2003)

... APPELLANT
(Original Complainant)

VERSUS

Babasaheb Raosaheb Waykar
Age 26 years, R/o Nimbalk
Tal. Nagar, Dist. Ahmednagar

... RESPONDENT
(Original Accused)

.....
Shri M.M. Nerlikar, A.P.P. for appellant/ State
Shri B.N. Palve, Advocate for respondent
.....

CORAM: SUNIL K. KOTWAL, J.

Date of reserving judgment : 6th February, 2018

Date of pronouncing judgment : 12th February, 2018

JUDGMENT :

1. By this appeal, the State of Maharashtra has challenged the vires of judgment and order of acquittal of accused No.1, passed by learned Assistant Sessions Judge, Ahmednagar in Sessions Case No.53/2003, dated 1.12.2003, whereby all accused were acquitted of the offences punishable under Sections 498-A, 306 and 201 read with Section 34 of the Indian Penal Code. Respondent is original accused No.1.

Original accused No.3 died during the trial and proceedings against him is abated.

2. The prosecution case in brief is that, the deceased married accused No.1 on 24.5.2002 and thereafter cohabited with the accused persons at Nimbalik. Accused Nos.2 and 3 are parents of accused No.1. They lived together. After marriage, for about 2/3 months, cohabitation of the deceased was normal. However, thereafter accused persons started ill-treatment to the deceased for demand of dowry amount of Rs.7000/-. The deceased was fed up with the said ill-treatment and, therefore, on 30.1.2003, at about 11.30 p.m., at the residence of the accused, deceased committed suicide by setting herself ablaze. Initially, in the injured condition, the deceased was rushed to Civil Hospital, Ahmednagar by accused No.1. Dr. Santosh (P.W.9), who was the then C.M.O. on duty, started medical treatment to deceased and intimated police about the injured deceased. In the result, A.S.I. Shaikh Chand (P.W.5) rushed to Civil Hospital, Ahmednagar and recorded dying declaration (Exh.34) of the deceased in presence of Medical Officer (P.W.9), in between 1.30 a.m. to 2.00 a.m. on 31.1.2003. On the basis of that dying declaration, Crime No.25/2003 was registered at M.I.D.C. Police Station, Ahmednagar. On 31.1.2003, at about 12.300 noon hours, the deceased succumbed to her injuries.

After carrying out investigation, charge sheet was submitted against the accused Nos.1 to 3 for the offence punishable under Sections 498-A, 306 read with Section 34 of the Indian Penal Code in the Court of Judicial Magistrate, First Class, Ahmednagar.

3. Offence punishable under Section 306 of the Indian Penal Code being exclusively triable by Court of Sessions, this case came to be committed to the Court of Sessions, Ahmednagar. Charge Exh.11 was framed against the accused persons for the offence punishable under Sections 306, 498-A read with Section 34 of the Indian Penal Code.

4. In support of the prosecution case, total 9 witnesses were examined. Zumber Dalavi (P.W.1) is father, and Ramdas (P.W.3) is brother of the deceased. Venubai Pansare (P.W.4) is neighbour of parents of the deceased. Sachin Gaikwad (P.W.2) is the panch witness and Dr. Sunil Pokharna (P.W.6) is the Medical Officer, Civil Hospital, Ahmednagar who performed autopsy examination of the dead body of the deceased and submitted post mortem report Exh.37. Shaikh Rauf Abdul Rahman (P.W.7) is the person who conducted part of the investigation and prepared spot panchanama Exh.27 of the spot of the incident. Chandrakant Mhaske (P.W.8), P.S.I., M.I.D.C. Police Station, Ahmednagar is the investigating officer who carried out further investigation and filed charge sheet against the accused. Dr.

Santosh Khamkar (P.W.9) is the Medical Officer, Civil Hospital, Ahmednagar in whose presence first dying declaration (Exh.34) was recorded.

5. Learned A.P.P. for the State submits that, when the injured was admitted in the hospital, at the earliest her first dying declaration (Exh.34) was recorded, which speaks that, on account of doubting the character by accused No.1 and due to beating to deceased by accused No.1, she committed suicide. He placed reliance on the oral dying declarations of deceased in presence of her parental relatives (P.W.1, P.W.3 and P.W.5).

6. According to learned A.P.P., on the basis of these dying declarations, prosecution can establish that, on account of continuous demand of dowry amount of Rs.7000/-, the deceased was subjected to ill-treatment by all the accused persons. Even accused No.1 doubted the character of the deceased, which resulted into her death. According to learned A.P.P., this evidence is sufficient to convict at least the accused No.1 for the offence punishable under Sections 498-A and 306 of the Indian Penal Code.

7. In reply, Shri B.N. Palve, learned counsel for the respondent submitted that, even if dying declaration Exh.34 is admitted as it is, it indicates that, the deceased committed

suicide in the hit of anger. Therefore, on the basis of Exh.34, even accused No.1 cannot be convicted for any offence.

8. His next submission is that, the oral dying declarations brought on record by Zumber (P.W.1), Ramdas (P.W.3) and Venubai (P.W.4) are vague and totally unreliable and cannot be accepted to base the conviction of the accused. Learned counsel for the respondent did not dispute the preparation of spot panchanama Exh.27 and cause of death of the deceased as proved by Dr. Sunil Pokharna (P.W.6).

9. In view of these submissions of respective parties, the fate of this case revolves upon the reliability of written dying declaration Exh.34 and oral disclosure by deceased before her father Zumber (P.W.1), brother Ramdas (P.W.3) and neighbour Venubai (P.W.4).

10. After going through the evidence of Dr. Santosh (P.W.9) and A.S.I. Shaikh Yusuf (P.W.5), it emerges that, the first dying declaration Exh.34 was recorded by A.S.I. Shaikh Yusuf (P.W.5) when deceased was in fit condition to give her statement. Nothing could be elicited from the cross-examination of these both witnesses to create doubt about fit condition of deceased to give the statement.

11. However, this important piece of evidence i.e. dying

declaration Exh.34 speaks that, on 30.1.2003 at about 11.00 to 11.30 p.m., accused No.1 asked the deceased whether she had any affair with any third person and thereafter the accused had beaten the deceased. The dying declaration reflects that, due to this act of the accused No.1, the deceased got annoyed and enraged, and she poured kerosene on her body and set herself ablaze.

12. It is to be noted that, in the dying declaration Exh.34, the deceased nowhere blamed accused Nos.2 and 3 (in-laws). Most important aspect to be noted is that, in this dying declaration, the deceased did not utter a single word regarding harassment to her at the hands of even accused No.1 for demand of dowry or any other valuable article. Even in her dying declaration, the deceased nowhere uttered that due to harassment at the hands of accused or due to doubt raised by accused No.1 about her character, her condition was so miserable or intolerable that she was constrained to commit suicide. Therefore, even if the dying declaration Exh.34 is accepted as it is, it is not sufficient to make out a case under Section 498-A of the Indian Penal Code or even under Section 306 of the Indian Penal Code, for the simple reason that, single incident of taking doubt on the character of wife or beating to wife does not amount to compelling the wife or instigating the

wife to commit suicide. If the deceased had committed suicide in a fit of anger due to her sensitive nature, even accused No.1 cannot be blamed. I hold that, the dying declaration Exh.34 falls short to establish guilt of even accused No.1 for the offence punishable under Section 498-A or 306 of the Indian Penal Code.

13. Even if the evidence of Zumber (P.W.1), Ramdas (P.W.3) and Venubai (P.W.4) is considered carefully, it emerges that, the testimony of Zumber (P.W.1) and Venubai (P.W.4) regarding the so called ill-treatment is absolutely vague. These both witnesses have not made it clear exactly in which manner the deceased was harassed by the accused persons. Only Ramdas (P.W.3) deposed that accused No.1 used to assault and accused Nos.2 and 3 used to abuse and kept the deceased starving for demand of balance dowry amount of Rs.7000/-. According to these witnesses, at the time of settlement of marriage, the total dowry amount of Rs.10,000/- was agreed and amount of only Rs.3000/- was paid, and arrears of Rs.7000/- was due from parents of the deceased.

14. However, cat has come out of the bag when Zumber (P.W.1) was subjected to searching cross-examination by learned defence counsel. He has admitted in clear words that, due to weak financial condition of parents of bride and groom, they were not in a position to bear marriage expenses of their daughter and

son independently and, therefore, marriage of deceased, her brother Ramdas and Shivaji, son of maternal uncle of deceased were performed at one venue and it was settled by maternal uncle Govardhan. He also admitted that, those marriages were performed peacefully. In view of this admission, it has become clear that, at the time of marriage of deceased and her brother Ramdas (P.W.3), the financial condition of Zumber (P.W.1) was very weak. Therefore, it is very hard to accept that he would promise to pay dowry of Rs.10,000/- to the accused persons or he would be in a position to pay amount of Rs.3000/- to the accused persons towards partial payment of dowry. Thus, obviously, the version of these witnesses regarding ill-treatment to the deceased at the hands of accused for payment of dowry appears to be doubtful.

15. Another important aspect is that, from the cross-examination of Zumber (P.W.1), it emerges that, after marriage, all along the deceased was reluctant to cohabit with the accused No.1 for the reason that, she disliked him as accused No.1 was patient of leucoderma. Even on the date of incident, Zumber (P.W.1) was called by accused No.2 to his house and when Zumber (P.W.1) went to the house of accused persons, he was informed that the deceased was not ready to stay in the house of accused persons. Therefore, Zumber (P.W.1) convinced the

deceased to stay at the house of accused. This conduct of the deceased till the date of incident creates probability that the deceased committed suicide as she was not willing to cohabit with the accused No.1, but from time to time due to insistence by her parents, she was compelled to reside at the house of accused against her wishes. Considering the probability of this reason for commission of suicide by deceased, I hold that, the learned trial Court has rightly taken a possible view and extended the benefit of doubt in favour of the accused persons while acquitting them. My conclusion is that, this appeal being devoid of merits, deserves to be dismissed. Hence, I pass the following order:

ORDER

- (I) Criminal Appeal No.208/2004 is dismissed.
- (II) Bail bonds and surety bonds of the respondent shall stand cancelled.

(SUNIL K. KOTWAL)
JUDGE

fmp/