

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO.253/2012

Rampratap s/o Mansinha (Mansingh)
Rajput, aged 30 years, Occ. Pvt. Service,
R/o Inder colliery No.6, Kanhan,
Dist. Nagpur.

.....APPELLANT

...V E R S U S...

The State of Maharashtra through
Police Station Officer, P.S. Kanhan,
Dist. Nagpur.

...RESPONDENT

Mr. A. V. Gupta, Senior Advocate assisted by Ku. Yesheshvini
Ojha, Advocate for appellant.
Mr. M. K. Pathan, A.P.P. for respondent-State

CORAM:- V. M. DESHPANDE, J.
DATED:- 03.02.2020

ORAL JUDGMENT

1. This appeal is directed against judgment and order of conviction in Sessions Trial No.290/2009 passed by learned Additional Sessions Judge, Nagpur on 18.06.2012.

Though learned Judge of trial Court acquitted accused nos. 2 to 4, the appellant, who was accused no.1 in the trial, stands convicted for the offence punishable under Section 498-A, 304-B of the Indian Penal Code (IPC) and Section 4 of the Dowry

Prohibition Act. For the offence punishable under Section 498-A of the IPC, the sentence imposed was of three years and payment of fine of Rs.5,000/-, in default of payment of fine, to suffer rigorous imprisonment for 7 days. For the offence punishable under Section 304-B of the IPC, the appellant was sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.10,000/-, in default, to suffer further rigorous imprisonment for six months. For the offence punishable under Section 4 of the Dowry Prohibition Act, appellant was sentenced to suffer simple imprisonment for two months and to pay a fine of Rs.2,000/-, in default, to suffer rigorous imprisonment for seven days.

2. The appellant challenged his conviction. Though, original accused nos. 2 to 4 were acquitted of all the charges, the State chose not to prefer appeal against their acquittal.

3. The prosecution case, as it is disclosed during the course of trial is as under:

On the intimation received in the police station about death of Smt. Rina at Police Station, Kanhan, proceeding under Section 174 of the Code of Criminal Procedure were registered

vide Marg No.28/2008 by Head Constable Hansraj Wankhade. The inquiry was entrusted to ASI Ramdas Nanhe (PW7). On receipt of case diary of said Marg, he visited the spot of incident situated at Inder Colony Khadan No.6. He prepared spot panchanama (Exh.-58) in presence of panchas. He also conducted inquest over dead body and prepared inquest panchanama (Exh.-91-C). The spot of incident was house of the deceased. While conducting spot panchanama, ASI Nanhe (PW7) collected two toe silver rings at bathroom situated near the spot of incident. Similarly, he also seized carpet, pillows, etc. by preparing seizure memo (Exh.-61). He, thereafter, sent dead body for post mortem at General Hospital, Kamptee under requisition (Exh.-92). Thereafter, he handed over documents to PSI Ramkrishna Meshram (PW8).

After receipt of investigation papers by PSI Meshram (PW8), Bhimsingh Thakur (PW1) lodged report (Exh.55) on 16.07.2008. On its receipt, PSI Meshram (PW8) registered the offence vide Crime No.143/2008 for the offence punishable under Sections 302, 498-A read with Section 34 of the IPC and under Section 3 and 4 of the Dowry Prohibition Act against Rampratap alias Raju Mansingh Rajput, appellant-accused no.1, Mansingh

Ramnarayansingh Rajput-accused no.2, Kamlabai w/o Mansingh Rajput-accused no.3. Printed FIR is at Exh.-56.

During the investigation, PSI Meshram (PW8) seized clothes from appellant Rampratap which were produced by him in the police station. He also seized clothes of other accused persons under seizure memos (Exhs.60, 62 and 94). During investigation, he found vehicle No. MH-04/A-7083. During Police Custody Remand, the appellant gave statement under Section 27 of the Indian Evidence Act that he hit the head of deceased on the wall and he will show the spot. The admissible portion is at Exh.95. Accordingly, the applicant shown the spot of incident. The said spot was house of appellant. He prepared spot panchanama (Exh.96) of said spot. He also recorded statements of witnesses. After completion of other usual investigation, he submitted charge-sheet before the Court.

4. The charge-sheet was presented for the offence punishable under Sections 302, 498-A, 304-B, read with Section 34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act against four accused. Since the offence was exclusively triable by the Court of Sessions, the case was committed to Sessions Court.

The learned Additional Sessions Judge framed charge (Exh.-20) against appellant and three other accused for offence punishable under Sections 498-A, 302, 304-B read with Section 34 of the IPC and under Sections 3 and 4 of the Dowry Prohibition Act.

5. In order to bring home guilt of the accused persons, in all 10 witnesses were examined. After a full dress trial, learned Additional Sessions Judge, though acquitted original accused nos. 2 to 4, convicted the appellant, as narrated in opening paragraph of this judgment. Hence, this appeal.

6. Heard Mr. Avinash Gupta, learned Senior Counsel for the appellant and Mr. M. K. Pathan, learned A.P.P. for the State, in extenso. They took me through notes of evidence and various documents duly proved during the course of trial. They prayed for the respective reliefs in their favour.

7. Bhimsingh Thakur (PW1) who lodged oral report (Exh.-55) is father of deceased Rina alias Mohini. Her marriage was performed with the appellant on 16.02.2008. Accused nos. 2 to 4 (acquitted) are the father, mother and elder sister of

appellant. As per the report, the deceased used to reside in her matrimonial house with them. As per the report, at the time of marriage, appellant demanded a motorcycle and at that time, Rs.31,000/- was given in cash, one gold chain, etc. However, the motorcycle could not be given for want of funds and therefore the appellant and other accused persons were nourishing grudge, are allegations in the FIR. On that, the deceased used to be subjected to cruelty.

8. It is also stated in the report that on 09.06.2008, Rina delivered a baby girl. Cesarean was required to be performed on her. Prior to 15 days of cesarean, appellant took the deceased to his house and thereafter again ill-treatment was there. According to the FIR, on 15.07.2008, from the hospital, deceased and the appellant came to the house of Bhimsingh and at that time, the appellant refused to have breakfast and gave threats to deceased. On 16.07.2008, a phone call was received from house of the appellant that the deceased died of snake biting. At last, it is stated in the FIR that appellant and accused persons dashed the head of the deceased on the wall, due to which she died.

9. During trial, following ten witnesses were examined by the prosecution:

- “(i) Bhimsingh Thakur (PW1) father of deceased.
- (ii) Mewalal Sahare (PW2), pancha on panchanama, seizure of clothes of accused and seizure of four wheeler vehicle.
- (iii) Bhawna Gautam (PW3), friend of deceased.
- (iv) Dr. Mrs. Sandhya Dange (PW4), doctor who conducted post mortem.
- (v) Sau. Kusumbai Bais (PW5), mother of the deceased,
- (vi) Chandrakala Jamdar (PW6), neighbour.
- (vii) ASI Ramdas Nanhe (PW7), who conducted inquiry of Murg.
- (viii) API Ramkrishna Meshram (PW8), who conducted investigation and filed charge-sheet.
- (ix) Digambar Hargode (PW9), pancha who turned hostile.
- (x) Dr. Shamim Akhtar (PW10), who was one of doctors while conducting the post mortem.”

Though appellant was charged for offence punishable under Section 302 of the IPC, he was acquitted of said charge and no appeal is filed even against appellant by the State. Further, appellant was not convicted for any of the bodily offences.

10. Marriage of deceased was performed with appellant on 16.02.2008 and she died on 16.07.2008. Therefore presumption under Section 113-B of the Indian Evidence Act was drawn against

appellant while convicting him for the offence punishable under Section 304-B of the IPC.

What was the nature of death:

11. The appellant and other accused persons were charged for the offence committed under Section 302 of the IPC. Thus, in trial, it was prosecution case that death of Rina was homicidal one. However, said charge was not proved. It is not the case of prosecution that due to ill treatment and fed up with the said, Rina committed suicide. As observed, appellant is convicted for the offence punishable under Section 304-B of the IPC on the strength of statutory presumption under Section 113-B of the Indian Evidence Act.

12. To reach to nature of death, there is evidence of two doctors, Dr. Sandhya (PW4) and Dr. Shamim (PW10) on record.

On 16.07.2008, Dr. Shamim was attached to Sub District Hospital at Kamptee as Medical Officer when he received a requisition from Police Station, Kanhan for conducting post mortem on the dead body of Rina. On the said day, at 4.45 p.m., he received dead body. He, along with one Dr. Sonune and

Dr.Sandhya Dange (PW4) conducted the post mortem. It has started at 05.00 p.m. and ended at 07.00 p.m. The doctor found five external injuries which are mentioned in column no. 17 of the post mortem report. Those are as under:

- a] *Contusion lateral to lateral angle of right eye in right temporal region;*
- b] *Abrasion on right cheek approximately 2 Cm lateral to angle of mouth;*
- c] *Circular contusions three in numbers on upper 1/3rd of left arm on lateral aspect size 6 Cm X 5 Cm might be caused by pinching;*
- d] *Circular contusion on upper 1/3rd of left arm on lateral aspect size 3 Cm X 2 Cm might be caused by pinching.*
- E] *Linear abrasion two in number on right side of back. In infra scapular region obliquely in nature. Blood clot present.*

Final post mortem report is at Exh.-76. Prior to that, two provisional post mortem reports were given. Those are at Exhs.-77 and 78 and those are proved by Dr. Sandhya Dange. Exh.-78 reads thus:

*“No Internal Injuries found [signs of Head injury]
Hence, opinion for cause of death kept Reserved &
Viscera preserved for Chemical analysis.”*

Exhs.77, another provisional post mortem report reads as under:

*“Internal Injuries,
Signs of head injury +ht. Approx. 50 ml of Blood clot
in left Parieto occipital region.
Viscera preserved.”*

In final post mortem, cause of death is due to head injury.

13. During the cross-examination, Dr. Dange (PW4), stated that provisional post mortem certificate was given on the request of police. She did state from witness box that from the provisional post mortem report, she did not mention cause of death. She did state that though it was not necessary to issue two provisional post mortem reports, two post mortem reports were issued.

In her cross-examination, following pointed question was put to her:

Question: What is the reason to issue Exh.-78?

Answer: Issued Exh.-78 only on police demand.

In her cross-examination, she has admitted as under:

“It is true that at the first, I had mentioned word “No” in the statement no internal injuries found. It is true to say that, subsequently, I have scored the word “No”.

This doctor from the witness box stated that she has conducted more than 1000 post mortems.

14. Evidence of Dr. Shamim (PW10) would show that he issued provisional post mortem certificate (Exh.-78) as per the request letter (Exh.-118) received from Police Station, Kanhan. He deposed that as per Exh.-118, only one provisional post mortem report was sought by police official. He also admitted his signature on Exh.-78. During the course of cross-examination, Dr.Shamim (PW10) stated as under:

“It is true to say that in Exh.-78, initially I had wrote down that no internal injuries found and then after word “No” was struck off. It is true to say that I had interpolated the word “signs of Head injuries” in Exh.-78. It is true to say that while scoring any letter in official document, initials needs to be put. It is true to say that Exh.-78 no initials are made in the scoring of word”no” as well as addition of word “signs”.

In the backdrop of aforesaid admissions given by these two doctors, serious doubt is created in respect of internal injuries on the head.

Insofar as other injuries are concerned, both doctors admitted that colour of injury plays an important role to ascertain its age i.e. “Fresh” or “Old”. Dr. Dange (PW4) has admitted that the colour of injury and age of injury is not mentioned in column no. 17 of post mortem report (Exh.-76).

15. The defence of the appellant, as it could be seen from his written statement when he was examined under Section 313 of the Code of Criminal Procedure is that on the day of incident at about 10.00 O'clock in morning, she went for attending nature's call and subsequently she was found in unconscious state near toilet. At that time, froth was coming out from her mouth and since toilet was situated in the agriculture field and as it was a rainy season, he thought that she died due to snake bite. Dr. Shamim Akhtar (PW10) did state in his cross-examination that since froth was coming, he kept his opinion reserved though he found there were signs of injury on her person. In the cross-examination of Dr. Shamim (PW10), it is stated as under:

33] I have not find any blood in the froth. It is true to say that in a epileptic attack frothing is common feature. I know tonic clonic seizure is one of the form of epileptic attack. It is true to say that tonic seizure is followed by clonic seizure. It is true to say that in a tonic phase, patience looses his consciousness. It is true to say that in a clonic phase persons muscles starts contract and relaxed rapidly causing convulsions and body shakes uncontrollable. It is not true to say that the patient becomes violent.

34] It is true to say that when the froth is coming in air passage, the wind pipe is choked. It is true to say that, because of such chocking, person may die.

35] *It is true to say that in this case, I found Lungs and Thorax are full of froth.*

Spot panchanama (Exh.-58) recites that house of the appellant is in agriculture field and two toe rings were found near the toilet.

16. In the light of the aforesaid evidence as discussed, I have no difficulty to record a finding that death of the deceased Rina was purely an accidental one.

Whether Cruelty is Proved:

17. By various decisions, law is well crystallized that mere factum of unnatural death in matrimonial home within seven years of marriage is not sufficient to convict an accused under Sections 304-B and 498-A of the IPC. Presumption under Section 113-B of the Evidence Act can be drawn only when prosecution proves, beyond doubt, that the deceased was subjected to cruelty in connection with dowry demand soon before death.

18. On the point of alleged demand of dowry and cruelty, prosecution has examined four witnesses i.e. Bhimsingh (PW1), Bhawna (PW3), Kusumbai (PW5) and Chandrakala (PW6).

Bhimsingh and Kusumbai are the parents of deceased. Whereas Bhawna is friend and Chandrakala is neighbour of deceased.

19. As per prosecution, there were demands of motorcycle and cash. It is undisputed before this Court that on 20.12.2007, “Sagai” took place and “Tilak” was performed on 01.02.2008 and date of marriage was 16.02.2008.

As per Bhimsingh (PW1), demand of motorcycle by appellant on 02.02.2008, i.e. on next day of Tilak. However, this important aspect is not finding its place in the report (Exh.-55).

20. In the report, Bhimsingh (PW1), father of the deceased has shown his occupation as labour. He, however, required to cut sorry figure for the same as he admitted in his evidence, during the course of cross-examination from the learned counsel for the appellant, that at the time of marriage, he was running a shop of compact discs and he did state as under:

‘हे खरे आहे कि माझे रिपोर्ट वर माझा व्यायसाय हातमजुरी लिहिला आहे. तो चुकीचा आहे.’

He has also admitted that at the time of marriage of his daughter, his economic position was weak and this fact was well within the knowledge of the appellant’s family and their financial

position was much stronger than of his. He also admitted that house of the appellant is situated in his agricultural field and it was well within his knowledge that the appellant was having one motorcycle even before his marriage.

21. As per defence of appellant, his marriage with deceased was a love marriage and the said was opposed by the deceased's parents. Bhimsingh (PW1), in his evidence did state that there was no love affair between appellant and deceased prior to marriage and the deceased was not knowing Rampratap i.e. appellant before her marriage.

22. It is not in dispute that appellant and parents of deceased belonging to Thakur community. This Thakur community is a conservative and conceiving before marriage is treated as bad in the community as it could be seen from the cross-examination of Kusumbai (PW5), mother of the deceased. Her evidence would show that deceased was carrying 5 months' pregnancy at the time of her marriage and after marriage, within four months the deceased delivered full term child.

In the cross-examination, Bhimsingh (PW1), father of deceased did state that after solemnization of Tilak ceremony, he came to know about pregnancy of the deceased. It was disclosed to him by his wife and in fact this fact was made known to him by Mansing, father of the appellant. He also admitted that since the deceased delivered a full grown child within four month of her marriage, the community people used to tease him and his family members. This aspect clearly establishes the defence that his parents were not happy with appellant because of lowering down of their image in the society and therefore taking advantage of the death of their daughter, the parents of the deceased filed false complaint is lodged against him.

The evidence of Bhimsingh (PW1) and Kusumbai (PW5), father and mother of the deceased, in my view, therefore is actuated to rope the appellant in the crime.

23. Chandrakala (PW6), neighbour, though examined by prosecution to prove demand, her evidence on that aspect is found to be an hearsay evidence. This prosecution witness is residing to the next door to Bhimsingh (PW1). From her evidence, it is clear

that she came to Court for depositing along with Bhimsingh (PW1). Her evidence would show that though she claims that there was a torture to the deceased at the hands of the appellant, I am not accepting her evidence because though on the date of incident she had been to the house of Bhimsingh (PW1), she did not state anything to the police about the torture on the said day.

24. Bhawna (PW4), is a friend of the deceased. She claims in her evidence that deceased used to disclose her that her in laws are not good people and they are harassing her on the pretext of non fulfillment of demand of motorbike from her parents by taunting. She admitted that even before marriage, the appellant was owning two motorcycles, one Scorpio car and one tractor. There is nothing in her evidence to show that the statement that the deceased disclosed her about the demands. This Court has already found that the evidence of the parents of the deceased about demand is not inspiring confidence as it is actuated with bad motive to rope in the appellant in the crime. Further, this prosecution witness also came along with father of the deceased in the Court while deposing evidence. Hence, I am not ready to put any importance to her evidence.

25. The appellant and the deceased were belonging to Thakur caste, which is conservative one, the deceased was pregnant of five months even prior to marriage and even after that the appellant performed marriage. For delivery also, she had not been to her parental house and even after death of Rina, undisputedly, her daughter is being taken care of by the appellant himself. These are other factors which support the evidence that appellant and his family members were falsely implicated in crime in respect of the offence punishable under Section 498-A of the IPC, out of vengeance by parents of the deceased.

26. The upshot of the aforesaid discussion leads me to pass the following order.

ORDER

(i) The appeal is allowed.

(ii) Judgment and order dated 18.06.2012, passed by learned Additional Sessions Judge, Nagpur in Sessions Trial No.290/2009 is hereby quashed and set aside.

(iii) Appellant-Rampratap s/o Mansinha (Mansingh) Rajput stands acquitted of the offence punishable under Sections 498-A, 304-B of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

(iv) Bail bonds of the appellant stand cancelled.

JUDGE

kahale