



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 299 OF 2004

1. Vishwanath s/o Manikrao Awachar,
Age 41 years, Occ. Agri.
R/o Karegaon,
Tq. & Dist. Parbhani.
2. Gajanan s/o Vishwanath Awachar,
Age 26 years, Occ. Agri.
R/o as above.
3. Sow. Anjanabai w/o Vishwanath Awachar,
Age 40 years, Occ. Household,
R/o as above.

... Appellants
[Ori. Accused]

versus

The State of Maharashtra
Through P.S.O. Police Station,
New Mondha, Parbhani.

... Respondent

.....
Mr. P. N. Sonpethkar, Advocate for the Appellants.
Mr. K. K. Naik, APP for the Respondent-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

DATED : 10.07.2024

JUDGMENT :

1. Conviction recorded by the 2nd Adhoc Assistant Sessions Judge, Parbhani in Sessions Trial No. 157 of 2003 recording conviction of present appellants for offence punishable under Sections 498-A and 304-B of the Indian Penal Code [IPC], is now taken exception to by filing instant appeal.

FACTS IN BRIEF, LEADING TO TRIAL

2. New Mondha Police Station, Parbhani registered crime on receipt of report from PW4 Apparao, father of deceased Suvarna, who died due to burns. Sum and substance of the complaint Exhibit 26 is that deceased Suvarna was married to accused no.2 Gajanan. There was dowry fixed to the tune of Rs.35,000/-. Part payment was made but for remaining amount of Rs.20,000/-, accused started harassing deceased Suvarna. Whenever she visited father's house, she reported ill-treatment. On 24.05.2003, Suvarna suffered 61% burns and finally succumbed to the same. On report by father, police registered crime bearing no. 89/2003 for offences punishable under Sections 498-A, 306, 304-B r/w 34 of IPC.

On conclusion of investigation, accused husband, father-in-law and mother-in-law were tried vide Sessions Trial No. 157 of 2003. After appreciating oral and documentary evidence, learned trial Judge did not accept the case of prosecution for commission of offence punishable under Section 306 of IPC and acquitted accused from the said charge. However, accused stood convicted for offence punishable under Sections 498-A and 304-B r/w 34 of IPC.

Such judgment and order of conviction is now subject matter of instant appeal before this Court.

SUBMISSIONS

On behalf of the appellants :

3. Learned counsel for the appellants submits that prosecution had miserably failed to establish the charges. According to him, there is no convincing, cogent and reliable evidence in support of dowry, its demand and ill-treatment in consequence to it. He pointed out that none of the prosecution witnesses have elaborated the manner and nature of ill-treatment, nor any instances are quoted. That, there are mere allegations of keeping deceased starved. According to him, there is no evidence as regards cruelty, as contemplated under Section 498-A of IPC.

4. He further pointed out that trial court has already acquitted accused from offence under Section 306 of IPC. However, surprisingly accused are held guilty for commission of offence under Section 304-B of IPC. He emphatically submitted that there is no evidence to show that soon before alleged incidence of burns, Suvarna was subjected to cruelty in the backdrop of any dowry demand. But still conviction is recorded for said offence. According to him, it is against the provisions of law as well as the settled legal position. Hence, for all above reasons, he criticizes the judgment passed by the trial court and seeks indulgence by allowing the appeal.

On behalf of the State :

5. In answer to above, learned APP, while supporting the judgment, pointed out that there is clear and cogent evidence of father, who deposed about dowry demanded by husband and in-laws. That, for unpaid dowry, there was ill-treatment. That, deceased was kept starved and was mentally harassed by repeatedly raising demands. Only because of such demands, according to learned APP, deceased immolated herself. That, there are not one, but two dying declarations. Therefore, prosecution having established from the evidence of father and uncle of deceased, that accused are responsible, learned trial court committed no error in accepting such evidence, and hence he prays not to disturb the findings and conclusion reached at by learned trial court.

EVIDENCE ON RECORD

6. In support of its case, prosecution has examined as many as five witnesses. Their role and status and the sum and substance of their evidence is as under:

PW1 Dr. Rodge is the autopsy surgeon, who conducted postmortem and attributed death due to shock due to extensive burns.

PW2 Uddhav, uncle of deceased, deposed about marriage of his niece with appellant Gajanan in June 2002. That, there was agreement to pay dowry of Rs.55,000/- to the groom. Part amount was paid and his niece went to cohabit with appellant husband and in-laws. They started demanding unpaid dowry and also demanded money for opening shop. They did not give food and kept her starved. Whenever Suvarna came, she reported about above ill-treatment. They got news of she suffering burns.

PW3 Bhagwan Jadhav also stated about marriage and dowry to be fixed to the tune of Rs.55,000/-. He claims to be present at the time of settlement of marriage and then about getting news of Suvarna suffering burns.

PW4 Apparao, father of deceased Suvarna, stated about marriage, dowry fixed and after his daughter went for cohabitation, husband and his parents started ill-treating Suvarna. They demanded Rs.50,000/- to open shop of electric appliances. When his daughter came on the eve of marriage of his son, she reported ill-treatment and starvation and pressing demand of Rs.50,000/-. Later, news was received about burns suffered by her. Therefore, he lodged report Exhibit 26.

PW5 PS Tanhaji Belkunde, Police Officer, who entertained the report Exhibit 26 and registered crime, deposed about all steps taken by him till filing charge-sheet.

7. Defence has also adduced evidence of three witnesses which is as follows :

DW1 ASI Bhagwan Panchange, who is police personnel and who recorded dying declaration, which he identified to be at Exhibit 37.

DW2 Sow. Surekha Patwe, Naib Tahsildar, who recorded dying declaration Exhibit 40.

DW3 ASI Katore, who drew inquest panchanama Exhibit 17, recorded statement of father-in-law (accused no.1) and forwarded report Exhibit 42 to New Mondha Police Station.

ANALYSIS

Charge under Section 498-A IPC

8. As to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark cases of *Giridhar Shankar Tawade v. State of Maharashtra* (2002) 5 SCC 177; *Gurnaib Singh v. State of Punjab* (2013) 7 SCC 108; *State of Andhra Pradesh v. M. Madhusudhan Rao* (2008) 15 SCC 582 ; *Bhaskar Lal Sharma v. Monica* (2009) 10 SCC 604 and *K. Subba Rao v. The State of Telangana* (2018) 14 SCC 452.

9. The undisputed facts are that Suvarna was married to appellant husband on 05.06.2002. Father and uncle, who are crucial witnesses, are both deposing about dowry amount being fixed, part of it being paid and for the unpaid part, they both speak about ill-treatment to Suvarna. What was the ill-treatment, whether it was physical or mental, has not been clarified by the witnesses. Witnesses are not quoting the instances or manner of ill-treatment. General allegations are made that Suvarna was ill-treated. Only aspect which is consistent in their testimony is that, deceased was kept starved. Therefore, as there is no convincing and cogent evidence on the point of cruelty as contemplated under Section 498-A of IPC, mere allegations of ill-treatment without specifying its nature or without quoting instances, cannot be straightway accepted.

On charge of Section 304-B of IPC

10. Learned trial court seems to have already acquitted accused from charge under Section 306 of IPC, however, conviction seems to have been recorded for offence under Section 304-B of IPC, which provision reads as under:

“304-B. 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.”

11. In ***Bansi Lal v. State of Haryana***, (2011) 11 SCC 359, the Hon’ble Apex Court has held that, while considering case under Section 304-B, cruelty has to be proved during close proximity of time of death and it should be continuous and such continuous harassment, physical or mental, by accused, should make life of deceased miserable, which may force her to commit suicide.

12. In ***State of Rajasthan v. Girdhari Lal***, (2013) 15 SCC 269, the Hon’ble Apex court has observed that the period which can come

within the term “soon before” cannot be put within the four corners of time-frame. It is left to the court for its determination depending upon the facts and circumstances of each case. On facts, though in the past there was cruelty and harassment in connection with dowry demand, yet there was no evidence on record to come to a definite conclusion that soon before her death the cruelty and harassment which the deceased suffered was for or in connection with any demand of dowry, in such situation the presumption under Section 113-B of the Evidence Act also cannot be drawn.

13. Likewise, in *Manohar Lal v. State of Haryana*, (2014) 9 SCC 645, the Hon’ble Apex Court has observed that, as per definition of “dowry death” in S. 304-B IPC and wording in presumptive S.113-B, Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been “soon before her death” subjected to cruelty or harassment “for or in connection with the demand of dowry”. The Hon’ble Apex Court further observed that the proximity test has to be applied keeping in view the facts and circumstances of each case and the facts must show existence of a proximate live link between effect of cruelty based on dowry demand and death of the victim.

14. Similarly, in ***Sher Singh v. State of Haryana***, (2015) 3 SCC 724, the Hon'ble Apex Court held that there must be live link and proximity between cruelty emanating from dowry demand and death of woman. The words "soon before her death" indicate that there must be a live link between the cruelty emanating from a dowry demand and the death of a young married woman, as is sought to be indicated by the words "soon before her death", to bring Section 304-B into operation; the live link will obviously be broken if the said cruelty does not persist in proximity to the untimely and abnormal death. It cannot be confined in terms of time. The demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304-B or the suicide under Section 306 IPC.

15. The germane of above provision is that soon before death, deceased must have been shown to be subjected to cruelty in the backdrop of dowry demand and consequently, death must have been unnatural one. Keeping such legal requirements in mind, here, admittedly, except dying declaration, there is no other evidence about occurrence. Exhibit 37 seems to be the first dying declaration. DW1, a police personnel and who was said to be posted in Civil Hospital premises, on receipt of MLC, seems to have approached the doctor in

burns ward and has recorded dying declaration Exhibit 37. Its translated form is as under:

Exhibit 37

“Myself Suvarna w/o Gajanan Awachar, age 25 yrs, occupation - household, r/o Karegaon, Tal. Parbhani.

I do hereby orally state in person that, I am residing at the above mentioned place and I got married one year ago. I have mother-in-law, father-in-law, one sister-in-law and one brother-in-law. On 23.05.2003 my husband went out of station for wedding. He returned on 23.05.2003 at 23.30 O'clock, in the night. I was watching movie on television. My husband had dinner and slept.

On 24.05.2003 at around 00.30 in the night, as I was fasting on Friday, I went to the kitchen to make tea. And there was no light in the kitchen, we always used chimney in that kitchen. I lit the chimney as there was a chimney and put **Govarya** (*a thing which is made up of cow dunk*) into the earthen stove and added kerosene from the chimney. And while lighting the earthen stove, suddenly the kerosene flared up, my saree layer fell on it and my back, stomach, chest, both hands, neck, chin, feet were burnt. I screamed as I burnt. At that time my husband and mother-in-law extinguished fire and brought me to the Government Hospital, Parbhani and admitted me for treatment. Currently I am undergoing treatment. No one has burned me. Nor did I burn myself. I don't doubt anyone. I got burnt while lighting the stove to make tea. My statement is written as per my narration, read over to me, and it is correct and true as per my narration.”

[Translation provided by Senior Translator, High Court, Bench at Aurangabad]

16. Therefore, on appreciation of the contents of such dying declaration, it is conspicuously coming on record that deceased had attributed burns to accidental one. There are no allegations of incineration as is tried to be posed by prosecution.

17. Similarly, there is another dying declaration which is at Exhibit 40 and the translated version of the same is as under:

Exhibit 40

Dying Declaration

Time : 6.50 am

“Myself Suvarna w/o Gajanan Awachar, age 25 yrs, occupation- household do state on oath that I have been married for a year. My husband is mechanic. My maternal house is at AUSA. I do not have child. At my house, my in-laws, one sister-in-law, brother-in-law, grand mother-in-law and grand father-in-law are residing.

At 12.30 in the night I was making tea on the earthen stove in the kitchen, there was no light in the kitchen and the chimney was used in the house. When the kerosene from the lamp was poured to light the earthen stove, it burst into flames. My saree layer(*padar*) fell on the stove and caught fire. I screamed and everyone in the house woke up. They extinguished fire by putting quilt on me. Later all the persons of my house admitted me to the government hospital for treatment.

In this incident, some part of my back, both hands, chest, mouth and a hair are badly burnt.

I don't suspect anyone nor I burnt myself. The above incident happened due to saree layer (*padar*) suddenly catching fire on the stove. The above statement read over to me and it is true.”

[Translation provided by Senior Translator, High Court, Bench at Aurangabad]

18. Even on scrutiny, above dying declaration, no role whatsoever is attributed to the appellants. As pointed out, here, alleged occurrence of burns has taken place during the night intervening 23.05.2003 and 24.05.2003. Father and uncle both unanimously speak about deceased coming to attend marriage of her brother. It is pertinent to note that at such occasion, she has not levelled any allegations. Therefore, when there is nothing indicating or demonstrating any cruelty subjected in proximity to the burns, offence under Section 304-B IPC cannot be said to be attracted. There is no live link to connect accused with the episode of burns. For all above reasons, both charges fail.

19. Perused the judgment under challenge. It is apparent that learned trial court has not carefully considered the evidence and has also apparently lost sight of essential requirements, settled legal position and quality of evidence i.e. is required to hold accused persons guilty of offence under Section 304-B of IPC. Therefore, there

is apparently improper appreciation necessitating indulgence at the hands of this Court by allowing the appeal. Accordingly, I proceed to pass the following order:

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellants Vishwanath s/o Manikrao Awachar, Gajanan s/o Vishwanath Awachar and Sow. Anjanabai w/o Vishwanath Awachar, by learned 2nd Adhoc Assistant Sessions Judge, Parbhani in Sessions Trial No. 157 of 2003 under Sections 498-A and 304-B r/w 34 of IPC on 17.04.2004 stands quashed and set aside.
- III. The appellants stand acquitted of the offence punishable under Sections 498-A, 304-B r/w 34 of IPC.
- IV. The bail bonds of the appellants stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellants after the statutory period.
- VI. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]