



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.163 OF 2003

1. Gajanand S/o Madhukar Chavan,
Aged 25 years, Occupation: Agriculture
2. Radhabai W/o Madhukar Chavan,
Aged 40 years, Occupation: Household,

Both R/o. Satephal, Taluka Purna,
District Parbhani

.. Appellants
(Ori. Accused Nos.1&3)

Versus

. State of Maharashtra

.. Respondent

...

Advocate for Appellant: Mr. Vikram R. Dhorde
APP for Respondent/State: Mrs. Chaitali Choudhari-Kutti

...

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 15.07.2024

Pronounced on : 20.07.2024

JUDGMENT:

1. Appellants who stood convicted for offence under section 304-B read with Section 34 of the Indian Penal Code, 1860 (IPC) by the learned Ad-hoc Additional Sessions Judge, Parbhani in S.T. No.72/2001 are challenging their conviction by which they are sentenced to suffer 7 years R.I. and to pay fine.

FACTS LEADING TO TRIAL

2. Deceased Ahilyabai was married to appellant. At the time of marriage it was settled between the parties to give Rs.51,000/- and 1 Tola gold. Rs.50,000/- were already paid along with 5 Gram gold. Thus, amount of cash Rs.1000/- and 5 Gram gold was outstanding. For initial period of 2 months, she was treated well and, thereafter, husband and in-laws i.e. parents-in-laws subjected deceased to ill treatment. When informant / father went to meet her, she reported the above treatment meted out to her i.e. when he went to Satephal. Eight to ten days after his visit news was received that dead body of Ahilyabai was found in the well. Therefore, he lodged report Exhibit 27, on the basis of which, crime was registered, investigated and after gathering evidence husband and in-laws were tried by S.T. No.72/2001 by Ad-hoc Additional Sessions Judge, Parbhani, for offence under Sections 306, 304-B, 498-A read with 34 of the IPC.

On appreciating the oral and documentary evidence, learned trial judge reached to a finding that prosecution has succeeded in establishing the charge against the accused husband and mother-in-law. But, prosecution failed to establish charges against accused no.2 father-in-law and by judgment and order dated 20.02.2003, husband and mother-in-law stood convicted, which is now subject matter of challenge in this case.

ARGUMENTS

On behalf of the Appellants:

3. At the outset, learned counsel pointed out that on same set of evidence accused no.2 has been already acquitted but husband and mother-in-law are singled out and held guilty. He pointed out that general, vague and omnibus allegations are made by father and uncle without elaborating or specifying instances of so called ill treatment, it's form or nature. He pointed out that even F.I.R. by father is a delayed one. Learned counsel took this court through the substantive evidence of informant PW-2 then to the cross faced by informant PW-2 and would point out that, apart from material omissions, there are variances and contradictions between himself and PW-3 maternal uncle on the point as to whether actual talks and settlements of marriage had taken place. He pointed out that even so called mediator through whom marriage was fixed and talks were initiated, namely Annarao Kadam, who is none other than cousin brother-in-law of informant, has not been examined. That, material omissions are got proved through the cross of Investigating Officer.

He next took this court through the testimony of PW-3 and would pointed out that even his testimony does not throw light as to what was actual form of ill treatment. That, even his evidence is silent about incident of ill treatment and or as to when it took place. Therefore,

on the point of ill treatment and cruelty learned counsel fervently submitted that there is little, no or weak evidence.

He next pointed out that prosecution has not substantiated as to whether Ahilyabai met suicidal death or accidental death. He pointed out that even A.D. papers are not placed on record. According to him, dead body of deceased Ahilyabai was traced in a well of adjoining owner but said land owner has not been examined by prosecution.

He further pointed out that though prosecution claims that deceased was not allowed to wear *mangalsutra* but according to him the very findings noted by Autopsy Doctor at the time of postmortem clearly shows that at the time of autopsy, *mangalutra* was found to be tied on the person of deceased and, thus, according to him false, concocted and fabricated report and allegations are levelled by father.

He also invited attention of this court to the cross faced by very Investigating Officer and pointed out that material witnesses and independent witnesses are not examined by the Investigating Officer.

Learned counsel further invited attention of this court to the judgment and would pointed out that there is apparently improper appreciation. Findings are not supported by sound reasons.

He also strenuously submitted that learned trial court has already acquitted all accused from charges under Section 306 read with Section 34 of IPC and has held husband and mother-in-law guilty under

Section 304-B read with Section 34 of IPC, and further submitted that evidence of prosecution is patently lacking with regard to cruelty or ill treatment meted out by these 2 appellants immediately prior to alleged unnatural death of Ahilyabai. Thus, according to him, when there was no evidence suggesting cruelty in backdrop of dowry demand in proximity to alleged death he criticized the findings recorded by learned trial court. For all above reasons, learned counsel submits that judgment is perverse and not maintainable in the eyes of law and, hence, liable to be set aside.

On behalf of the State:

4. Supporting the judgment of the learned trial court, learned APP pointed out that marriage and cohabitation between the deceased and appellant no.1 is purely of 8 to 9 months. She pointed out that after 2 months of marriage deceased was subjected to both physical and mental cruelty. She had reported it to her father. For remaining dowry demand accused husband and in-laws subjected deceased to cruelty. According to learned APP, there is convincing evidence of father and uncle of deceased. That, 8 days prior to the incident, when informant had been to visit his deceased daughter, that time she had reported about demand and ill treatment. Accused persons had not provided him meals even when he stayed there for the night. According to her, such conduct of accused is self explanatory and is sufficient to opine their behaviour

towards deceased as well as informant. That, there was no other reason for her to end up her life. According to her, they even on their own have not reported informant about deceased missing. Therefore, according to her, there is ample evidence against accused persons. Learned trial court has correctly held husband and mother-in-law guilty under Section 304-B read with Section 34 of IPC.

According to learned APP, taking the testimony of father about hearing from his daughter 8 days prior to the death about demand and ill treatment, essential ingredients for attracting Section 304-B of IPC are also available and, as such, it is her submission that trial court correctly appreciated the evidence and has committed no error whatsoever in returning the guilty for said charges and, consequentially, she prays to dismiss the appeal for want of merits.

EVIDENCE BEFORE THE TRIAL COURT

5. Role and status of the prosecution witnesses and the sum and substance of their evidence is as under :

PW-1 Autopsy Doctor, who reported and issued opinion that probable cause of death was due to asphyxia due to drowning.

PW-2 Informant / father deposed that marriage of his daughter was performed 2 years back. That, it was settled to give Rs.51,000/- and 1 Tola. Rs.50,000/- were already paid along with 5 Gram gold.

Rs.1000/- and 5 Gram gold had remained to be paid. For 2 months everything was proper and thereafter husband and mother-in-law ill treated Ahilyabai. When he went to meet her she reported the above conduct. Eight days thereafter, he learnt message that dead body of Ahilyabai was traced in the well.

PW-3 Maternal Uncle also stated about marriage to be settled for Rs.51,000/- and 1 Tola gold, Rs.1000/- and 5 Gram gold had remained and rest was paid. Ahilyabai was happy for 2 months. But, thereafter, when she was to the village, she told about ill treatment by husband and in-laws. According to him, she went back to cohabit but due to ill treatment she committed suicide.

PW-4 Police Officer, who carried out investigation.

ANALYSIS

6. Husband, mother-in-law and father-in-law were made to face trial for commission of offence under Section 498-A, 306, 304-B read with Section 34 of IPC. There is no dispute that all 3 are acquitted from charge under Section 306 read with Section 34 of IPC and father-in-law is acquitted from all charges but only husband and mother-in-law are held guilty for offence under Section 304-B read with Section 34 of IPC.

7. Though, as many as 4 witnesses are examined, evidence of informant PW-2 father and PW-3 maternal uncle is of relevance and significance. They both in their evidence at Exhibit 26 and 28 deposed that at the time of marriage it was decided to give Rs.51,000/- and 1 Tola gold, and out of it Rs.50,000/- were provided with 5 Gram Gold, and as such only Rs.1000/- cash and 5 Gram gold had remained unpaid. That, after the period of 2 months of marriage, according to informant father, husband Gajanand and mother-in-law Radhabai were giving ill treatment. Informant father has stated that accused no.2 father-in-law Madhukar was neutral.

Maternal uncle PW-3 has attributed ill treatment to husband as well as both the parents-in-law.

It is noticed that except stating that there was ill treatment and trouble, informant father has not stated the form of ill treatment or as to when such instances of ill treatment or harassment took place. What father is found to be deposing is that during his visit to her, he noticed his daughter not wearing *mangalsutra* on her neck and on his query he claims that she told that her mother-in-law did not provide threat to wear mangalsutra. As pointed out by learned counsel for the appellant if one visits postmortem report, in column no.7 of the postmortem report autopsy doctor has given description, that is pertaining to description of clothes and ornaments on the body, by virtue of item no.1, mangalsutra is

found on the very person of the deceased. Therefore, allegation of father seeing daughter without mangalsutra is rendered false. Testimony of uncle is silent about above aspect. Testimony of father in witness box about absence of mangalsutra on the person of his daughter, is apparently omission, as is revealed from answers given by this witness in para 4.

8. Again as pointed out, no distinct evidence is placed by prosecution about marriage settled and decided to be performed on payment of Rs.51,000/- and 1 Tola gold. Cross of informant father shows that Annarao Kadam from Katneshwar, who was a mediator, has not been examined by prosecution in support of such settlement. Again, as pointed out, further cross of informant, para 3, goes to show that talks of settlement of giving and taking dowry had taken place at residence of Annarao Kadam of Katneshwar but, contrary to it, maternal uncle in cross, para 3, speaks of marriage negotiations taking place at his own place Dagadgaon. Therefore, witnesses are not consistent.

Consequently, what is emerging from testimony of informant father and maternal uncle is that there are vague, general, omnibus allegations of accused subjected deceased to ill treatment without magnifying or amplifying it's nature so as to hold that there was cruelty as contemplated under Section 498-A of IPC.

9. Second charge with which appellants have faced trial and are held guilty is Section 304-B of IPC i.e. causing dowry death and deceased meeting unnatural death within 7 years of marriage. No doubt, in this unfortunate incident, deceased met unnatural death within a year of marriage. It is now to be seen, whether as contemplated by the law, there is evidence suggesting cruelty and ill treatment being meted out in proximity to alleged unnatural death. It is expected of prosecution to substantiate that soon before death deceased was subjected to such harassment and cruelty that too in the backdrop of dowry that she was left with no other alternative but to end up her life.

10. On one hand, learned counsel for the appellants pointed out that firstly prosecution failed to establish that there was dowry demand and secondly prosecution also further failed to prove beyond reasonable doubt that death of Ahilyabai was only suicidal and not otherwise. On the other hand, learned APP strenuously submitted that 8 days prior to the death itself, deceased had reported to her father informant that there was ill treatment for remaining dowry.

Again on this point, except testimony of informant there is no other evidence. As discussed above, nature and form of ill treatment has not come on record, neither roles of accused nos.1 and 3, who are held guilty are defined by either informant father or maternal uncle.

General allegations are levelled that there was ill treatment. This court has already dealt in aforesaid para that father and uncle are contradicting each other about place of initial talks and dowry. Informant father speaks of talks taking place at Katneshwar but his own brother contradicts him by stating that talks taking place at his own place at Dagadgaon. Mediator Annarao Kadam, as stated above, who was the main person for settling talks, is not examined by prosecution for the best reasons known to it. Therefore, firstly here, very case of prosecution about dowry demand has comes under the shadow of doubt.

11. Informant and uncle have deposed that out of Rs.51,000/- substantial amount i.e. Rs.50,000/- were already given at the time of marriage and what had remained was only Rs.1000/- and 5 Gram gold. Father and uncle both speaks about assurance being given to meet the demand, if this was so then question arises is, why at all there would be consistent ill treatment or incessant ill treatment for just remaining Rs.1000/- and 5 Gram gold. There is gap of 8 days between alleged visit of informant to the house of accused and death of his daughter. What exactly triggered and prompted deceased to jump in the well is not come in the record. No neighbour is examined.

It is pertinent to note that very investigating officer PW-4 while under cross, para 3, has admitted that he did not record the

statement of the owner of the land wherein the well was situated. He did record statements of Narayan and Lalita, who were related, but their statements are not attached to the charge-sheet. He further answered in cross, that in their statement, possibility of accidental fall of Ahilyabai in the well were expressed by both these persons. Non-examination of such witness calls upon drawing adverse inference. In fact, it indirectly amounts to suppressing of material facts and truth, which courts of law are expected to look for.

Consequently, how and in what circumstances Ahilyabai went towards the well, what made her go to the well, what happened in the house and whether both present appellants were present or not, was expected to be proved by prosecution in support of the charge of 304-B of IPC, which contemplates cruelty, harassment, ill treatment immediately or soon before unnatural death. These essential requirements are not getting met from the available prosecution evidence. Law to the extent of charge under Section 304-B of IPC has been dealt in series of judgment. As to when said charge can be said to be established is elaborately and succinctly dealt time and again in numerous judgments like ***Bansi Lal v. State of Haryana***, (2011) 11 SCC 359; ***State of Rajasthan v. Girdhari Lal***, (2013) 15 SCC 269; ***Manohar Lal v. State of Haryana***, (2014) 9 SCC 645 and ***Sher Singh v. State of Haryana***, (2015) 3 SCC 724.

12. To sum up, here, there is little or weak evidence on both the charges i.e. Sections 498-A and 304-B read with Section 34 of IPC.

13. Perused the judgment under challenge, trial court has not considered the above legal requirements before accepting case of prosecution and recording guilt. Therefore, it is the fit case to interfere with. Hence, following order.

ORDER

I) Criminal Appeal No.163 of 2003 is allowed.

II) The conviction awarded to appellants Gajanand S/o Madhukar Chavan and Radhabai W/o Madhukar Chavan in S.T. No.72 of 2001 by the learned Adhoc Additional Sessions Judge, Parbhani, on 20.02.2003 for the offence punishable under Section 304-B read with Section 34 of the IPC stands quashed and set aside.

III) The appellants stand acquitted of the offence punishable under Section 304-B read with Section 34 of the IPC.

IV) The bail bonds of appellants stand cancelled.

V) The fine amount deposited, if any, be refunded to the appellants after the statutory period.

[ABHAY S. WAGHWASE, J.]