

(1992) 02 BOM CK 0001

In the Bombay High Court

Case No : Criminal Appeal No. 282 of 1990

Arjun Dhondiba Kamble and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 14-02-1992

Acts Referred:

Dowry Prohibition Act, 1961 — Section 2
Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (1993) 3 BomCR 473 : (1993) MhLj 1007

Hon'ble Judges : S.M. Daud, J;M.F. Saldanha, J

Bench : Division Bench

Advocate : A.P. Mundargi, for the Appellant; K.D. Randive, Public Prosecutor, for the Respondent

Judgement

S.M. Daud, J.—A husband, wife and their son impugn the conviction and sentence recorded against them for the commission of offences punishable under sections 498 and 105-B r/w. 34 of the Indian Penal Code.

2. The victim Lalita is the daughter of Annappa Bhima Kamble who has been examined as P.W. 4 at the trial. She was wedded to appellant Mahadeo some four years prior to July 1969. The marriage was solemnized along with several others in what is known as a `Samoocha lagan" (mass marriage). After the marriage Lalita came to reside with the appellants. She was not treated well and in fact was subjected to vilification and beatings. The reason for inflicting ill-treatment on the girl was her not being able to extract gold and a wrist-watch from her parents for her husband Mahadeo. She used to speak of this ill-treatment on the festive occasions of Deepavali and Bendur, when she was visiting her parental home. Annappa counseled patience saying that he would get the articles the appellants had set their hearts upon the moment his financial position so permitted. The answers satisfied neither the appellants nor Lalita. The ill-treatment to which she had been subjected increased in frequency as also intensity. On 12-7-1989 the girl left the matrimonial home saying that she was

going out to relieve herself. She did not return. That led to a frantic search for the missing Lalita. Appellant Jenabai had gone to Annappa's village at Gijawane wanting to know whether Lalita had come there. Suspecting trouble Annappa lodged a report with the Ajra Police Station which is at Exh. 13. On 14-7-1989, the corpse of Lalita was found floating in a well. It was brought out and appellant Arjun lodged a report which is at Exh. 25. In that report, it was alleged that Lalita's behaviour was not always proper, that Jenabai had advised her to improve her behaviour, that she had drowned herself angered at her mother-in-law's tongue-lashing. Annappa's suspicions were very different and he believed that the repeated assaults and insult inflicted upon her by the appellants had driven her to commit suicide. It was on the basis of this suspicion of Annappa expressed in Exh. 21, which led to the registration of a crime against the appellants. The investigation concluded, a charge-sheet was lodged against the appellants and when the matter came up before the Assistant Sessions Judge at Kolhapur, appellants were called upon to answer the charge of having committed offences punishable under sections 304-B, 306 and 498-A all r/w. 34 of the I.P.C.

3. Appellants pleaded not guilty. Their stand was broadly in conformity with what had been stated by Arjun in his statement dated 24-7-1989 marked Exh. 25. To substantiate the charge, the prosecution examined amongst others Devka, Raosaheb, Kalgonda, Annappa, Shila and H.C. Yadav. Their testimony was accepted and the learned Asst. Sessions Judge found appellants guilty under sections 498-A and 304-B r/w. 34 of the I.P.C. They were however acquitted of the offence punishable u/s 306 r/w. 34 I.P.C.

4. The stand taken in the appeal is that Lalita's death was due to an accident, that in any case it had nothing to do with the attitude of the appellants towards her, that even on the prosecution's own showing there was no 'cruelty' as contemplated by section 498-A and lastly it was not a dowry death punishable u/s 304-B I.P.C.

5. Mr. Mundargi, learned Counsel for the appellant bases the theory of Lalita having died an accidental death on the basis of the build of the well in which Lalita's corpse was found floating on 14-7-1989. P.W. 3 Kalgonda testifies that the well does not have a fencing around it for which reason it was quite possible for a person to accidentally slip into it. This was said to be all the more probable because Lalita had left home at 6.00 a.m. on 12-7-1989. The visibility then was not perfect and having missed a step, Lalita may have landed in the well. Not knowing how to swim, she could not save herself and therefore, got drowned. The best refutation to this contention comes from the report at Exh. 25. Appellant Arjun in Exhibit 25 very definitely stated that Lalita had committed suicide by jumping into the well as an act of retribution for her mother-in-law reproving her. The stand taken is in line with another frivolous plea raised in the cross-examination of one of the prosecution witnesses about Lalita suffering from fits. This contention has been met with a protestation of ignorance from P.W. 2 Devakka. Significantly enough, the contention was not repeated when her father

Annappa and Aunt Shila were under cross-examination. In fact the point taken in the cross-examination of Annappa was that Lalita was obstinate and hot tempered. A slight variation was made when it came to cross-examining Shila. This time the witness was asked whether Lalita was a semi-lunatic. Shila refuted the suggestion, and, very rightly so. Exh. 25 makes no reference to Lalita being a semi-lunatic, hot-tempered or obstinate.

6. The conclusion irresistible is that Lalita committed suicide by her throwing herself in the well from where her corpse was fished out. The crucial question is whether this could be termed as a 'dowry death' within the meaning of section 304-B. Sub-section (1) of this section together with the explanation reads as follows :

"(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 purpose of this sub-section "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961)."

In Act No. 28 of 1961, section 2 defines 'dowry' as ---

"any property or valuable security given or agreed to be given either directly or indirectly

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."

Annappa and Shila speak of Lalita complaining on every visit after the marriage that the appellants were pressing her for a gift of gold and a wrist watch. Mr. Mundargi argues that this allegation is unbelievable, seeing that both the families come from poor backgrounds, that the marriage itself was performed at an inexpensive mass marriage ceremony and that any marriage so performed could not have led to an expectation on the part of the husband or his parents for valuable presents from the side of the bride. Dowry in the sense of that expression contemplated by Act 28 of 1961 is a demand for property or valuable security having an inextricable nexus with the marriage. In other words it is a consideration from the side of the bride's parents or relatives to the groom or his parents and/or guardian for the agreement to wed the bride-to-be. Where the demand for property or valuable security has no connection with the

consideration for the marriage, it will not amount to a demand for dowry. In the instant case, the evidence has to be properly understood and thus viewed it is clear that what the appellants wanted was valuable presents to be made to appellant Mahadeo on the occasion of festivals like Deepavali. Judicial notice can be taken of the fact that the presents are customarily given to sons-in-law on festive occasions and giving of such presents is in no way connected with the wedding or marriage. It is a post-marriage expectation and the expectation and performance thereof once restricted to the affluent and the middle class, has now spread its tentacles to the poor also. The expectation is because of the relationship, but without any nexus to the agreement to marry. Therefore, it does not amount to dowry. Any demand for presents after the marriage, but not having a connection with the marriage of the parties will not constitute a demand for dowry. This is clear from the qualifying clause of section 2 in Act 28 of 1961 reproduced above. Cruelty and harassment by a husband or a relative of the husband which brings about unnatural death of the wife within 7 years of her marriage is to be taken into consideration for dowry deaths punishable u/s 304-B. But the said cruelty or harassment is not that understood in common parlance. It is a special type of cruelty or harassment, in that it is linked to a demand for dowry. Where it is not so linked, section 304-B will not apply. A demand on the part of the husband or a relative of the husband for property after the marriage in conformity with the custom spoken of above, cannot be said to be a demand for dowry. The wife, if disgusted at the constant pressure for the customary presents; takes her life, that death cannot be said to be a dowry death. The husband and/or his relative though guilty of cruelty or harassment in the popular sense, will not be guilty of that cruelty or harassment having a nexus with a demand for dowry which is the sine-qua-non for attracting section 304-B I.P.C. Disagreeing with the learned trial Judge, we hold that the appellants are not guilty u/s 304-B r/w. 34 of the I.P.C.

7. But the acquittal of the appellants u/s 304-B does not mean that they also stand absolved of the offence punishable u/s 498-A. Section 498-A reads as under:

"Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation :---For the purposes of this section, "cruelty" means---

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

It will be noticed that though the section takes within its sweep 'cruelty' relating to an unlawful demand for property or valuable security, it is not as limited or confined as is the case with section 2 of Act 28 of 1961. The harassment of a woman with a view to coercing her or any person related to her to meet any unlawful demand for any property will amount to cruelty punishable u/s 498-A. The fact that the demand is in conformity with custom or usage does not render it in any way lawful. The cruelty contemplated by section 498-A is far wider. Of course, ordinary notions of what constitutes cruelty regard being had to the explanation will be the criterion for judging an accusation u/s 498-A. A hypersensitive wife affected by every little word or gesture cannot complain of cruelty u/s 498-A. But constantly pestering a wife year after year for valuable presents allegedly in conformity with custom, taunting her and making life miserable for her all the time, would attract section 498-A. That Lalita was exposed to such a cruelty is the assertion not only of Annappa and Shila, but is also corroborated though to a very little extent, by the guarded language used by appellant Arjun in Exh. 25. Exh. 25 speaks of Lalita's behaviour not coming upto the approval of Arjun and Janabai, the latter reproving her, Lalita being angered at the reproof and taking her life. The evidence does not show that Lalita was unusually constituted. Normal expressions of displeasure at her ways of attending to household chores could not have brought about so high a degree of dudgeon that Lalita would drown herself. She came from a poor family and could not have expected a privileged existence at her in-law's home. The protestations of innocence pleaded by the appellants cannot carry any conviction. Lalita disappeared on the morning of 12-7-1989. Yet it was only after her body had been fished out from the well that appellants or any of them thought it necessary to approach the police. This shows a guilty conscience resulting in inaction, for the appellants were not sure of what had become of the girl. Their persistent demands, taunts and insults drive Lalita to commit suicide and therefore appellants were rightly convicted u/s 498-A r/w. 34 of the I.P.C.

8. As to the sentence Mr. Mundargi says that the period of detention already undergone by the appellants should suffice. Appellants Arjun and Janabai were released on bail pursuant to an order of this Court at the stage of admission of the appeal. This order was passed on 25-6-1990 and the Sessions Court's judgment was delivered on 29-3-1990. As to the appellant Mahadeo he is in detention at least since 29-3-1990. The period of detention undergone by the appellants seems to be enough. But justice has to be done to Annappa also. It was the greed of the appellants which led to the untimely death of Lalita. This greed had to be avenged in an appropriate manner. In the circumstances, the proper sentence to pass upon the appellants would be to restrict the imprisonment to that already undergone and a fine of Rs. 250/- each vis-a-vis Arjun and Janabai and Rs. 500/- vis-a-vis Mahadeo. A higher fine is imposed on Mahadeo for his remissness is far more than that of his parents. As the unfortunate Lalita's husband he shares a greater responsibility for having driven her to death. Appellants are given six months time to pay the fine and in the

event of the fines not being paid, they will undergo simple imprisonment for two months. Fine amount, if recovered, be made over in its entirety by way of compensation to Annappa, the father of the deceased Lalita. Appeal partly allowed by setting aside the conviction and sentence recorded against the appellants for the offence punishable u/s 304-B r/w. 34 of the I.P.C.

9. The conviction recorded against the appellants u/s 498-A r/w. 34 of the I.P.C. is confirmed. The sentence is varied to the imprisonment already undergone by the appellants and fines of Rs. 250 each vis-a-vis Arjun and Janabai and Rs. 500/- vis-a-vis Mahadeo. In case the fines are not paid within six months from the date of delivery of the judgment, appellants will undergo S.I. for 2 months. Fine, if recovered, be made over in its entirety by way of compensation to Lalita's father Annappa.

10. Appellant Mahadeo be released forthwith unless required in other cases.

11. Bail bonds furnished, by and on behalf of Arjun and Janabai, to stand cancelled after the fines imposed upon them are paid.