
(2012) 09 BOM CK 0010

In the Bombay High Court

Case No : Criminal Appeal No's. 679 of 1992 and 163 of 1993 and Criminal Revision Application No. 92 of 1993

Baban @ Balkrishna Dubhal and Others

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Evidence Act, 1872 — Section 113A
Income Tax Act, 1922 — Section 34, 34(1)(a)
Income Tax Act, 1961 — Section 10, 10(2)(vii), 131, 143(3), 144A
Penal Code, 1860 (IPC) — Section 304B, 306, 34, 342, 386

Citation : (2013) ALLMR(Cri) 1993

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : S.V. Kotwal holding for . Mr. S.G. Chitnis in Appeal No. 679/1992 and Mr. P.D. Gharge in Revision application No. 92/1993, for the Appellant; S.V. Kotwal and Mr. S.G. Chitnis in Appeal No. 163/1993 and for Respondent Nos. 1 and 2 in Revision Application No. 92/1993 and Mrs. G.P. Mulekar, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Chavan, J.—Criminal Appeal No. 679 of 1992 is filed by the original accused Nos. 1 to 3 questioning their conviction for the offences punishable under Sections 498-A and 306 of the Indian Penal Code as also conviction of accused No. 2 for offence punishable u/s 3 and 4 of Dowry Prohibition Act, 1961 and sentences of various terms of imprisonments and fine imposed upon them by the learned Additional Sessions judge, Mumbai, upon conclusion of Sessions trial No. 556 of 1989. Criminal Appeal No. 163 of 1993 is filed by the State for enhancement of sentences imposed upon the accused.

2. Criminal Revision Application No. 92 of 1993 is filed by the first informant questioning the acquittal of accused Nos. 4 and 5.

3. Facts which are material for deciding these proceedings are as under:-

The complainant Tukaram's daughter Shobha Dubai was married to accused No. 1 Baban the son of accused Nos. 2 and 3 on 29th May, 1988. It was alleged that at the time of marriage a sum of Rs. 15,000/- was agreed to be paid as dowry. Out of the same, a sum of Rs. 5,000/- was paid and for security of payment of balance, a gold necklace had been given to the accused persons. The accused persons are alleged to have repeatedly sought the payment of balance of Rs. 10,000/- and used to harass, abuse and taunt the victim for failure of her father to pay the balance of Rs. 10,000/-. On 7.12.1988, the victim sustained burn injuries when she was inside her house at Mumbai. She succumbed to injuries. On a report by the victim's father, lodged on 12/13th December, 1988, an offence was registered and an investigation commenced. Police had performed inquest on the body of the victim and caused it to be sent for postmortem examination. Police performed panchnama of spot and recorded the statements of witnesses including that of the Fire Officer of the Mumbai Fire Brigade since the cause of fire was not known. On completion of investigation chargesheet was sent to the Court of Metropolitan Magistrate, Kurla, who committed the case to the Court of Sessions at Mumbai.

4. The learned Additional Sessions Judge, to whom the case was made over, charged the appellant and accused Nos. 4 and 5 of offences punishable under Sections 498-A, 306, 304-B, 342, 506 part II and 386 read with section 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. Since the accused persons pleaded not guilty, they were put on trial at which the prosecution examined in all 12 witnesses in its attempt to bring home the guilt of the accused persons and the accused persons examine three defence witnesses.

5. After considering the evidence in the light of defence of false implication, the learned trial Judge acquitted accused Nos. 4 and 5 of all the offences charged. He convicted accused Nos. 1 & 2 of offences punishable under Sections 498-A and 306 of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for one year. He sentenced accused No. 3 for simple imprisonment till rising of the Court and fine of Rs. 1,000/- or in default rigorous imprisonment for three months for the offences punishable under Sections 498 and 306 of the Indian penal Code. He also convicted the accused No. 2 for offences punishable under Sections 3 and 4 of the Dowry Prohibition Act, and sentenced him to suffer rigorous imprisonment for six months and three months respectively with fine Rs. 15,000/-. He acquitted them of the other offences charged. Aggrieved thereby the parties are before this Court.

6. During the pendency of appeal, accused No. 2 was reported to have died, hence the case as against him has abated.

7. I have heard learned counsel for the appellant, learned Additional Public Prosecutor for the State and learned advocate for the first informant. With their help, I have gone through the evidence on record.

8. P.W. 1. Atmaram is the victim's father, who states about settlement of dowry of Rs. 15,000/- and payment of Rs. 5,000/- and handing over ornaments as security for the payment of balance of Rs. 10,000/-. He proved his report at Exh. 25. He stated that the victim had been to his house after the marriage and before she committed suicide and narrated the ill-treatment which she suffered on account of non payment of sum of Rs. 10,000/-. He also proved the letters exchanged between him, his son and the accused persons. He stated the victim had told him that the accused Nos. 1 and 3 i.e. husband and the mother in-law used to harass and assault the victim. It seems that P.W. 1 was also working at Mumbai with accused No. 2. He states that he came to know about victim's death and was present when the victim's body was moved by the police. He states that on 8th December, 1988, he had been called by the accused persons to a godown in Kumbharwadi at 7.30 p.m. where he was made to sign on a stamp paper and was handed over bag containing a gold chain. He was told not to make any report to the police. He states that he approached a lady by name Mhatre and on her advice on 13th December, 1988, lodged a report with the police.

9. P.W. 2, Bhausahab is victim's brother, possibly serving at Bombay who too stated about payment of dowry of Rs. 5,000/- and an ornament being given for the balance of Rs. 10,000/-. He stated that he had visited the house of victim in Mumbai, but was not allowed to see the victim in the first visit. During the second visit, the victim told him to keep remaining amount of Rs. 10,000/- ready as her in-laws were demanding the same and were scolding and abusing and taunting her for not getting that money. He states that he had taken the victim for the festival of Nagpanchami. The victim was brought back to her matrimonial home after 8 days. Accused No. 2 asked him whether he had brought Rs. 10,000/- and he told that the amount would be paid afterwards. He stated that when about 4 to 5 days thereafter when he had been to the victim's house, the victim had reported increased harassment at the hands of accused persons. The victim had told her brother that the victim's husband would come to the village of victim's father, provided he was given scooter, gold ring, dress and balance payment of Rs. 10,000/-. He stated that he had been to his village to make arrangement for this money, when the news of death of victim came.

10. P.W. 3 Sajabai, victim's mother, corroborates her husband and son. She added that the victim had told her during her visit to the village that the victim would be killed if the amount was not paid and scooter and dress was not delivered.

11. P.W. 4 Chitrasen Ghadge is cousin of the victim who states about settlement of dowry at Rs. 15,000/-, payment of Rs. 5,000/- and delivery of ornaments as security for balance of Rs. 10,000/-. He also stated that P.W. 1 Tukaram was made to sign some stamp paper after the death of the victim and was handed over a gold ornament, HMT wrist watch and a pair of gold rings, P.W. 5. Waman was present at the time of settlement of marriage. He too states about demand

and payment of part of dowry. P.W. 6 Baburao is a panch at the spot panchnama at Exh. 46. P.W. 7 Fire officer Anil Sawant and P.W. 10 Fireman Nilkanth Jagdale stated about extinguishing the fire and their attempt to find out the cause of fire. P.W. 8 Ashok is a Photographer. P.W. 9 is Dr. Prakash Ambekar conducted postmortem examination and proved his notes at Exh. 59. P.W. 11, PSI Kharat and P.W. 12 Police Inspector Gopal Rane conducted parts of investigation.

12. Learned counsel for the appellants submitted that if dowry was settled at Rs. 15,000/- and a sum of Rs. 5,000/- was paid and gold ornament was allegedly given as security for payment of balance of Rs. 10,000/-, it is not clear as to why the appellants would be required to harass the victim to get the balance amount of dowry. Learned counsel for the appellant also submits that in fact the ornament was given in marriage and not by way of security of balance dowry as there was no question of dowry and the ornament was returned after the victim's death. He submitted that the victim had visited her parental house at Nagpanchami and also at Deewali and number of letters had been exchanged between the parties which are part of record. In none of the letters, there is any reference to the ill-treatment or harassment to the victim. When the incident dated 7th December, 1988 took place none else was in the house. The incident could indeed have been accident as the Fire Department found the cause of fire to be doubtful. He submitted that if indeed the victim had suffered any harassment and had committed suicide, there was no reason why report was not promptly given. Mrs. Mhatre, at whose instance a report was allegedly given by P.W. 1, has not been examined at the trial. Learned counsel for the appellant submitted that in any case the demand of dowry was made by accused No. 2 who is not alive now. There is no demand by accused Nos. 1 and 3. The evidence about harassment has surfaced only after the death of the victim. Offence registered after 7 days after victim's death. He submitted that the entire story about ill-treatment is not to be found in the statements recorded by the Police. Learned counsel further submits that the harassment reported cannot qualify to be cruelty for the purpose of section 498A of the Penal Code and was in any case not enough to provoke the victim to commit suicide. He, therefore, submitted that there was no case for the conviction of the appellants for these offences.

13. Learned Additional Public Prosecutor on the other hand submitted that since this was a case of demand of dowry, which has been duly proved by the evidence of not only relations of victim but also by P.W. 5 Waman, who was an independent witness, it may be necessary to look into the provisions of explanation (b) to section 498 of the Indian Penal Code, which includes harassment of woman with a view to coercing her to meet any unlawful demand or on account of failure by her to meet such demand. Learned Additional Public Prosecutor submitted that presumption u/s 113-A of the Evidence Act would have to be invoked in this case since the victim committed suicide within a period of 7 years from the date of her marriage. She submits that since it has been proved that the appellants had subjected the victim to cruelty as defined in explanation (b) to Section 498-A, the conviction of the appellants for offence u/s 498-A and

306 of the Penal Code has to be upheld.

14. Learned counsel for the first informant applicant in Revision Application No. 92 of 1993, relied upon a judgment of Supreme Court in Wazir Chand and Another Vs. State of Haryana, , and submitted that all the ingredients required to prove offence u/s 306 of the Penal Code were proved. He further submitted that acquittal of accused Nos. 4 and 5 on the basis of evidence which has been tendered was thoroughly unjustified.

15. I have carefully considered these submissions. First it has to be noted that there is ambivalent evidence as to whether the victim committed suicide or died as a result of accidental fire, as can be seen from the evidence of Fire Officer examined as P.W. 7 and Fireman P.W. 10. Even if it is presumed for a while that the victim did die by setting herself on fire, it could only be said that the victim had committed suicide within 7 years of the marriage, since she was married on 29th May, 1988. For drawing presumption u/s 113A of the Evidence, mere commission of suicide within a period of 7 years of marriage is not enough. The section further requires prosecution to prove that the victim's husband or other relatives of husband subjected the victim to cruelty as defined u/s 498A of the Penal Code. The fact that victim had gone to her parental home at least twice, and was in communication with her relations and with her father Tukaram who was very much in Mumbai where the victim was residing and actually working with accused No. 2, the victim's father-in-law, it is strange that there is no clinching evidence about any prior communication by the victim about the ill-treatment to which she was subjected.

16. As rightly submitted by the learned counsel for the appellant, if ill-treatment was on account of non fulfillment of demand of dowry of Rs. 10,000/-, since ornament was already given as a security, there should be no occasion or such harassment. It is not that P.W. 1 Tukaram or P.W. 2 Bhausahab stated that they had refused to pay the balance of Rs. 10,000/-. In fact they claim that they were arranging that money. In view of this the story of harassment for failure to meet any such demand appears doubtful. Further, the story about accused Nos. 4 and 5 being involved in getting stamp paper executed and delivery of ornament to P.W. 1 would also show that rather than victim being harassed on account of demand of dowry, the parties did not want any further disputes on account of ornaments which may have been given in marriage, since the victim had died. The evidence of three defence witnesses who had been examined in respect of delivery of ornaments would show that there was nothing forcible about the execution of document. These witnesses are Narayan, Ramdas and Janardhan. Therefore, the circumstance about returning gold ornament and obtaining writing, rather than being consistent with the story about demand of dowry or ornament having been given as security for payment of balance, would be consistent with the absence of any dispute about dowry between the parties.

17. Learned counsel for the appellant also pointed out that the evidence about harassment was aggravated later by P.W. 3 Sajabai who stated that the victim

reported that she would be killed if the amount was not paid. This was an improvement. He wondered that if the victim had indeed told her mother that victim would be killed if the amount was not paid, how could a mother send the victim to the house of accused. It appears that the only harassment that was reported by the victim to her relations was taunting or abuses which even if it is accepted as true for its face value, should not lead to the inference that it amounted to "cruelty" as required for establishing offence u/s 498A of the Code or amounted to abetment to commit suicide.

18. In *Wazir Chand and anr. vs. State of Haryana (supra)*, on which learned counsel for the Revision applicant placed reliance, Supreme Court had observed in para 7 that there was also evidence that Veena the victim made statement after her marriage and right upto the time when she died that she and her parents were being harassed for various dowry articles and also for money. Such evidence is not forthcoming in the case at hand.

19. To sum up, first, the fact about harassment for non payment of balance of dowry of Rs. 10,000/- would appear to be doubtful on the face of prosecution case that an ornament was allegedly given as security for that payment. Secondly, the entire evidence about harassment has surfaced only after the incident and comes in the form of improvement. Thirdly, one Mrs. Mhatre at whose instance or at whose advise report was allegedly made 7 days after the incident has not been examined. And, lastly, harassment, if any, as reported by the witnesses does not qualify to be cruelty as defined u/s 498A of the Indian Penal Code. Since it is not shown to be "cruelty" as defined u/s 498A, it does not lead to any presumption u/s 113A of the Evidence Act. In view of this the conviction of appellant Nos. 1 and 3 for the offences punishable under Sections 498-A and 306 of the Indian Penal Code and sentences imposed upon them cannot be sustained. Therefore, there would be no question of any sentence imposed upon them being found, to be inadequate or accused Nos. 4 and 5 being held to be guilty of any offences.

20. Criminal Appeal No. 679 of 1992 so far it relates to appellant No. 2 Eknath abates because of his death. Appeal in respect of appellant Nos. 1 and 3 is allowed. Their conviction for the offences punishable under Sections 498-A and 306 and sentences imposed upon them are quashed and set aside and they are acquitted of such offences. Criminal Appeal No. 163 of 1993 filed by the State and Criminal Revision Application No. 92 of 1993 filed by first informant are dismissed.