
(2014) 07 BOM CK 0308

In the Bombay High Court

Case No : Criminal Appeal No. 1319 of 2012 and Criminal Application No. 559 of 2014

Dashrath Shamrao Dalve

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174

Evidence Act, 1872 — Section 106, 8

Penal Code, 1860 (IPC) — Section 201, 304(B), 304-B, 306, 498(A)

Citation : (2014) 07 BOM CK 0308

Hon'ble Judges : Sadhana S. Jadhav, J

Bench : Single Bench

Advocate : D.G. Khamkar, Advocates for the Appellant; G.P. Mulekar, APP, Advocates for the Respondent

Judgement

Sadhana S. Jadhav, J.—Appellant herein is convicted by the Additional Sessions Judge, Pune in Sessions Case No. 815 of 2009 vide Judgment and Order dated 06/10/2012 for offence punishable under section 304(B) of Indian Penal Code and sentenced to suffer rigorous imprisonment for 10 years and fine of Rs. 3,000/- i.d. to suffer rigorous imprisonment for 2 months. Appellant herein is also convicted for offence punishable under section 306 & 498(A) of Indian Penal Code. He is sentenced to suffer rigorous imprisonment for 6 years and to pay fine of Rs. 2,000/- i.d. to suffer rigorous imprisonment for 1 month. He is also convicted for offence punishable under section 498(A) and 201 of Indian Penal Code. For offence punishable under section 498(A) & 201 of Indian Penal Code, there is no separate sentence is awarded.

2. Such of the facts which are necessary for the decision of this appeal are as follows.

3. On 01/06/2009, appellant had approached Vashi Police Station, District Osmanabad and had informed the police that his wife was carrying pregnancy of

24 weeks. She was suffering pain in the abdomen and she died. A detailed statement was recorded. He informed the police that he is a father of 3 year old daughter. He is working as a driver on the private bus. He has further stated in his report that on 31/05/2009, he had left the house at about 1.30 pm. His wife was at home. She had complained of abdominal pain. He returned home at about 8.15 pm and he saw that his wife was writhing in pain. He therefore, hired a rickshaw and was taking her to Laxmi Hospital. She has expired on the way. He therefore, hired Indica Car and took her to village Ghodki i.e. his native village. He informed the police patil and other people. They directed him to report the same to the police station. He accordingly had reported the matter to the police station. Initially, it was registered as "0" of 2009. An inquest panchanama was performed on the dead body. Police inspector had recorded the statement of appellant on the basis of which A.D. No. 140 of 2009 was registered at Yerawada Police Station, since Sunita had died in the jurisdiction of Chandan Nagar, Pune. The inquest panchanama reveals that deceased had blackish/bluish marks below her chin. There was discolouration on the chest and there were blackish/bluish marks on her abdomen, on both forearms. The dead body was sent for post mortem. After performing autopsy on dead body of Sunita, Medical Officer had observed that Sunita was pregnant of 20 to 30 weeks. The cause of death was "Terminal Cardio respiratory arrest, due to asphyxia, due to hanging". Post mortem was conducted upon her on 01/06/2009 at medical hospital, Vashi, District Osmanabad. Post mortem lividity had developed. Coloumn no. 17 shows abrasions/contusion below chin 4 X 1/2 X 3 1/2 cm. Abrasion around neck bilateral two marks. Bruise present. Blackish discolouration at right arm. Medial aspect of thumb size. It was transpired that she was carrying a foetus of fully developed female baby.

4. On 09/06/2009, Housrav Mhaske who happens to be unfortunate father of the deceased lodged a report at the Yerawada Police Station alleging therein that husband of Sunita was assaulting her under the influence of alcohol. He had given an understanding to him. His son Indrajeet had also attempted to give an understanding to the husband of Sunita. That he was demanding Rs. 1,00,000/- for purchasing Maruti Omni. The first informant had expressed his inability to fulfill the said demand and thereafter, Sunita was being brutally assaulted now and then. At the time of marriage, the husband of Sunita had demanded a golden ring of 10 gms. He has further alleged that on 30/05/2009, at about 5.30 pm, present appellant had called upon him on his cellphone and told him that he may come for his funeral. Thereafter, Sunita had called upon Indrajeet and told him not to make any phone calls to her. She had then disconnected the phone. On 01/06/2009, at about 5.00 am, appellant had called upon the cellphone of the first information and informed him that Sunita was having abdominal pain and she has died. He had already taken the dead body to his village. First informant rushed to the village immediately. Indrajeet had informed his father that Sunita had informed him that she was assaulted by her husband. On the basis of the report, crime no. 273 of 2009 was registered at Yerawada Police

Station, against the appellant for offence punishable under section 498(A) & 306 of Indian Penal Code. Accused was arrested on 17/07/2009. Investigation was completed, and charge-sheet was filed in August 2009 against the accused for offence punishable under section 498(A), 306 & 201 of Indian Penal Code. Case was committed to the Court of Sessions and registered as Sessions Case No. 815 of 2009. Prosecution examined 8 witnesses to bring home the guilt of the accused.

5. P. W. 1 is doctor Rajarao Galande. He had performed autopsy on the dead body of Sunita on 01/06/2009. He has deposed before the Court that although, he had observed while performing autopsy on her dead body, on examination of stomach, approximately 10 cm, semi solid material rice like present in the stomach. He has opined that the cause of death is due to "Terminal cardio respiratory arrest due to asphyxia due to hanging". Post mortem report is at Exhibit 28. He has proved the contents of post mortem notes. It is elicited in the cross-examination that opinion given by him is also applicable to suicidal death. That there is a ligature mark shown in the report, referred in column no. 17 can be caused because of Saree or Dhoti used for the purpose of hanging.

6. P. W. 2 is the first informant i.e. father of deceased Sunita. He has deposed in consonance with the F.I.R. and has proved the contents of F.I.R. which is at Exhibit 40. He has deposed before the Court that his daughter was being brutally assaulted by her husband for not fulfilling the demand of Rs. 1,00,000/-. As a result of which, his daughter had to bear the brunt and her husband assaulted her under the influence of alcohol. In the cross-examination, he has stated that he had not inquired about the accused, prior to fixation of marriage as he was satisfied with the situation of his house. At the time of marriage, accused was serving in the sugar factory as mechanic and after two years, he had shifted to Pune with his wife and daughter. That Indrajeet used to visit the house of Sunita once in six months. It is specifically elicited in the cross-examination that accused had demanded money from the first informant in 2008 at his village. He had personally met P. W. 2 and demanded money.

7. P. W. 2 has specifically stated that when accused came to his village with the dead body of Sunita, he had informed P. W. 2 i.e. his daughter Sunita was suffering from abdominal pain and she died. Prior to that no information was given to him. He had reached to village Ghodki at about 11.00 am along with his relatives. Approximately 50 persons had gathered at the house of the accused. The police had not recorded his statement at village Ghodki. Police had not taken his signature on any paper. It appeared that the police were protecting the accused. That the accused was in the police station at Vashi at that time. Police had not obtained the signatures of any members of the family on the inquest panchanama. He has admitted that on the date of incident, he had not gone to the police station for lodging the complaint against the accused. He had lodged the complaint against the accused after 15 days when police came to his residence. It is specifically admitted in the cross examination that police had

inquired with him as to whether he wanted to lodge a report against the accused or not. It is admitted that he had not witnessed the ill-treatment meted out to his daughter personally as he had no occasion to see it. Police has not recorded statement of any of the members of his family.

8. P. W. 3 Indrajeet Mhaske is the brother of deceased Sunita. He has deposed before the Court that he had got a job at Shiroom and therefore, he was residing along with his sister and the accused at Chandan Nagar, Thite Vasti. He had personally seen that the accused used to come home under the influence of alcohol and abuse Sunita. According to P. W. 3, accused had demanded Rs. 1,00,000/- from his father when they had assembled at the house of the accused to celebrate the birthday of Ragini i.e. daughter of accused. He has reiterated about the demand of golden ring at the time of his marriage. P. W. 3 has specifically deposed before the Court that on 30/05/2009, he had received call from the accused calling him to come for his funeral and thereafter, his sister had informed him on the same telephone saying that hereinafter, he should not contact her on telephone and he shall presume that she is dead. On 01/06/2009, P. W. 3 has received a call at about 5.00 am from the accused informing him that Sunita was suffering from abdominal pain as a result of which she has died. It was further informed that the dead body of Sunita had been brought to Vashi. P. W. 3 had seen that there were mark of injuries on her throat, chest and stomach. In the cross-examination, he had admitted that he had resided with his sister for about 1 to 1 1/2 months and thereafter, he had shifted to Shiroom. He has admitted that he had not informed to his family members regarding the ill-treatment meted out to Sunita at the hands of accused. It is also admitted that his sister had not informed her father about the ill-treatment meted out to her, but it was P. W. 3 who had informed his father. It is reiterated that amount of Rs. 1,00,000/- was demanded at the time of Ragini's birthday.

9. P. W. 4 Baban Jadhav is the landlord of the accused. He has deposed before the Court that on 31/05/2009, he had been to Kurudwadi for attending the marriage and there, he got the message that wife of the appellant has expired. He has stated that accused is addicted to liquor and that the behaviour of Sunita was good. He has further stated that relative of the accused namely Balu was residing as his tenant.

10. P. W. 5 Govardhan Rajput was attached to Vashi Police Station. He has deposed before the Court that on 01/06/2009, when he was in the police station, P.S.O. had handed one A.D. for investigation. Name of deceased was Sunita. Husband of Sunita by name Dashrath had given information about the death of Sunita. Report is at Exhibit 51. Thereafter, P. W. 5 had completed the formalities. He had sent all the documents for further investigation to Yerawada Police Station since offence had occurred within the jurisdiction of Yerawada Police Station.

11. P. W. 6 Sopan Udane was attached to Yerawada Police Station. He had received the report from Vashi Police Station. In the cross-examination, he has

stated that he would not be able to state the names of the relatives of accused with whom he had inquired.

12. P. W. 7 Vitthal Chavan was in charge of Shivrana Pratap Police Outpost under Yerawada Police Station. He is the scribe of first information report on the basis of which crime no. 273 of 2009 is registered. He had received papers regarding inquiry of AD No. 140/2009. He has denied the suggestion that he had conducted the investigation in accordance with law.

13. P. W. 8 Dattatraya Raut was attached to Yerawada Police Station as P.S.I. He had recorded the statements of mother and sister of deceased and thereafter, he had filed charge-sheet in the Court. He had arrested accused on 17/07/2009 at Thite Vasti.

14. In the present case, it is pertinent to note that initially accused/appellant has concocted a false story that on the date of incident, when he returned home, he found his wife writhing in pain. He took her to the hospital, however, on the way, she had died. Post mortem notes would falsify the said contention as it is clear from the cause of death opined by the medical officer that the cause of death was "Terminal cardio respiratory arrest due to asphyxia due to hanging" It appears that charge-sheet was therefore filed under section 306 & 498(A) of Indian Penal Code. Learned Sessions Judge had noticed that Sunita had died within seven years of marriage and soon before her death, there was a demand of Rs. 1,00,000/- made by the accused from the father of the deceased. Hence, he had framed an alternative charge under section 304(B) of Indian Penal Code. Offence punishable under section 306 & 304(B) cannot be read in the alternative for the simple reason that in case of 306, prosecution has to substantially establish that the deceased had committed suicide. In the present case, although, charge was framed, appellant could not have been convicted for offence punishable under section 306 & 304(B) of Indian Penal Code.

15. Firstly, since Sunita had died within seven years of marriage, the Court was empowered to presume that it was a case of dowry death, since, she had died in suspicious circumstances in her matrimonial home. The accused had made out a case of accidental death/death due to illness. However, there is nothing on record to show that she had died due to some ailment. Post mortem notes clearly indicate that the cause of death was "Asphyxia due to hanging. Accused/appellant had not stated that when he returned home, he had seen his wife hanging. According to him, she was writhing in pain and she died on the way to hospital. In a case of circumstantial evidence, a false explanation would give an additional link and which has to be held as an additional circumstance against the accused for convicting the accused.

16. That since, accidental death was registered under section 174 of Code of Criminal Procedure, 1973, it was incumbent upon the accused/appellant to explain the cause and circumstance in which his wife had died in suspicious circumstances and the onus would lie upon the accused to establish the same

under section 106 of Indian Evidence Act. The cause and circumstances in which Sunita had died would be in the exclusive knowledge of her husband. This has to be read in consonance with the fact that the father of the deceased has specifically stated that there was a demand of Rs. 1,00,000/- prior to her death. It is pertinent to note that the date of death is 30/05/2009 and a golden ring was demanded on 07/05/2009 i.e. at the time of marriage of Indrajeet. The date of demand is elicited in the cross-examination of Indrajeet. Hence, according to the accused also, the demand was made on 07/05/2009 and within 23 days Sunita had died in suspicious circumstances which leads to inference that this is a case of dowry death.

17. The conduct of the accused can be considered under section 8 of the Indian Evidence Act which reads thus:

"Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto. Explanation 1. The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant."

18. The conduct of giving false explanation in respect of the death of his wife and then misleading the Investigating Agency, making out a case of accidental death is a pointer establishing the guilt of the accused.

19. Accused had taken the dead body to Ghodki, even without informing her parents. The delay in lodging the F.I.R. in the present case cannot be said to be fatal to the prosecution for the simple reason that the father of the deceased had believed the accused innocently. Only after receipt of post mortem notes, it was revealed that Sunita had died homicidal death. There were injury marks on her neck, chest and abdomen which would clearly establish that she was brutally assaulted prior to her death.

20. Prosecution has established the guilt of the accused beyond reasonable doubt. The wife of the appellant had died while in the custody of her husband and under section 106 of the Indian Evidence Act, accused had offered a false explanation for the same. In view of this, conviction recorded by the Sessions Judge does not call for any interference. Hence, following order.

ORDER

(i) Appeal is partly allowed.

(ii) The conviction of the appellant for the offence punishable under section 304-B, 498A and 201 of Indian Penal code is maintained.

(iii) The sentence is modified. The appellant is sentenced to substantive sentence of eight years.

(iv) The appellant is acquitted of the charge under section 306 of Indian Penal Code.

(v) The sentence of fine is maintained.

(vi) In view of the disposal of Appeal, Criminal Application No. 559 of 2014 in Criminal Appeal No. 1319 of 2012 stands disposed of.

Appeal stands disposed of.