
(2004) 03 BOM CK 0149
In the Bombay High Court
Case No : Criminal Appeal No. 40 of 2001

Deepak Bharne and Others	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 18-03-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 306, 34, 498A

Citation : (2005) 1 DMC 65 : (2004) 2 MhLj 987

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : E.W. Nawab, for the Appellant; Ahirkar, APP, for the Respondent

Final Decision : Allowed

Judgement

A.H. Joshi, J.—The present appeal is arising out of the conviction and sentence ordered by the learned 2nd Additional Sessions Judge, Yavatmal in Sessions Trial No. 60 of 1994. The learned Trial Court has sentenced the appellants to suffer rigorous imprisonment for seven years and to pay fine of Rs. 1000/-, in default, to suffer further rigorous imprisonment for six months for the offences u/s 306 read with Section 34 of the Indian Penal Code and to suffer rigorous imprisonment for one year and pay fine of Rs. 500/- in default, to suffer further rigorous imprisonment for three months for the offence u/s 498A of the Indian Penal Code.

2. Sunita who was married to appellant No. 1, met with suicidal death at village Aakpuri, the place of her father. The prosecution has come out with the story that initially, dowry of Rs. 5000/- was given to the appellant No. 1. Later on, the accused raised demand of Rs. 10,000/- for the purpose of installation of Pan shop. Immediately, prior to the suicide, deceased Sunita was residing with her father. She had, however, gone to Ghatanji, the place of her husband where, according to the prosecution, she was driven out of house and met with ill-treatment, such as, beating etc. at the instigation of other accused persons. During investigation, amongst other, police drew inquest panchanama and it has

been recorded therein that when the blouse and brassiere of the deceased were opened, a chit under her hand-writing was found, which was regarded as suicide note.

3. At the trial, the prosecution examined various witnesses to prove inquest panchanama; recovery of suicide note and other chits which are also considered as suicide notes by the prosecution. One Vimal Shamrao Bawane, friend of deceased Sunita, is examined as PW 6 to prove the hand-writing of deceased Sunita. Besides other witnesses, the prosecution has also examined father and sister of deceased Sunita. The case of the prosecution, thus, rests upon the proof of cruelty, harassment or ill-treatment by the accused persons on account of dowry demand which is sought to be corroborated by the version of the deceased as contained in the suicide note.

4. The prosecution witnesses, viz. Narayan Gangaram Nagrale (PW 4) and Baby " Kalawati Prakash Bedale (PW 5) are the prosecution evidence in relation to demand of dowry, ill-treatment, harassment etc. Narayan (PW 4), father of the deceased, in his examination-in-chief has deposed about the payment of dowry initially of Rs. 5000/- and has also deposed about the additional demand of Rs. 10,000/-. The relevant portion of his deposition in this regard reads thus :--

"In the marriage, I paid dowry amount of Rs. 5,000/- to accused No. 1 Deepak. After the marriage, Sunita resided with accused persons. At the time of Akhadi festival, I went to fetch Sunita. I brought Sunita at my house. Sunita resided at my house for 8 to 10 days. Sunita told me that accused persons are demanding Rs. 10,000/- from us for the purpose of installation of pan shop."

However, in paragraph 2 of his examination-in-chief, he deposed as follows :--

"Prior to 8 days of Diwali, my another daughter Ranjana went to fetch Sunita and brought Sunita at my house. At that time also, Sunita told that accused persons are demanding amount and for that purpose, they used to beat her."

According to this witness, maternal uncle of the accused No. 1 and accused No. 1 Deepak had come to fetch Sunita after the festival of Diwali. According to him, thereafter on 24th (Wednesday), Sunita alone went to the house of accused persons, but she returned back and told that accused persons did not allow her inside and beat her. This witness also identified the chit (exhibit 34) - suicide note. He has, however, admitted in cross-examination that he is unable to read the contents of chit (exhibit 34). He states that deceased Sunita was educated upto 11th standard.

5. Another witness on the point of ill-treatment, harassment or cruelty is sister of deceased Sunita, viz. Baby " Kalawati Prakash Bedale (PW 5). She has deposed about Sunita having revealed to her that the accused persons were demanding Rs. 10,000/- for installation of pan shop and about ill-treatment. It shall be useful to reproduce ad-verbatim the relevant version of this witnesses, which is thus --

"at the time of Rakshabandhan Poornima, Sunita came to the house of my parents and I also went there. At that time, she met me. At that time, Sunita told that accused persons are demanding Rs. 10,000/- for installation of pan shop, they used to beat her and there is severe ill-treatment to her from the accused persons. After 5-6 months of the marriage, Sunita consumed poison, committed suicide and died. I am educated upto 6th std."

In cross-examination, this witness has stated that due to ill-treatment given by the accused, deceased Sunita used to often stay at the parental house. In the language of the witness, as recorded by the Trial Court, her version in the cross-examination is as below :--

".... After the marriage, Sunita used to reside always at the house of my parents. Sunita told that due to ill-treatment she is residing at the house of her parents. As there was ill-treatment from the accused persons, therefore, my mother told to Sunita to reside at the house of parents. Due to ill-treatment from accused persons, my parents were not desirous to send Sunita at the house of accused persons. I am deposing about ill-treatment on the say of Sunita"

The question as to whether the deceased Sunita was met with the treatment of cruelty is, therefore, liable to be decided on the versions of these two witnesses as primary evidence.

6. Insofar as the reliance of the prosecution of the suicide note is concerned, it is at exhibit 34 and contents thereof (translated) are as under :--

"I was not taking the poison. Though Diwali was over no one from my house was coming to take me. Hence I myself also went to Ghatanji to see as to why they were not coming. On 24-11-1993 when I had gone there at Ghatanji, my mother in law, my husband and my sister in law caught hold of my hand and pushed or drove me out of the house, the brother of my mother in law beat me. My mother and father were (illegible) Majya Nawrani Wa Sasuni Gali Lawane Evadich Majhi Viccha (prob meaning thereby my mother in law and my husband should be punished and handed. This is my only wish)".

The suicide note was proved through the evidence of pancha witness Subhadra Ramesh Rammadgillwar (PW 1) who also acted as pancha witness to the inquest panchanama (exhibit-35). This witness has deposed that she identifies the chit to be the same as it bears her thumb impression. She states that the chit which was seized by police, is the same which was before the Court. This witness does not know reading and writing.

7. The evidence of PW 6 Vimal has been relied upon by the prosecution for proof of the said chit/suicide note on the ground that this witness was conversant with deceased Sunita as well as her mode of writing. This witness is, however, required to deposit about ill-treatment also. This witness has deposed about ill-treatment in para 1 of her deposition which reads thus -

"... Sunita told that accused persons are demanding Rs. 10,000/- for the

installation of pan shop and for that purpose, there is ill-treatment to her. On the day of incident, Sunita went to the house of accused persons at Ghatanji and on the same day, returned to Akpuri. After returning from Ghatanji she met me. Sunita told that she cannot tolerate the ill-treatment from the accused persons."

Insofar as the suicide note (exhibit 34) is concerned, the said witness in a very categorical terms, stated as follows :--

"I can identify the handwriting of Sunita. Exh. 34 letter now shown to me, it is in the handwriting of Sunita. Another letter Article B now shown to me. It is also in the handwriting of Sunita. Article C letter is in the handwriting of Sunita and it bears her signature. I can identify her handwriting and signature. Article B bears the signature of Sunita."

In cross-examination, this witness in categorical terms, stated as follows :--

"... I can only sign and cannot read and write. I had no occasion to read her handwriting earlier. Merely name of Sunita is written on Article B and C and they do not bear the signature of Sunita. It is not true that Sunita was my friend, therefore, I am deposing falsely."

8. The prosecution has not examined, PW 5 Baby " Kalawati, real sister of deceased Sunita on the point of proving or identifying the handwriting of deceased Sunita nor another sister of deceased Sunita viz. Ranjana was examined in that behalf.

9. Insofar as the source of chits, its recovery etc. is concerned, in an effort to strengthen the case, it seems that Narayan (PW4), father of the deceased Sunita was asked about the chits. However, in cross-examination this witness has deposed thus :--

"Police took out the chit Exh. 34 from the blouse of dead body of Sunita. I cannot read and write but can only sign. All the three chits on record were taken out from the blouse of the dead body. I am unable to read the contents of the chit. On that day, though chits were shown to me at the time of seizure. Ranjana and Baby are educated."

10. According to prosecution, the alleged suicide note (exhibit 34) was seized under seizure panchanama (exhibit 33). It is recorded under Seizure Panchanama (exhibit 33) that a chit written on ruled paper has been seized and its contents are also reproduced in the seizure memo. It would be useful if description of the seized article, as is revealed under seizure memo (exh. 33), is reproduced. It reads thus -

"Description of the seized articles --

Valued at 00.00 1) one paper of the note book on which the below mentioned contents are written.

I was not taking the poison. Though Diwali was over no one from my house was

coming to take me. Hence I myself went to Ghatanji. Majya Nawrani wa sasuni Gali Lawane. Evadich Majhi Viccha (prob meaning thereby my Husband and my mother in law should be punished and hanged. This is my only wish)."

11. Contents of exhibit 34 are already reproduced hereinabove. It would thus be observed that there is remarkable variation in between the two versions, viz. the one which is reproduced in exhibit 33 - seizure panchanama and the actual article (exhibit 34). The portion - "... to see as to why they were not coming. On 24-11-1993 when I had gone there at Ghatanji. My mother in law, my husband and my sister in law caught hold of my hand and pushed or drove me out of the house. The brother of my mother in law beat me. My mother and father were ..." is the additional portion appearing in the chit at exhibit 34. These words do not appear in the description of the document given in the seizure memo (exhibit 33). It is obvious that in order to rope in all the appellants in the offences, exhibit 34 has been prepared.

12. PW 4 Narayan, father of the deceased Sunita has claimed during his evidence on oath that three chits were taken out from the person of the deceased. However, PW 1 Subhadra who was witness to the seizure memo, does not speak of three chits having been found under the blouse of deceased Sunita nor does not seizure memo speaks of seizure of three chits. There is thus exaggeration in the evidence of PW 4 Narayan. All these factors have weakened the case of prosecution and it appears to my mind that leaving of suicide note, is a made up story and the prosecution story cannot be believed.

13. In order to testify the document at exhibit 34, the prosecution has examined PW 6 Vimal Shamrao Bawane. Even though this witness claims in the examination-in-chief that she can identify the handwriting and signature of deceased Sunita and that Articles B and C bear the handwriting and signature of Sunita, in cross-examination she clearly admits that she had no occasion to read the handwriting of Sunita earlier and that merely the name of Sunita appears on Articles B and C and those Articles do not bear her signature. She further admits that she can only sign and cannot read and write. In view of this evidence of feeble character, the prosecution has failed even to prove the comparison in between two sets of document and it can safely be said that there is no proper identification of the hand-writing and signature of deceased Sunita.

14. There is no doubt that; the concept of cruelty and its effect varies from individual to individual and it also depends on the social and economic status to which the parties belong. It is also true that cruelty may not be physical and even mental torture and abnormal behaviour may amount to cruelty, in the instant case, the father of deceased has spoken of complaint; of beating by Sunita. However, as observed above, his evidence is found to be exaggerating and contradictory to the seizure memo. PW 5 Baby speaks bare minimum on the point of alleged cruelty. Moreover, she is a married sister of deceased Sunita and is not expected to possess knowledge in respect of alleged harassment to Sunita. On the point of cruelty, evidence of PW 6 Vimal can also not be accepted. In

answer to a question, she has deposed in cross-examination that Sunita had gone to Ghatanji prior to 2-3 days of the incident. However, according to PW 4 Narayan, father of the deceased, the incident occurred on the day on which Sunita returned from Ghatanji place of her husband. Thus, in absence of direct oral or documentary evidence, the prosecution case cannot be accepted on the basis of hear-say evidence.

15. The learned counsel for appellant has relied upon Gananath Pattnaik Vs. State of Orissa, . As in the present, the learned Sessions Judge in the said case, had relied upon the statement of sister of deceased. The Apex Court held that such a statement is not admissible in evidence and has to be termed as being only a hearsay evidence. The Apex Court held thus :--

"It follows, therefore, that there was no legal evidence tendered in the case which could be made the basis for returning a finding with respect to the alleged cruelty of the accused with the deceased. In the absence of any legal evidence produced in the case, we are of the opinion that the prosecution has failed to prove, beyond doubt, that the appellant had committed the offence u/s 498-A of the Indian Penal Code and find that it is a fit case where he is entitled to be given the benefit of doubt."

16. The learned counsel for appellants has tried to harp upon the entire prosecution story on the ground that there was considerable delay in lodging of the FIR in the present case. For that purpose, he relied upon Dilip Ramaji Kakde v. State of Maharashtra, 2000 (1) M.L.J. 549.

17. It shall not be necessary to dilate upon this question in view of the fact that the very proof of cruelty either by primary or direct evidence has come forward in this case. In view of the discussion that I have made about type and quality of evidence that has come on record, I have no hesitation to arrive at a conclusion that the evidence as to ill- treatment or cruelty brought by the prosecution is not based on direct evidence. The nature of evidence is hearsay. It shall be unsafe to rely upon such evidence to base and uphold the conviction. There is absence of proof of cruelty due to dowry demand.

18. The learned Trial Judge has observed that if at all the accused doubted the authenticity of exhibits 34 and 52, they could have produced the handwriting of the deceased and obtained the opinion of hand-writing expert. Learned Trial Court observed that the accused No. 1 being husband, could have produced the admitted handwriting of the deceased on record. The observation of the learned Trial Court cannot be accepted. It is a settled position that the burden to prove charge lies on the prosecution and the prosecution cannot be given benefit of the weaknesses of the accused. The observation made by the learned Trial Judge is wholly unsustainable.

19. In view of what is stated above, prosecution has failed to prove that the deceased Sunita was subjected to cruelty on account of demand of dowry and the accused/appellant abetted the commission of suicide.

20. In the result, appeal is allowed. The conviction and sentence imposed by the learned 2nd Additional Sessions Judge. Yavatmal vide its judgment and order dated, 11-1-2001 in Sessions Trial No. 60 of 1994 is hereby set aside.

The accused/appellants are acquitted of the offences with which they were charged. They be released forthwith if not required in any other case.