
(2017) 08 BOM CK 0184
In the Bombay High Court
Case No : 151 of 2002

Dinesh s/o Premlal Gautam

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 01-08-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 304B](#) - Dowry death

Citation : (2017) 08 BOM CK 0184

Hon'ble Judges : M. G. Giratkar

Bench : SINGLE BENCH

Advocate : Amol Mardikar, A. M. Joshi

Final Decision : Allowed

Judgement

1. Present appeal is against the judgment of 1st Adhoc Additional Sessions Judge, Gondia dated 13-3-2002 by which appellant/ accused is convicted for the offence punishable under Section 304B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years.

2. The case of the prosecution against the appellant in short is as under : (i) Marriage of deceased Premlata was solemnized with appellant/ accused on 19-6-1997. The appellant was demanding dowry. After the marriage, deceased told her father that accused was demanding sofa set, cupboard etc. therefore, her father purchased sofa set etc. and paid Rs. 16,000/to his daughter. When her father went to see deceased, she told her father that accused demanded Rs. 40,000/to purchase motorcycle. Deceased delivered female child. In the rainy season, father of accused asked him to pay Rs. 6,000/for the purpose of service of the accused. Before Diwali, accused informed father of deceased that Premlata was serious, therefore, her father went to the house of accused. He saw Premlata in good condition. Accused was saying that he do not want to reside with deceased as she was abusing to him and used to dance. On the next day, he brought deceased to his house. In the night of incident, deceased committed

suicide by jumping in the well. Her father Vishwanath lodged report in the Police Station. But in the report, he did not suspect anybody.

(ii) During the investigation, statements were recorded. Offence punishable under Section 304B of the Indian Penal Code came to be registered. P.W. 1 Veena/sister-in-law of deceased produced one chit and letter. Those were seized by the police. After complete investigation, Investigating Officer filed the chargesheet before the Court.

(iii) Charge was framed by Adhoc Assistant Sessions Judge, Gondia at Exhibit 10 for the offence punishable under Section 304B of the Indian Penal Code. Prosecution has examined in all total seven witnesses. Statement of accused was recorded. Accused denied material incriminating evidence against him and stated in his statement that deceased Premlata went to her matrimonial home along with her father as she was not keeping well. She was treated at Balaghat by Dr. Harinkhede. He did not cause any cruelty for commission of suicide by Premlata. She might have committed suicide under the state of schizophrenia. After hearing the prosecution and defence, learned trial Court convicted the accused for the offence punishable under Section 304B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 7 years.

3. Learned counsel Shri Mardikar has pointed out material evidence supporting the defence. Learned counsel Shri Mardikar has submitted that deceased was under the treatment of Dr. Harinkhede. She was brought by her father P.W. 5 to his house because of her illness. She was also getting medical treatment of Dr. Bahekar at Gondia. Learned counsel has pointed out evidence of witnesses and submitted that there are material omissions and contradictions. Investigating Officer not examined by the trial Court, therefore, accused could not prove omissions and contradictions and therefore, prejudice is caused to the appellant/accused.

4. Learned counsel Shri Mardikar has submitted that Police Inspector Shri Sapkal who investigated the crime was a material witness. As per the report, complainant not suspected anybody for the cause of death of his daughter. Therefore, it was for the prosecution to show as to how the offence came to be registered.

5. Learned counsel Shri Mardikar submitted that chit and letter proved by P.W. 7 (Handwriting Expert) Shri Ranjangaonkar do not show any illtreatment by the appellant. Prosecution has failed to prove the guilt of the accused. Learned counsel has submitted that suicide due to cruelty/demand of dowry should be soon before her death. In support of his submission, Shri Mardikar, learned counsel pointed out decision in the case of M. Srinivasulu Vs. State of A. P. reported in (2007) 12 SCC 443.

6. Learned Additional Public Prosecutor Shri Joshi has submitted that Dr. Bahekar not examined by the accused. Therefore, accused failed to prove that deceased was mentally ill. Learned Additional Public Prosecutor has submitted that

evidence of P.W. 1 to P.W. 5 show that accused was demanding dowry and due to his ill treatment deceased committed suicide. Learned trial Court rightly convicted the appellant, hence appeal is liable to be dismissed. Learned Additional Public Prosecutor pointed out judgment in the case of Amrutlal Liladharbhai Kotak and ors. Vs. State of Gujarat reported in 2015(4) SCC 452.

7. Report was lodged by father of deceased. It is at Exhibit 29. As per the contents of report, deceased was married with appellant before 3 years of the incident. His son-in-law is a teacher at Balaghat. Deceased begotten a female child aged about 1 1/2 years. Before 15 days, his soninlaw named Dinesh Gautam (appellant) informed on telephone that Premlata was not feeling well, therefore, he along with his daughter-in-law Veena (P.W. 1) went to meet deceased. Complainant and P.W. 1 stayed in the house of accused in the night. Accused told them that Premlata was not well and so they shall take her along with them to their village. Therefore, on the next day, her father and sisterinlaw brought deceased Premlata to their village. That time, she was taking medicine. His soninlaw Dinesh had come to village 8 days back and went back on the same day. In the night of 21-12-1999, they were sleeping. In the morning of 22-12-1999, daughter of Premlata was crying. Deceased was not found. They searched deceased but not found. Umesh Turkar dropped the hook in the well situated at the backside of his house and told that girl had fallen in the well. His daughter Premlata died by drowning in the water in well. He do not suspect anybody for death.

8. From perusal of the report, P.W. 5 Vishwanath, father of deceased there is no any allegations about demand of dowry or illtreatment by the appellant. Therefore, it was necessary for the prosecution to examine the Investigating Officer. PSI Sapkal investigated the crime but he is not examined by the prosecution. Therefore, material prejudice is caused to the accused/appellant.

9. In respect of evidence, P.W. 1 Veena has stated in her evidence that after the marriage, accused demanded sofa set etc. and her fatherinlaw paid Rs. 18,000/ to the accused. Accused was demanding Rs. 40,000/to purchase motorcycle. But her evidence is not reliable because of her admission in the cross-examination. She has admitted in her cross-examination that accused never talk with her about demand of cash amount. She did not know whether accused demanded anything at the time of settlement of marriage. She has stated that 15 days before she along with her fatherinlaw went to the house of appellant, deceased was not well, therefore, they brought to their house at Hudkyatola.

10. P. W. 1 has further stated that 8 days before the incident, accused informed on phone that he was unable to do household work and also go to school, therefore, requested them to send deceased but deceased not returned to the appellant. In the crossexamination, material omission is brought on record that she has stated to police in her statement that accused did not take deceased for about one month after the marriage because he was demanding cash amount. She has admitted that this fact has not stated in her statement and for the first

time she stated before the Court. She has admitted that deceased was getting medical treatment of Dr. Bahekar at Gondia. She has further admitted that they brought deceased to Hudkyatola on 1st December, since then, she was in matrimonial home. She has stated that in the night of incident, deceased committed suicide by jumping in the well. In the morning they searched her but not found. She produced one letter and one chit before the police written by the deceased. Material omission about the cruelty and demand of dowry is brought in cross-examination.

11. P.W. 2 has stated about telephonic message given by the accused/appellant. In his cross-examination, he has stated that he did not know from which place Veena brought letter, that time, Veena brought only single letter and police seized it. Veena told him that it was a letter written by Guddi/deceased. Guddi never told him about her grievance. Accused never demanded cash and motorcycle in his presence.

12. P.W. 2 is grandfather of deceased. Therefore, it was natural for him to know about the demand of money and cruelty by accused. He has specifically stated that accused never demanded cash amount and motorcycle in his presence.

13. P.W. 3 has stated in his evidence that he conducted post mortem. As per his opinion, cause of death was asphyxia due to drowning. Accordingly, he issued post mortem report, Exhibit 21. P.W. 4 is the panch witness. He has proved spot panchanama and inquest panchanama, Exhibit 23 and Exhibit 24.

14. P. W. 5 is father of deceased. He has stated that accused demanded cupboard, sofa set etc. and he has given Rs. 16,000/to his daughter. His daughter told him that accused demanded Rs. 40,000/to purchase motorcycle. He has stated in his evidence that deceased was getting medical treatment of Dr. Bahekar. Fifteen days before the incident, he along with his daughterinlaw went to the house of the accused. That time, accused told him that deceased was not behaving properly. She was abusing and used to dance. Therefore, P.W. 5 brought deceased to his house. Material omissions are brought on record in his crossexamination.

15. P.W. 6 proved seizure panchanama, letters. P.W. 7 Shri Vishwas Ranjangaonkar proved the letters written by deceased. Those are at Exhibit 13 and 15.

16. Accused examined Dr. Harinkhede at Exhibit 42. He has stated in his evidence that accused brought deceased to his private hospital. She was suffering from schizophrenia. She came to his hospital for treatment on 4-3-1999, 4-9-1999, 20-9-1999, 29-11-1999 and lastly, on 1-12-1999. As per his evidence, patient of schizophrenia used to loss mind control and it results in abnormal behaviour, so also, there is possibility of irrelevant talk. On 29-11-1999, deceased came to his hospital for medical treatment. That time, he observed that deceased Premlata was behaving abnormally and talkative. He prescribed medicine to her. He has stated that there is tendency of suicide in

case of patient of schizophrenia. In the cross-examination it is brought on record that he is qualified as M.D. (Medicine).

17. Evidence on record clearly show that deceased was mentally ill. She was getting medical treatment of Dr. Harinkhede (D.W. 1). As per his evidence, deceased was behaving abnormally. There was tendency of committing suicide. As per his evidence, it is clear that he gave long treatment. The prescriptions issued by Dr. Harinkhede are proved on record, those are at Exhibit Nos. 50 to 53.

18. As per evidence of witnesses P.W. 1 and P.W. 5, it is clear that deceased was also getting medical treatment of Dr. Bahekar at Gondia. Therefore, it is clear that whenever she was residing with the accused, she was getting medical treatment of Dr. Harinkhede at Balaghat. Whenever she used to reside with parents at Hudkyatola, she was getting medical treatment of Dr. Bahekar at Gondia.

19. Cross-examination of P.W. 1 clearly shows that accused never demanded any articles or money in her presence. P.W. 2 is grandfather of deceased. He has specifically stated in his cross-examination that deceased never made any grievance to him. He has further stated that accused never demanded cash amount and motorcycle in his presence. It is natural for him to know about the demand of husband of his granddaughter. But he has not stated anything against the accused.

20. Only evidence of P.W. 5 which shows that there was some demand of household articles, motorcycle etc. But his cross-examination shows that he had given Rs. 16,000/to his daughter to purchase sofa set etc. He has stated in his evidence that his daughter told him that accused demanded Rs. 40,000/to purchase motorcycle. His evidence is not reliable because at the first instance, he could have made allegations against the accused. The report, Exhibit 29 was lodged by this witness in the Police Station in which he has specifically stated that "before 15 days, he brought deceased to his house. Deceased was not feeling well, therefore, he brought her to his house. That time, she was taking medicine. Thereafter soninlaw/ appellant came to his house and returned back on the same date. In the night of incident, she jumped in the well. In the morning, they searched her but not found. He has stated in his report that his daughter Premlata died by drowning in the water of well. He do not suspect anybody for her death."

21. It is pertinent to note that how the incident of demand of dowry, cruelty etc. stated by P.W. 5 related to the incident of death by drowning. Therefore, it was natural for P.W. 5 to state everything in his report but he has not made any allegation against the appellant/ accused stating that accused was demanding Rs. 40,000/to purchase motorcycle etc. It is pertinent to note that not a single witness has stated before the Court that there was any kind of illtreatment such as beating etc.

22. Learned trial Court has wrongly relied on the letters proved by P.W. 7. Both the letters, if read as it is, then it is clear that both letters do not show any kind of illtreatment or demand of dowry by the accused/appellant. As per the contention of P.W. 1, she found letter in the bag after the incident and she handed over the same to the police. Letter of so called suicide note shows that letter Exhibit 13 written as under : "I want to die at my own will. My (daughter) Shruti only will suffer very much due to my death. What complaint a lady (like me) can make, who is deserted by her own husband. I can neither tolerate tears of everybody nor can I carry it along, therefore, I am taking this step."

Letter, Exhibit 13 does not show that there was any illtreatment or demand of dowry by her husband. Another letter, Exhibit 14 shows that she was happy with her husband. There is nothing in the letter, Exhibit 14 to show there was any ill-treatment or demand of dowry by her husband.

23. Letter, Exhibit 13 was written by her before committing suicide. This letter, Exhibit 13 does not show any illtreatment or demand of dowry by her husband. Therefore, there is material substance in the defence of the appellant that she was mentally ill. She was suffering from schizophrenia as per the evidence of Dr. Harinkhede. Therefore, she might have committed suicide. Defence appears to be probable. The burden of proof on defence is not so heavy as like prosecution. Accused has to prove his defence by preponderance of probability. It is clear that accused/appellant has proved his defence by examining Dr. Harinkhede.

24. As per the evidence of Dr. Harinkhede, for the first time on 4-3-1999, she was brought by appellant to his private hospital at Balaghat for medical examination and treatment. She was suffering from schizophrenia. In case of schizophrenia patients, they lost mind control and it results in abnormal behaviour. There was possibility of committing suicide. He gave treatment from 4-3-1999 up to 1-12-1999. He observed that deceased Premlata was abnormal and talkative.

25. Learned Additional Public Prosecutor Shri Joshi has submitted that Dr. Bahekar has not examined by the accused. Dr. Harinkhede is not a Psychiatrist and, therefore, his evidence is not reliable. It is pertinent to note that Dr. Harinkhede is qualified as M.D. (Medicine), therefore, he is having sufficient knowledge to give treatment to the patients of schizophrenia. Moreover, it is clear from the evidence of prosecution witnesses that whenever she used to come to matrimonial home, she was given treatment of Dr. Bahekar. Before the incident also, she was residing with her parents and getting treatment of Dr. Bahekar. Therefore, it was for the prosecution to examine Dr. Bahekar, but prosecution has not examined Dr. Bahekar.

26. Evidence on record clearly show that deceased was suffering from schizophrenia. There is nothing in the evidence of any of the witness that there was any physical or mental cruelty to the deceased. On the other hand her grandfather has stated in his evidence that deceased never made any complaint

about her husband. Accused/ her husband never demanded cash amount and motorcycle in his presence. P.W. 1 also stated in her cross-examination that appellant never demanded any amount in her presence.

27. The only evidence of P.W. 5 is not sufficient. There is material omissions in his evidence. Moreover, P.W. 5 not stated anything in his report about demand of dowry to purchase sofa set and motorcycle. If it was a fact, then it was natural for him to write everything in his report, Exhibit 29. But report, Exhibit 29 clearly show that "his daughter fallen in the well and died by drowning in the water of well. He do not suspect anybody for death of his daughter."

28. Learned Additional Public Prosecutor Shri Joshi pointed out decision in the case of Amrutlal Liladharbhai Kotak and ors. Vs. State of Gujarat reported in 2015(4) SCC 452. In the cited decision, deceased was residing with her husband, fatherinlaw and motherinlaw. P.W. 1, P.W. 8 and P.W. 9 stated that deceased used to complain about the mental torture and harassment meted out to her by the accused due to insufficient dowry provided during the marriage. This evidence was supported by P.W. 7 who was friend of deceased who stated that deceased informed her that she was subjected to frequent mental torture and harassment by the accused for bringing less dowry. In the cited decision, prosecution has proved demand of dowry and cruelty by her husband and inlaws. She was residing with her husband and inlaws at the time of incident. Due to cruelty, she hanged herself. Since then, her husband and inlaws were absconding for a period of 36 days and ultimately, they surrendered at Morbi City Police Station.

29. Facts in the cited decision is very much different. She was in the custody of husband and inlaws. Demand of dowry and cruelty by her husband and inlaws are proved, therefore, they were convicted and conviction was upheld by the Hon'ble Supreme Court. Facts in the cited decision are very much different and thus, not applicable to the case in hand.

30. Learned counsel Shri Mardikar placed reliance on the judgment of the Supreme Court in the case of M. Srinivasulu Vs. State of A. P. reported in (2007) 12 SCC 443. Hon'ble Apex Court has observed as under :

Section 304B of IPC

"The provision has application when 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 relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304B IPC, the essential ingredients are as follows :

(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

Section 113B of the Evidence Act is also relevant for the case at hand. Both Section 304B IPC and Section 113B of the Evidence Act were inserted as noted earlier by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths."

Further it is observed by the Hon"ble Apex Court that :

"As per the definition of "dowry death" in Section 304B IPC and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand for dowry". Presumption under Section 113B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials :

"(1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304B IPC.)

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death."

31. In the present case, deceased not stated in her letter, Exhibit 13 or Exhibit 14 about the illtreatment or demand of dowry by her husband/appellant. P.W. 1 and P. W. 2 have not stated anything about illtreatment or demand of dowry by the appellant in their presence. P.W. 2 has specifically stated that deceased never stated anything to him about the grievance of her husband. He has specifically stated that accused never demanded any amount to purchase motorcycle etc.

32. P.W. 5, father of deceased has stated in his examinationinchief in respect of demand of dowry but he has not stated a single instance of any cruelty by accused. P.W. 5 not stated anything about demand of dowry or cruelty in his report, Exhibit 29. He has made much more improvement in his evidence before the Court. Deceased was not residing with her husband/ appellant at the time of incident. Prosecution has miserably failed to prove that soon before her death,

there was demand of dowry by the appellant/accused. Hon"ble Apex Court in the case of M. Srinivasulu Vs. State of A. P. (cited supra) has observed that :

"suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

33. In the present case, at the time of incident deceased was residing with her parents. She was getting medical treatment of Dr. Bahekar. It is specifically stated in the report, Exhibit 29 that nobody was responsible for her death. Not a single allegation in respect of demand of dowry or cruelty by the husband of deceased are made in the report. P.W. 1, P.W. 2 and P.W. 5 not stated any instance of any physical or mental cruelty by the appellant in their presence. Deceased herself could have written about the physical or mental cruelty or demand of dowry by her husband in the letter, Exhibit 13 or Exhibit 14. She has simply stated in the letter/chit, Exhibit 13 that "she was deserted by her husband and, therefore, she did not want to live."

34. It is pertinent to note that she was brought by her father and sisterinlaw (P.W. 5 and P.W. 1) to their house. As per their versions and report, she was getting medical treatment of Dr. Bahekar. It is pertinent to note that 8 days before the incident, appellant visited her. If there was really any cruelty to her, then she would have disclosed to her grandfather or sisterinlaw. Therefore, it is clear that she was suffering from schizophrenia. In the attack of schizophrenia, she might have committed suicide.

35. Defence is proved by the appellant/accused by the evidence of Dr. Harinkhede. Prosecution has not proved the guilt of accused beyond reasonable doubt. On the other hand accused/appellant has proved that deceased was suffering from schizophrenia and under the attack of mental illness, she has committed suicide. All these material evidence are not considered by the trial Court and wrongly convicted the appellant. Hence, impugned judgment is liable to be quashed and set aside. Hence, the following order. (i) Appeal is allowed.

(ii) Impugned judgment of conviction of appellant is hereby quashed and set aside.

(iii) Accused/appellant is hereby acquitted of the offence punishable under Section 304B of the Indian Penal Code.

(iv) Bail bond of accused/appellant stands cancelled.

(v) R & P be sent back to the trial Court.