
(2013) 10 BOM CK 0264

In the Bombay High Court

Case No : Cri. Appeal Nos. 934 and 890 of 2008

Ganesh @ Premnath Dattu Deore

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 25-10-2013

Acts Referred:

Citation : (2015) 1 MhLJCrI 604

Hon'ble Judges : P. V. Hardas and P. N. Deshmukh, JJ.

Bench : Division Bench

Advocate : S. P. Kadam along with M. N. Sandhyshiv and R. P. Hake, Advocates, for the Appellants (in both the Appeals); Smt. U. V. Kejriwal, APP, for the State

Final Decision : Dismissed

Judgement

P. V. Hardas, J. (Oral)—Criminal Appeal No. 934 of 2008 has been filed by Original Accused No. 1, who stands convicted for an offence punishable under sections 498-A and 302 of the Indian Penal Code and sentenced to RI for two years and to pay a fine of Rs. 500/-, in default of which to undergo SI for six months and imprisonment for life and to pay a fine of Rs. 1000/-, in default of which to undergo SI for one year, while Criminal Appeal No. 890 of 2008 has been filed by Original Accused Nos. 2 and 3, who stand convicted for an offence punishable under section 498-A read with section 34 of Indian Penal Code and sentenced to RI for two years and each to pay a fine of Rs. 500/-, in default of which to undergo SI for six months, by the Additional Sessions Judge, Malegaon, by judgment dated 7-8-2008 in Sessions Case No. 299 of 2007, by these appeals question the correctness of their conviction and sentence.

2. Facts in brief as are necessary for the decision of these appeals may briefly be stated thus :-

PW 4 - PSI Chhagan Ghuge, who was attached to Satana Police Station on 18-7-2007, received a telephone call from the Police Patil of village Meshi that deceased Suvarna had died of drowning in a well. Accordingly, PW 4 - PSI Ghuge

filed the accidental death and proceeded to the scene of the incident. On reach the scene of the incident, he had noticed that a crowd had assembled around the well, which was situated in the field of the accused. The dead body of a young woman had been taken out of the well. Accordingly, an inquest panchanama, in the presence of panchas, was drawn at Exh. 25. The dead body was thereafter referred for post-mortem examination. The scene of the incident panchanama also accordingly was drawn in the presence of panchas at Exh. 27. From the scene of the incident, a bottle of insecticide was seized. The sketch of the scene of the incident was accordingly drawn at Exh. 28. PW 2 - Jagannath, father of deceased Suvarna, lodged his report at Exh. 38. On the basis of the said report, an offence vide Crime No. 197 of 2007 was registered under sections 302, 304-B, 498-A, 201 read with section 34 of the Indian Penal Code against the accused. Statements of witnesses were recorded. Accused Nos.1 to 3 were arrested on 18-7-2007 and accused No. 4 was arrested on 19-7-2007 under arrest panchanamas at Exhs. 47 to 50. The marriage invitation card was accordingly seized and is at Exh. 51. The school leaving certificate of deceased Suvarna was also seized and is at Exh. 52. The viscera of deceased and the insecticide bottle were referred to the Chemical Analyzer under requisition at Exh. 54. The reports of the Chemical Analyzer are at Exhs. 41 to 44. Further to the completion of investigation, a charge-sheet against the accused was submitted.

Post-mortem on the dead body of deceased Suvarna was conducted by PW 3 - Dr. Prashant Deore, who noticed one external injury i.e. a small abrasion on the anterior aspect 1 c.m. X 0.5 cm. He had opined that this injury was an antemortem injury. On examination of the dead body, PW 3 - Dr. Deore noticed that the eyes were partially open with the tongue of deceased inside the mouth. Froth was oozing through the nose and mouth. On internal examination, he noticed that the brain was congested and oedematous. He found the left lung was congested and oedematous. Froth was absent in the lungs. Stomach was filled with fluid with smell like O.P.P. poison. He accordingly preserved the viscera for chemical analysis. Upon receipt of the report of the Chemical Analyzer, he opined that the probable cause of death of Suvarna was death due to O.P.P. poisoning. The post-mortem report is at Exh. 46.

3. On committal of the case to Court of Sessions, trial court vide Exh. 15 framed charge against the accused for offence punishable under sections 498-A read with 34, 302 read with 34 and 201 read with 34 of the Indian Penal Code. Accused denied their guilt and claimed to be tried. Prosecution, in support of its case, examined four witnesses. The trial court came to the conclusion that deceased Suvarna had died due to administration of poison and, therefore, convicted the accused No. 1 under sections 302 and 498-A of Indian Penal Code and also convicted accused Nos. 2 and 3 under section 498-A of the Indian Penal Code. The accused being thus aggrieved by their conviction and sentence have filed the appeals.

4. In order to effectively deal with the submissions advanced before us by Shri.

Kadam, learned counsel for the appellants and the learned APP, it would be useful to refer to the evidence of the prosecution witnesses.

5. PW 2 - Jagannath, father of deceased Suvarna and the first informant states that Suvarna was married on 6-3-2007 to accused No. 1. Rs. 65,000/- were paid as dowry in the marriage to the accused. For about a month, the accused had treated Suvarna well and Suvarna lived happily at the house of the accused. He states that on account of the festival of Akshay-tritiya, PW 2 - Jagannath had gone to the house of Suvarna for bringing Suvarna to his house. He states that after the festival, he had reached Suvarna to the house of the accused and accused Nos. 2 to 4, who were present in the house, had informed him that Suvarna was not doing the domestic work properly. Suvarna could not cook well and do the agriculture work. PW 2 - Jagannath persuaded and requested the mother-in-law of Suvarna i.e. Accused No. 3 to give Suvarna time to adjust herself in the house. He further states that at that time accused No. 1 and accused No. 3 demanded Rs. 50,000/- for purchasing a vehicle called "tempo". He states that the accused were abusing Suvarna as she could not do the work properly and they were making a grievance that less dowry was paid at the time of marriage. According to PW 2 - Jagannath, he returned home and informed his family members about the harassment which was being given to Suvarna and also informed them about the demand of Rs. 50,000/-. He states that about 8 to 10 days after the festival of Akshaya-tritiya, he had received a telephone call from accused No. 1, demanding Rs. 1000/- for purchasing the clothes and 5 gms. gold ring. Jagannath states that accordingly the clothes and the gold ring had been given to accused No. 1 at the house of Jagannath. At the house of PW 2 - Jagannath, the accused had again demanded Rs. 50,000/- for purchasing the tempo. Accused No. 1 had also informed him that accused No. 1 was disliking Suvarna. Jagannath further deposes that about 3 to 4 days prior to the incident, accused No. 1 - Ganesh had informed him on telephone and had demanded Rs. 50,000/- for purchasing of tempo and had threatened that in case the amount was not given, he would administer some poison to Suvarna. Jagannath states that he had accordingly sent his mother and his brother PW 1 - Devidas at the house of the accused. Jagannath further deposes that PW 1 - Devidas had informed that the accused were harassing Suvarna and, therefore, Jagannath had gone to the house of the accused on 16-7- 2007. At that time, Suvarna was alone in the house and after seeing him, Suvarna started crying and informed him that the accused were assaulting her and were pressing for their demand for Rs. 50,000/-. Suvarna had also informed him that she was apprehending danger to her life. From the house of Suvarna, PW 2 - Jagannath went to the house of his brother-in-law and thereafter again returned to the house of the accused. Accused No. 1 had again threatened to kill Suvarna if the demand of Rs. 50,000/- was not met by PW 2 - Jagannath. Jagannath further deposes that the accused had rushed towards him in order to assault him. Jagannath had requested the accused that he was unable to pay Rs. 50,000/-. Jagannath returned home on the next day i.e. 17-7-2007.

6. In respect of the incident, Jagannath states that on 18-7-2007, at about 9.30 a.m. he had received a telephone from accused No. 1 and was informed that Suvarna had died due to drowning in the well. Jagannath states that he, along with his brothers and other relatives, had gone to the house of the accused. He had seen the dead body of his daughter Suvarna. After the post-mortem examination, the Medical Officer had informed him that Suvarna had died due to administration of poison and, therefore, he had lodged his report at Exh. 38.

7. In cross-examination, Jagannath has admitted that the contents of the report that Suvarna was residing happily at the house of the accused for two months was correct. Omission has been elicited that he had not stated in his report at Exh. 38 that dowry of Rs. 65,000/- was paid to the accused at the time of marriage. Omission has also been elicited that he had not stated in his report that accused No. 1 had telephoned him and had demanded Rs. 1000/- for clothes and Rs. 50,000/- and a gold ring. He has admitted as correct that the accused No. 1 had not stated in the house of Jagannath that accused No. 1 disliked Suvarna. An omission in that respect has been elicited in the report at Exh. 38. Omission has also been elicited that he had not stated in his report that accused No. 1 had threatened to kill Suvarna by administering poison in case demand for Rs. 50,000/- was not met. Omission has also been elicited that he had not stated in his report at Exh. 38 that he had sent his brother and mother at the house of Suvarna after receiving the telephone call, demanding Rs. 50,000/-. Omission has also been elicited that he had not stated in his report that his brother and mother had informed him about the harassment being caused to Suvarna at the house of the accused. Omission has also been elicited that he had not stated that he had gone to the house of accused on 16-7-2007. He has admitted as correct that Suvarna had disclosed to him that she was not willing to stay at the house of the accused and had requested him to take her along with him. Omission has also been elicited that he had not stated in his report about accused No. 1 rushing at him in order to assault him.

8. Prosecution has examined PW 1 - Devidas, uncle of deceased Suvarna. PW 1 - Devidas deposes that Suvarna was married to accused No. 1 on 6-3-2007 and dowry of Rs. 65,000/- was paid to the accused. He states that Suvarna resided happily for a period of one month in the house of the accused and thereafter the accused started harassing Suvarna as Suvarna could not cook the food well and also on account of insufficient dowry being paid in the marriage. Devidas deposes that the accused had asked Suvarna to bring an amount of Rs. 50,000/- from PW 2 - Jagannath for purchasing the tempo. He states that Suvarna was ill-treated on account of failure to meet the demand for payment of Rs. 50,000/-. He states that when Suvarna had come for the festival of Akshay-tritiya in April 2007, Suvarna had informed them about the ill-treatment at the hands of the accused. He states that Suvarna had telephoned PW 2 - Jagannath in May 2007 informing Jagannath that accused No. 1 was demanding a gold ring of 5 gms. and Rs. 1000/- for purchasing new clothes. He further states that PW 2 - Jagannath gave the gold ring and the clothes to accused No. 1. He also states that Suvarna had

disclosed to Jagannath that if Rs. 50,000/- were not paid, the accused may administer poison to her and may kill her also. He states that Suvarna and her husband were then sent back to their house, making it clear that Jagannath could not pay Rs. 50,000/-. He further states that after 2 to 3 days, he along with his mother had gone to the house of the accused and had informed them that Jagannath was not in a condition to pay Rs. 50,000/-. He then states about receiving the news about death of Suvarna due to drowning in the well and about accompanying Jagannath to the house of the accused.

9. In cross-examination, Devidas was contradicted with the recitals in his previous statement that Suvarna resided happily at the house of accused for two months from her marriage. Omission has also been proved that he had not stated in his previous statement that he along with his mother had gone to the house of the accused to persuade them not to harass Suvarna. Omission has also been elicited that he had not stated about 8 days prior to the incident he had gone to the house of the accused to persuade them. Omission has also been elicited that he had not stated that Suvarna had apprehended that the accused may administer poison to her and may kill her if the demand for Rs. 50,000/- was not met. Omission has also been elicited that he had not stated in his previous statement that he and his mother had gone to the house of the accused in order to persuade them. Omission has also been elicited that he had not stated that about 8 days prior to the incident he had gone to the house of the accused.

10. The evidence of PW 1 - Devidas and PW 2 - Jagannath is at variance. According to PW 1 - Devidas it was Suvarna who had informed him about the demand for Rs. 50,000/- being made by the accused. PW 2 - Jagannath states that the demand was made by accused No. 1 as well as by accused No. 3 and the demand was repeatedly made. Omissions on this aspect have been elicited in the cross-examination in the evidence of both the witnesses. Omissions, pertaining to demand and payment of dowry, has also been elicited. PW 2 - Jagannath had waited till the Medical Officer had disclosed to him the cause of death of Suvarna and had thereafter lodged his report. In the light of omissions on the vital aspects of the prosecution case, we are not inclined to place any reliance on the evidence of PW 1 - Devidas and PW 2 - Jagannath in respect of the alleged demand made by the accused. We find that there is no cogent and reliable evidence in respect of ill-treatment alleged to have been given to deceased Suvarna by the accused.

11. In respect of the offence punishable under section 302 of Indian Penal Code, the prosecution has relied upon the evidence of PW 3 - Dr. Deore, who states that because he had not found water in the lungs of the deceased, therefore, he had concluded that Suvarna had not died due to drowning but by administration of poison. In cross-examination, he has admitted as correct that when water or poisonous water enters in the lungs, it is called as "oedema". The post-mortem report clearly indicates that both the lungs were congested and were

oedematous. He has further admitted that in case of drowning, the eyes are partially open with tongue inside the mouth and froth oozing from the nose and the mouth. The post-mortem report also records that eyes of Suvarna were partially open with tongue inside the mouth and froth oozing from nose and mouth. The Medical Officer has only given one reason for holding that deceased Suvarna had not died due to drowning and that is because no water was found in the lungs of deceased. PW 3 - Dr. Deore has, however, admitted that the lungs were oedematous and oedema would be because of water or poisonous water entering in the lungs. According to us, therefore, the opinion of PW 3 - Dr. Deore that deceased did not die on account of drowning does not appear to be correct. PW 3 - Dr. Deore has not given any other reason to indicate that deceased Suvarna had died on account of consumption of poison. In cross examination, PW 3 - Deore has admitted that it was not possible to determine the quantity of poison consumed by Suvarna and the time taken for the death of deceased Suvarna after consumption of poison.

12. Exhibit 41, the report of Chemical Analyzer states about finding of 8.33 milligrams of pyrethroid insecticide Lambda Cyhluthrin in the stomach and 2.2 milligrams in liver, spleen, kidney, heart etc. As per Exhibit 44, the Chemical Analyzer has opined that results of detection of pyrethroid insecticide Lambda Cyhluthrin were positive in respect of the bottle of the insecticide which had been referred to the Chemical Analyzer. There is, however, no evidence whatsoever that a lethal dose of poison has either been administered or had been consumed by the deceased and the deceased had died on account of the consumption of the poison. Neither the Chemical Analyzer nor the Medical Officer has referred to the lethal dose or as to what would be the lethal dose and whether the poison found in the viscera was sufficient for causing death of deceased Suvarna. In this behalf, a reference may usefully be made to the judgment of the Supreme Court in Ramgopal v. State of Maharashtra, AIR 1972 SC 656. The Supreme Court has held that in a case of death by poisoning, it was only when the motive was established and it was further established that the deceased had died of the poison in question and that the accused had the poison in his possession and also had an opportunity to administer the poison that the court can infer that the accused administered the poison to the deceased resulting in his death. In the present case, the prosecution has not led any evidence whatsoever regarding the fatal dose of the poison which was detected in the viscera of deceased. Thus, there is no evidence on record to even remotely indicate that deceased had died on account of consumption of the poison and not on account of drowning.

13. We may also make a reference to the judgment of the Supreme Court in Hanumant v. State of Madhya Pradesh, AIR 1952 SC 343, particularly to the warning which was addressed by Baron Alderson to the jury in Reg. v. Hodge. We reproduce the same hereunder :-

"The mind was apt to take a pleasure in adopting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one

connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

14. In cases resting on circumstantial evidence, it is incumbent on the prosecution to prove each and every circumstance on which it proposes to rely. The circumstances, so proved, should be of incriminating nature and the circumstances so proved should form a complete chain, which should exclude every hypothesis of the innocence of the accused and should unerringly point to the guilt of the accused. In other words, the circumstances should be capable of an inference that the accused and the accused alone has committed an offence. In the present case, we find that there is no evidence on record which would categorically indicate that the deceased had not died due to drowning but had died due to consumption or administration of poison. If that be the case, according to us the commission of suicide by deceased - Suvarna cannot be ruled out. In any event, the prosecution has failed to prove that it was the accused who had administered poison to deceased - Suvarna and had thrown the dead body of deceased -Suvarna in the well. Accused, in our opinion, therefore, would be entitled to be given the benefit of doubt.

15. Accordingly, Criminal Appeal No. 934 of 2008 is allowed and the conviction and sentence of the appellant is hereby quashed and set aside and the appellant is acquitted of the offence with which he was charged and convicted. Fine, if paid by the appellant, be refunded to him. Since the appellant is in jail, he be released forthwith, if not required in any other case. Criminal Appeal No. 890 of 2008 is allowed and conviction and sentence of the appellants is hereby quashed and set aside and the appellants are acquitted of the offence with which they were charged and convicted. Fine, if paid by the appellants, be refunded to them. The bail bonds of the appellants stand cancelled.