

(2015) 06 BOM CK 0121
In the Bombay High Court
Case No : Criminal Appeal No. 390 of 2000

Madhavrao and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Dowry Prohibition Act, 1961 — Section 2
Evidence Act, 1872 — Section 113-B
Penal Code, 1860 (IPC) — Section 304-B, 306, 34, 498-A

Citation : (2015) ALLMR(Cri) 4727 : (2015) 3 BomCR(Cri) 731 : (2016) 1 DMC 577

Hon'ble Judges : V.M. Deshpande, J

Bench : Single Bench

Advocate : Vijay Sharma, for the Appellant; Pratibha Bharad, APP, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

V.M. Deshpande, J.

1. Present Appeal is directed against the Judgment and Order of conviction passed by the learned 4th Additional Sessions Judge, Aurangabad dated 19/09/2000 in Sessions Case No. 238/1996, by which the appellants were convicted for the offence punishable u/s. 498-A read with 34 of the Indian Penal Code and on that count, they were directed to suffer Rigorous Imprisonment for one year and to pay fine of Rs. 1,000/- [Rupees One Thousand] and in default to further undergo Rigorous Imprisonment for three months by each of them.

Appellants were also convicted for the offence punishable u/s. 306 read with 34 of the Indian Penal Code and each of the appellant was directed to suffer Rigorous Imprisonment for three years and to pay fine of Rs. 1,000/- [Rupees One Thousand] and in default to further undergo Rigorous Imprisonment for six months.

Appellants were also convicted for the offence punishable u/s. 304-B read with 34 of the Indian Penal Code and each of the appellant was directed to suffer Rigorous Imprisonment for seven years.

Trial Court directed that the substantive sentence against the appellants shall run concurrently.

2. On admission of the Appeal in the year 2000, all the appellants were released on bail.

3. It was reported that during the pendency of the present Appeal, appellant No. 2 Jivram S/o. Bhivsan Patil, appellant No. 3 Subhash S/o. Jivram Patil and appellant No. 6 Mathurabai W/o. Jivram Sonawane Patil expired. Accordingly, vide Order dated 06/08/2014, Appeal stands abated against them.

Thus, the present Appeal was conducted and argued on behalf of remaining appellants viz. Appellant No. 1 Madhavrao S/o. Jivram Patil, appellant No. 4 Dayaram S/o. Bhivsan Sonawane Patil and appellant No. 5 Awadabai W/o. Abhiman Patil by their counsel.

Appellants will be referred to in the present Judgment by their original position before the Court below.

Appellant No. 1 Madhavrao S/o. Jivram Patil was shown as accused No. 1, appellant No. 4 Dayaram S/o. Bhivsan Sonawane Patil was shown as accused No. 4 whereas appellant No. 5 Awadabai W/o. Abhiman Patil was shown as accused No. 5.

4. Deceased in the present case is Meenabai. Accused No. 1 Madhav is her husband. Accused No. 2 Jivram [since deceased] was her father-in-law. Accused No. 3 Subhash [since deceased] was her brother-in-law. Accused No. 4 Dayaram is the brother of Jivram. Accused No. 5 Awadabai is the sister of Jivram. Accused No. 6 Mathurabai [since deceased] was mother-in-law of deceased Meenabai. Accused No. 7 Nimba Gojar Patil [acquitted accused] was the co-brother of Jivram.

5. The prosecution case, as it was unfolded during the course of trial, can conveniently be summarized herein under:--

"F.I.R. [Exh. 18] was lodged by Kashinath Bhila Patil [P.W.1]. Kashinath Bhila Patil is the father of deceased Meenabai. The report lodged by Kashinath was disclosing commission of cognizable offence, therefore, the police station authorities of Soyegaon, District Aurangabad registered the same as Crime No. 26/1995 for the offences punishable u/s. 498-A, 304-B read with 34 of the Indian penal Code. F.I.R. was registered on 16/05/1995."

F.I.R. would disclose that the marriage of Meenabai was performed with accused No. 1 Madhavrao prior to one year of lodging of F.I.R. At the time of marriage itself, accused persons demanded Rs. 50,000/- [Rupees Fifty Thousand], however, the dispute was resolved due to intervention of respectable persons

from the village.

After the marriage, Meenabai was sent to her matrimonial house at village Sindol, Taluka Soyegaon, District Aurangabad.

F.I.R. further discloses that on account of Akshay Tritiya, when the first informant had been to the matrimonial place of Meenabai, that time the accused persons asked him that unless Rs. 50,000/- is paid, they will not allow Meenabai to go with him, therefore, he was required to return alone.

F.I.R. further asserts that in the year 1995 on account of "Pola", when the first informant again had been to the matrimonial place of Meenabai, that time also she was not sent along with him. However, after two days she was sent by the accused persons. That time, upon enquiry, Meenabai disclosed that the accused persons had severely beaten her and have given physical and mental torture on account of demand of Rs. 50,000/-. Thereafter, she was taken to her matrimonial house.

On account of Akshay Tritiya of 1995, Meenabai was brought to her parental house. During this period also, there was constant demand of money [dowry] and she was subjected to cruelty. It was disclosed to the first informant through his wife that deceased was having pregnancy.

6. P.W. 6 is Rama Khanduji Raut. At the relevant time, he was attached to the concerned police station as Assistant Police Inspector. Investigation of Crime No. 26/1995 was handed over to him. He visited the spot of the occurrence. Panchanama was drawn of the scene of occurrence [Exh. 20]. He also recorded statements of witnesses. He caused arrest of three accused persons. Muddemal property was sent to the Chemical Analyser by him by his requisition letter dated 25/05/1995 [Exh. 27]. Chemical Analyser's report [Exh. 28] was obtained by him. After the completion of entire investigation, he filed charge sheet before the Court of law.

Learned Magistrate, in whose Court charge sheet was presented, found that the offences are exclusively triable by the learned Sessions Judge. Therefore, learned Magistrate passed committal order on 26/08/1996 and the case was committed to the Sessions Court. After its committal, the case was registered as Sessions Case No. 238/1996.

Learned 2nd Additional Sessions Judge, Aurangabad framed Charge against all the accused persons.

All the accused persons abjured their guilt and claimed for their trial.

Before the learned Court below, in order to bring home the guilt of the accused persons, prosecution has examined six witnesses and also relied upon various documents duly proved during the course of the trial.

Prosecution has examined following witnesses:--

"[i] Kashinath S/o. Bhila Patil [P.W.1], father of deceased Meenabai and the first informant.

[ii] Bhilal S/o. Deorao Patil [P.W.2], Panch witness, who has proved spot panchanama [Exh. 20].

[iii] Kamlabai w/o Kashinath Patil [P.W.3], mother of deceased Meenabai.

[iv] Bapurao S/o. Harchand Patil [P.W.4], he has proved Inquest panchanama [Exh. 23].

[v] Dr. Ramchandra S/o. Balkrishna Teli [P.W.5], he has conducted autopsy over the dead body and proved postmortem notes [Exh. 26].

[vi] Rama S/o. Khanduji Raut [P.W.6], Investigating Officer."

After full dressed trial, learned 4th Additional Sessions Judge, Aurangabad acquitted original accused No. 7 Nimba Gojar Patil from all the offences for which he was charged.

Though, accused No. 7 Nimba Gojar Patil was acquitted from all the charges, State did not prefer Appeal against acquittal.

Remaining six accused persons were convicted by the learned Court below and they were sentenced accordingly, as observed in the opening paragraph of this Judgment.

7. Heard Mr. Vijay Sharma, learned counsel for the surviving appellants and Mrs. Pratibha Bharad, learned A.P.P. for the respondent - State. Both the learned counsels took me through the entire record of the Sessions Case No. 238/1996 in detail. The notes of evidence were read extensively and in detail.

Learned counsel for the appellants would submit that the Court below ought not to have convicted the appellants, in as much as, according to him, the prosecution has utterly failed to bring home their guilt. He submitted that the evidence of the prosecution is sketchy and inconsistent and, therefore, it would be dangerous to maintain the conviction of the appellants.

Learned counsel for the appellants would further submit that the unfortunate incident of death of Meenabai has occurred due to accident and none of the appellant could be held responsible for the same. He, therefore, submitted that the Appeal be allowed.

Per contra, learned A.P.P. has vehemently submitted that in the present case, the evidence available on record against the appellants is cogent and consistent. According to her, prosecution has proved that there was consistent demand and nagging ill-treatment in that behalf to the deceased by the appellants, resulting into she being driven to commit suicide. Therefore, the Judgment of the Court below may not be interfered with and prays for dismissal of the present Appeal.

8. There is no dispute that death of Meenabai occurred within a short span of one

year of her marriage with accused No. 1 Madhav.

It is also not in dispute that death has occurred in the matrimonial house of Meenabai.

It is also not in dispute that death has occurred due to extensive burn injuries.

According to the prosecution, on account of demand of money, she has committed suicide. Whereas, as per the explanation offered by the accused persons before the learned trial Court and also before this Court, according to them, death of Meenabai was purely accidental one.

In view of the above, this Court will require to decide as to whether the death of Meenabai was accidental or suicidal?

9. Evidence of Kashinath S/o. Bhila Patil [P.W.1] would reveal that he received message from Ramesh Marwadi, who came to him on motorcycle that his daughter was serious. Therefore, he and Bapurao Patil [P.W.4] went to village Sindol, the matrimonial place of Meenabai. When they entered into the house, they noticed the dead body of Meenabai in completely burnt condition. His evidence would disclose that smell of kerosene was emitting from the said place. In so far as this aspect is concerned, evidence of Kashinath [P.W.1] is duly corroborated by Bapurao Patil [P.W.4].

Evidence of Kashinath [P.W.1] and Bapurao [P.W.4] to the effect that at the relevant time kerosene smell was emitting, is also corroborated by contemporaneous document [Exh. 20], the spot panchanama. Spot panchanama is duly proved by Bhil Patil [P.W.2]. Relevant recitals in spot panchanama [Exh. 20] in respect of kerosene smell is reproduced hereunder:--

During the course of investigation, clothes of the deceased were seized while drawing the spot panchanama itself.

Clothes of the deceased, which were attached, were sent to the Chemical Analyser, Aurangabad on 25/05/1995 by the Investigating Officer under his requisition. The requisition is duly proved and it is at Exh. 27.

The articles i.e. the clothes of the deceased were as under:--

"Partly burnt reddish colour petticoat [Exh. 3] and partly burnt yellow-pink colour saree [Exh. 4]."

Thus, petticoat and saree of the deceased were sent for examination to the Chemical Analyser in order to ascertain whether any kerosene residues are existed on the said articles.

Chemical Analyser's report is at Exh. 28. It shows that Exh. 3 and Exh. 4 contain kerosene residues. Thus, petticoat, which is under-garment of woman, was also found to be stained with kerosene residues.

Spot panchanama [Exh. 20] does not show the presence of any stove or hearth

at the spot of incidence. Thus, it can conveniently be said that the said room was not a kitchen.

In that view of the positive evidence of detection of kerosene residues on the under and upper garments of deceased Meenabai and the positive evidence of not noticing the stove or hearth and the emission of kerosene smell, in my considered view, conclusively proves the theory of suicide as contended by the prosecution.

According to the appellants, Meenabai received burn injuries accidentally. Said theory of accident is found only in their written explanation, when accused No. 1 Madhav disclosed in his statement recorded u/s. 313 of the Code of Criminal Procedure that he wish to file written statement to the effect that at the time of preparation of breakfast, deceased had received burn injuries. In view of not noticing any stove or hearth or any article by which it could be said that at that time Meenabai was preparing breakfast, the explanation offered by appellant No. 1 Madhav is highly improbable and has to be discarded.

10. Once it is conclusively proved that Meenabai has committed suicide, next question will be, whether she was required to take the said extreme step due to the harassment caused to her by the appellants/accused persons.

11. In view of the death of some of the appellants during the pendency of the present Appeal, evidence of prosecution witnesses in respect of ill-treatment on account of demand of money has to be assessed in relation to accused No. 1 Madhav, accused No. 4 Dayaram and accused No. 5 Awadabai.

12. Before advertng to the evidence, it would be useful to reproduce the provisions of Section 304-B of the Indian Penal Code and Section 113-B of the Indian Evidence Act.

"Section 304-B - Dowry death:-(1) Where the 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 relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death ", and such husband or relative shall be deemed to have caused her death.

Explanation:- For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. "

"Section 113-B - Presumption as to dowry death:- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or

harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death."

13. Thus, it is for the prosecution to prove that the accused are responsible for dowry death. Prosecution has to prove the following ingredients:--

"[i] That the death of woman has been caused in abnormal circumstances by her having been burn or having been bodily injured.

[ii] Within seven years of her marriage.

[iii] That she was subjected to cruelty or harassment by her husband or any relative of her husband.

[iv] In connection with demand of dowry.

[v] That the cruelty or harassment meted out to her continue to have the casual connection or live link with the demand of dowry."

14. In the present case, undisputedly, Meenabai died within seven years of her marriage. Secondly, she died due to burn injuries. In that view of the matter, now the Court has to evaluate the evidence as to whether she was subjected to cruelty or harassment by her husband and/or any of the relative of her husband in connection with the demand for dowry and there is live link of harassment and the demand of dowry.

15. Accused No. 1 Madhavrao is the husband of deceased. Accused No. 4 Dayaram and accused No. 5 Awadabai are brother and sister respectively of the father-in-law of deceased Meenabai. Thus, they are the relatives of the husband of deceased Meenabai.

16. In so far as demand of money and harassment in that behalf is concerned, prosecution has mainly relied upon the testimonies of Kashinath [P.W.1] and Kamlabai [P.W.3]. These two prosecution witnesses are the parents of deceased Meenabai. Thus, they are the close and interested witnesses.

Merely because the prosecution witnesses are close and/or interested witnesses, that by itself is not sufficient to discard their testimonies. While appreciating their evidence, the Court has to be on guard. While evaluating the evidence of such witnesses, it should be noticed that their evidence inspire confidence. Their evidence does not suffer from exaggeration and tendency to implicate falsely the accused persons. If the version of such prosecution witnesses is withstood in the searching cross examination from the defence and their evidence is free from embellishment, on overall appreciation of the prosecution case if the Court is of the view that their evidence is trustworthy, the conviction can be secured on the basis of such evidence of those witnesses, may be they are close relatives of the victim.

17. As observed, prosecution mainly relies on the evidence of the parents of deceased Meenabai. Evidence of Kashinath [P.W.1] would reveal that after one

and half months of the marriage of Meenabai when he had been to village Sindol, the matrimonial place of his daughter and when he brought her, that time she stayed with her parents for about fifteen days or one month. This version is also duly corroborated by Kamlabai [P.W.3]. Further, the version of these two prosecution witnesses that after one month of marriage, deceased Meenabai was brought to her parental house and she stayed there for 15 days, is not at all challenged by the defence.

Evidence of Kamlabai [P.W.3] would reveal that during her stay, Meenabai disclosed to her that her father-in-law and mother-in-law [deceased appellants] and her husband [accused No. 1] are causing ill-treatment to her over the demand of Rs. 50,000/-. Her evidence would also disclose that Meenabai narrated to her that for that she was beaten also. In so far as evidence of P.W. 1 Kashinath is concerned, his evidence would disclose that when Meenabai was staying with them, that time she disclosed to him that the accused persons were demanding Rs. 50,000/- and threatened that if the amount is not brought, she should not come back to the matrimonial house.

According to the learned counsel for the appellants, thus, there is variance which goes to the root of the matter in between the version of Kashinath [P.W.1] and Kamlabai [P.W.3]. He, therefore, submitted that the prosecution has not conclusively proved that there was any demand from the appellants and that deceased was subjected to cruelty on account of the same.

True it is that [P.W.1] Kashinath's evidence does not disclose that Meenabai did not state specifically as to which accused has caused harassment to her and demanded money.

18. Any lady like Meenabai, whose marriage was performed just one and half months back, would always be eager to disclose the happenings to her in her matrimonial house to her mother rather than to her father. A daughter is always close to her mother than her father. Thus, if Meenabai, the daughter, has disclosed the details to Kamlabai, her mother, rather than to Kashinath, her father; it can not be attributed that it was un-natural and/or it can not be said that Meenabai must not have disclosed those things to Kamlabai.

Further, the evidence of Kamlabai would reveal that her evidence is free from any omission and/or improvement. The only omission is in respect of 15 days. Thus, there is clinching evidence available on record that firstly when Meenabai had been to her parental house, at the very first instance, she has disclosed to her mother the happenings to her at her matrimonial house. Further, in so far as demand of Rs. 50,000/- is concerned, the said version of Kamlabai is corroborated by Kashinath [P.W.1] and also have due corroboration in the F.I.R. [Exh. 18].

The close scrutiny of the evidence of Kamlabai would reveal that at the said occasion, Meenabai has attributed ill-treatment to her only at the hands of accused No. 1 Madhav, her husband and her parents-in-law. Evidence of

Kamlabai is totally silent that, that time, it was disclosed to her by Meenabai that accused No. 4 Dayaram and accused No. 5 Awadabai were also responsible for the ill-treatment.

19. As per the evidence of both Kashinath [P.W.1] and Kamlabai [P.W.3], after the stay of Meenabai with them, she was sent to her matrimonial house. As per the evidence of Kashinath [P.W.1], accused No. 1 Madhavrao and accused No. 2 Jivram [since deceased] came to his house.

Evidence of Kashinath [P.W.1] would reveal that when these two persons had been to his place for taking Meenabai, that time they made demand of cash. Though this aspect is not appearing in the evidence of Kamlabai [P.W. 3], much importance can not be attached to the said aspect. The demand will always be made to the father of the girl rather than the mother. Further, at the time when accused Nos. 1 and 2 had been to the parental place of Meenabai, that time they were not accompanied by any woman folk. Therefore, non appearance of the said aspect in the evidence of Kamlabai shows that the prosecution witnesses are witnesses to the truth and they are not exaggerating and thus their version is free from exaggeration.

20. On second occasion, Meenabai was brought to her parental house, when she was brought by Kashinath [P.W.1] for Akshay Tithiya. That time also, she stayed for 15 days. This fact is also having corroboration in the evidence of P.W. 3 Kamlabai. During the said stay, Meenabai disclosed to her father and it will be useful to reproduce the vernacular version of P.W. 1 Kashinath as under:--

The aforesaid version is also duly corroborated by Kamlabai [P.W.3].

It is to be noted that when on this 2nd occasion Meenabai had been to her parental house, that time she has disclosed the ill-treatment to her father Kashinath [P.W.1]. During her first stay, at her parental house after one and half months of her marriage, she elaborately disclosed the ill-treatment to her mother only.

That shows that after her return to her matrimonial house and during that period of her stay, the degree of ill-treatment to her must have been increased, therefore, it was disclosed to her father Kashinath [P.W.1] by Meenabai.

Learned counsel for the appellants halfheartedly submitted that evidence of Kashinath [P.W.1] may not be considered because of the omissions. However, learned counsel was required to concede that the omissions which he was trying to press into service, were not at all proved during the trial.

Even during her second stay, Meenabai has specifically attributed the ill-treatment to her husband and in laws. The evidence of Kashinath [P.W.1] and Kamlabai [P.W.3] is completely silent that Meenabai has disclosed any role to them vis-?-vis accused No. 4 Dayaram and accused No. 5 Awadabai.

21. The aforesaid second visit to her parental house of Meenabai was her last

visit. Thereafter, her parents received intimation of her seriousness only.

22. Learned counsel for the appellants submitted that except the evidence of parents of Meenabai, there is no evidence in the prosecution case in respect of ill-treatment to Meenabai. Meenabai died within a period of one year from her marriage. Thus, the duration was very short. It is also not expected that during such short period, Meenabai would disclose ill-treatment to her to any other relatives than her parents.

Further, the evidence of parents of Meenabai would reveal that the total stay of Meenabai with them on 2nd occasion was about one and half months. Thus, her stay at her matrimonial house would be about ten and half months only. It is not expected from a newly wedded girl to disclose the atrocities to her to the neighbours at her matrimonial house, since it is rather impossible for such oppressed girl to gather courage in that behalf. Therefore, there is nothing unusual in the prosecution case for not sighting any other witness than the parents of deceased Meenabai in respect of the ill-treatment.

23. Therefore, on the close scrutiny of the evidence of the prosecution case, this Court is of the considered view that there is no material whatsoever to hold accused No. 4/appellant No. 4 Dayaram and accused No. 5/appellant No. 5 Awadabai as guilty. There is no incriminating material and/or evidence available in the prosecution case. Therefore, their conviction, as recorded by the learned Court below, can not stand to the scrutiny of law and accordingly their conviction is required to be set aside.

24. In so far as appellant No. 1/accused No. 1 Madhavrao, who is husband of deceased Meenabai is concerned, against him the evidence is consistent. It is amply proved that he was instrumental in making demand of Rs. 50,000/- to deceased Meenabai. There is no escape to accused No. 1 Madhav that he is guilty of committing ill-treatment, both physical and mental, to Meenabai in respect of the demand and its non fulfillment. It is clear from the evidence that the degree of ill-treatment at his hand to Meenabai was to such an extent that she was required to cut-short her life.

In that view of the matter, I see no reason to interfere with the finding of guilt recorded against him by the learned trial Court and the sentence imposed on him. That leads me to pass the following order.

ORDER

"(i) Criminal Appeal No. 390 of 2000 is partly allowed.

(ii) Criminal Appeal preferred by appellant No. 1 Madhavrao S/o. Jivram Patil is hereby dismissed.

(iii) Judgment and Order of conviction convicting appellant No. 1 Madhavrao S/o. Jivram Patil for the offences punishable u/s. 498-A, 304-B, 306 of the Indian Penal Code passed by the learned 4th Additional Sessions Judge, Aurangabad

dated 14/09/2000 in Sessions Case No. 238/1996 is confirmed.

(iv) Appellant No. 1 Madhavrao S/o. Jivram Patil shall surrender to his bail bonds, else the trial Court is directed to take necessary steps for serving out the remaining sentence.

(v) Judgment and Order of conviction convicting appellant No. 4 Dayaram S/o. Bhivsan Sonawane Patil and appellant No. 5 Awadabai W/o. Abhiman Patil passed by the learned 4th Additional Sessions Judge, Aurangabad dated 14/09/2000 in Sessions Case No. 238/1996 is hereby quashed and set aside. Their bail bonds stand cancelled.

Fine amount, if any, paid by them be refunded to them.

(vi) Present Criminal Appeal stands disposed of."