
(1997) 12 BOM CK 0008
In the Bombay High Court
Case No : Criminal Appeal No. 1 of 1994

Madhavrao and others	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 24-12-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 3, 59, 61, 8
Penal Code, 1860 (IPC) — Section 304, 34

Citation : (1998) 5 BomCR 206

Hon'ble Judges : V.K. Barde, J; R.G. Deshpande, J

Bench : Division Bench

Advocate : A.H. Kapadia, for the Appellant; V.B. Ghadge, Assistant Public Prosecutor, for the Respondent

Judgement

V.K. Barde, J.—The three appellants faced charge for offences punishable u/s 498-A r/w 34, 304-B r/w 34 of Indian Penal Code in Sessions Case No. 9/1993 before the Additional Sessions Judge, Biloli, and were convicted and sentenced for the said offences. Hence, the present appeal.

2. Ramrao Anaji Wankhede lodged report at Kuntur Police Station, Dist. Nanded. On 20-8-1990, he reported that his sister Ansabai got married with Madhavrao Shankar Kadam about five years prior to that date. Dowry Rs. 14,000/- and 5 gms. gold was agreed to be given. At the time to marriage, cash Rs. 10,000/- one tape-recorder and one electric fan were given to Madhavrao. The balance of dowry Rs. 4,000/- and 5 gms. gold was to be given at the time of next harvesting season. However, he could not give the amount and gold. So his sister was being illtreated by her husband and mother-in-law. His sister was telling him about the same. So on next harvesting season, he gave Rs. 2,000/- but cash Rs. 2,000/- and 5 gms. gold could not be given immediately.

3. His sister had been to his house at the time of Nagpanchami festival in the year 1990. At that time, she was again telling him that unless the cash and gold

were given, her marital life will not go on. On 9-8-1990, Shankar, her father-in-law, had come to the house of Ramrao to take back Ansabai to her matrimonial house. He demanded cash Rs. 2,000/- and 5 gms. gold and picked quarrel. Then Ranguji Patil and Gopal Patil -the two villagers, and he himself requested Shankar that the cash and gold will be given on the next harvesting season and Ansabai be taken back for cohabitation. Then Ansabai went to her husband's house with her father-in-law.

4. On 19-8-1990, two persons came from village Janerao Hipparga, the native of Madhavrao, at about 5 p.m. on motorcycle and gave the message that Ansabai had fallen in well and had died. Then the Crime No. 71/90/ was registered for the offences punishable under sections 304-B, 498-A r/w 34 of I.P.C. The Police took up the investigation.

5. Prior to that, Dasharath Kadam, the Police Patil of village Hipparga, had lodged report at Police Station, Kuntur, on 19-8-1990, that Ansabai @ Ashabai had fallen in the well and had died. So the accidental Death No. 21/90 was registered and Police had started enquiry about the same. The inquest panchanama of the dead body and the panchanama of the spot were prepared by the Police. The dead body was sent for post-mortem examination to Rural Hospital, Biloli. The doctor reported that the cause of death was asphyxia due to drowning. After the further investigation, charge-sheet was submitted against Madhavrao-husband of deceased Ansabai, his father Shankarrao and mother Sunderabai. The Judicial Magistrate, First Class, Biloli, committed the case to the Sessions Court, Nanded.

6. The learned Additional Sessions Judge, Biloli, framed charge against the accused-appellants for the said offences. The accused pleaded not guilty and they have contended that the case is false. The learned Additional Sessions Judge after recording evidence of the prosecution witnesses and statement of accused, came to the conclusion that the prosecution has proved the offences punishable u/s 304-B r/w 34 of I.P.C. and u/s 498-A r/w 34 of I.P.C. against all the accused and sentenced them to suffer R.I. for two years and to pay fine of Rs. 1,000/- each for offence punishable u/s 498-A r/w 34 of I.P.C. and R.I. for 7 years each for offence punishable u/s 304-B r/w of I.P.C. He directed substantive sentences to run concurrently.

7. The appeal is filed on the grounds that the learned Additional Sessions Judge has not properly appreciated the oral and documentary evidence. The learned Additional Sessions Judge has not taken into consideration the situation of the well from which the dead body of Ansabai was recovered. There was no protective wall around the well and the possibility that Ansabai falling in the well and dying due to accident cannot be ruled out. It is also contended that neither the agreement of dowry nor demand of dowry nor treatment with cruelty on account of non-payment of dowry is proved by the prosecution. The appellants, therefore, have prayed that the conviction and sentence be set aside and they be acquitted.

8. Heard Shri A.H. Kapadia, learned Counsel for the appellants and Shri V.B. Ghadge, learned A.P.P. for respondent.

9. It is not in dispute that Ansabai wife of accused-appellant Madhavrao died due to drowning in the well. The learned Counsel for the appellants has argued that merely because death has taken place due to drowning, the Court cannot jump to the conclusion that the death had taken place otherwise than under normal circumstances. The prosecution has to prove other ingredients of section 304-B of I.P.C. and the prosecution has failed to make out the case. While the learned A.P.P. has argued that there is the evidence of near relatives and other witnesses showing that Ansabai was being illtreated because part of agreed dowry cash Rs. 2,000/- and 5 gms. gold were not given. She was, therefore, being treated with cruelty. The death has taken place within 7 years from the date of marriage and so this is a clear case for offence punishable u/s 304-B of I.P.C.

10. To make out the case u/s 304-B of I.P.C., the prosecution must prove that the death had taken place within 7 years of the marriage. The prosecution witness No. 1 - Ramrao in his deposition at Exhibit 26 has stated that marriage of Ansabai with Madhavrao took place in the year 1985. In the F.I.R. Exhibit 27, he has mentioned that the marriage had taken place approximately 5 years ago. Anaji -P.W. 2- father of Ansabai has stated in his deposition at Exhibit 28 that the marriage of Ansabai took place about 5 years prior to her death. Raghunath P.W. 3 who is from village Sawarkheda has also stated that marriage of Ansabai took place about five years prior to her death. Bhujangrao P.W. 4, maternal uncle of Ansabai has stated that marriage of Ansabai took place in the year 1985 and the last witness on this point Govindrao-the cousin of Ansabai has stated that her marriage took place in the year 1985. The learned A.P.P. has pointed out that no prosecution witness is challenged in the cross-examination regarding these statements. So it can be held that the prosecution has proved that the marriage took place in the year 1985 while Ansabai died in the year 1990 i.e. within 7 years from the date of marriage.

11. The learned Counsel for the appellants has argued that Madhavrao in his statement u/s 313 Cr.P.C. has stated that the marriage took place in the year 1982. So even if the statements of prosecution witnesses are not challenged in their respective cross-examinations, the accused has taken the stand that the marriage took place more than 7 years prior to the death of Ansabai and the prosecution has failed to prove this fact specifically. He also pointed out that no documentary evidence is produced on record regarding date of marriage. Only vague statements are made by the witnesses. The date of marriage is not mentioned by any of the prosecution witnesses and, therefore, the prosecution has not clearly established that the marriage took place about 5 years back prior to death of Ansabai.

12. It is one of the most important ingredients of section 304-B of I.P.C. that the prosecution must prove that the death took place within 7 years from the date of marriage. The special provision u/s 304-B of I.P.C. is made and therefore, the

matter cannot be established by vague statements of the prosecution witnesses. Merely because the accused has not specifically challenged the statement in the cross-examination, it cannot be said that the prosecution has proved that the death took place within 7 years from the date of marriage. The date of the marriage ought to have been proved by the prosecution. But the prosecution has not proved the date of marriage and the prosecution is relying on the vague statements of the witnesses that the marriage took place about 5 years prior to the death of Ansabai. We find some substance in the contention of the learned Counsel for the appellants that this important ingredient is not proved by the prosecution. This important ingredient that the death took place within 7 years from the marriage is not proved by the prosecution.

13. The further important ingredient which the prosecution must prove is that it must be shown that soon before the death, the wife was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand for dowry. It means that the prosecution must prove that there was an agreement for dowry in connection with the marriage that there was demand for the dowry and that on account of non-fulfilment of that demand, there was treatment with cruelty or harassment of the wife. The prosecution has examined the abovenamed 5 witnesses to prove that there was an agreement for dowry. The learned A.P.P. has stated that all these 5 witnesses are the close relatives. Ramrao Anaji, Bhujangrao and Govindrao have stated that the dowry Rs. 14,000/- and 5 gms. gold was agreed to be given while settling the marriage of Ansabai with Madhavrao. The learned A.P.P. has argued that all these 4 witnesses are near relatives of Ansabai and in ordinary course, they should know about the settlement of marriage and the details regarding the same. So their evidence cannot be discarded only on the ground that they are near relatives. The learned A.P.P. has also pointed out that in the F.I.R. Exhibit 27 itself, it is mentioned that dowry Rs. 14,000/- and 5 gms. gold were agreed upon. So the prosecution has established that there was agreement for dowry.

14. The learned Counsel for appellants has argued that all these witnesses are very interested witnesses and, therefore, their evidence cannot be relied upon. But in the given circumstances, it has to be taken into consideration that only the interested witnesses, that means the near relatives of the wife, would state about the agreement of dowry and even about payment of dowry. So the evidence of these witnesses can not be discarded only because they are near relatives of deceased Ansabai.

15. It is in the evidence of these 4 witnesses that at the time of marriage, cash Rs. 10,000/-, one fan and one tape-recorder were given to the accused No. 1. However, amount of Rs. 4,000/- and 5 gms. gold could not be given.

16. These witnesses have further stated that one year or two years after the marriage, amount of Rs. 2,000/- was paid to the accused. Even then amount of Rs. 2,000/- and 5 gms. gold remained to be given. It is the case of the prosecution that Ansabai was being illtreated by her husband and in-laws for not

paying the entire amount of dowry. However, it has to be noted that there is nothing on record to show that any serious incident had taken place during the period of 5 years indicating that Ansabai was being treated with cruelty for not paying the dowry. On the contrary, it appears from the evidence of brother and father of Ansabai that Ansabai was visiting her parents' house practically on all festivals and was going back to her matrimonial house for cohabitation. No doubt the witnesses are stating that Ansabai was stating that she was being treated with cruelty, but these are very vague statements. The witnesses have not stated exactly what type of treatment was being given to Ansabai to come to the conclusion that she was being treated with cruelty.

17. Ramrao, the brother of Ansabai, in his deposition at Exhibit 26 and Anaji, father of Ansabai, in his deposition at Exhibit 28, have stated that they felt that because of illtreatment being given to Ansabai, she be not sent for cohabitation. The learned A.P.P. has argued that this statement indicates that there was serious type of illtreatment to Ansabai. However, here again, these are very vague statements. It is not mentioned what type of illtreatment was being given. It is not mentioned when they felt about the seriousness of illtreatment, whether immediately after the marriage or some years after the marriage. The evidence of all these witnesses if at all is taken into consideration, it would mean that the accused were not insisting on immediate payment of dowry, but they were making repeated demands.

18. Here one more circumstance has to be noted that Ansabai was pregnant for the first time after the marriage, but she suffered abortion in 5th or 6th month of pregnancy. Even thereafter she continued to cohabit with the accused No.1-Madhavrao. There is nothing on record indicating that this incident aggravated any way the cruel treatment being given to Ansabai. On the contrary, the normal life continued.

19. It is specifically contended by the prosecution witnesses that about 8 to 10 days prior to death of Ansabai, Ansabai was staying at her father's house. She had been there for Nagpanchami festival. Her father-in-law-accused No. 2 had been to the house of Anaji to take back Ansabai and at that time he picked up quarrel on the ground that cash Rs. 2,000/- and 5 gms. gold were not given. Father and brother of Ansabai requested him to take back Ansabai for cohabitation. Raghunath and Gopal then were called and in their presence, Anaji told the accused No. 2-Shankar that the cash and gold would be given at the time of next harvesting season and then only Shankar agreed to take back Ansabai to his house.

20. No doubt the evidence of Ramrao and Anaji on this point is corroborated by Raghunath in his deposition at Exhibit 29. However, it is rather difficult to believe that Raghunath and Gopal were present when the accused No. 2 picked up the quarrel. Raghunath has stated that he and Gopal were passing by the road and they were called in the house by Anaji. Anaji has stated to that effect. Why suddenly two villagers passing by the road should be called. They were not close

relatives of either Anaji or Shankar. It appears that to make out the case that only 8 to 10 days prior to death of Ansabai, there was demand for the cash and gold, the witnesses are stating so. Merely because Raghunath has corroborated the evidence of Ramrao and Anaji on this point, the evidence cannot be accepted at its face value.

21. There are two important circumstances which create doubt about the contention of the prosecution case that Ansabai was being treated with cruelty. One of the important circumstance is that at the time of death of Ansabai, she was pregnant of 4 months. Ramrao and Anaji were knowing that she was pregnant. That means her husband and parents-in-law also must be knowing that she was pregnant. This circumstance indicates that otherwise the married life was normal. Not only that she was pregnant, but she had been to the house of her parents for Nagpanchami festival and she had returned to her husband's house in the company of her father-in-law after the festival. It is neither in the F.I.R. nor in the deposition of Ramrao and Anaji that when she had come last time for Nagpanchami festival, she told that she was being treated with cruelty for not giving the remaining dowry. So it cannot be said that soon before death of Ansabai, she was subjected to cruelty or harassment. If that had been the situation, the witnesses would have stated that Ansabai told them that she was being treated with cruelty and they also would have stated what type of treatment she was given.

22. The other circumstance is that Ansabai died on 19-8-1990. Two persons from Hipparga went on motorcycle to give the message to Anaji and his family members. But neither Ramrao nor Anaji immediately went to village Hipparga. They have stated that it was raining heavily and, therefore, they could not go to village Hipparga, but when two persons could go to their village Sawarkheda from Hipparga to give the message of death of Ansabai, how can it be said that the father and brother of Ansabai could not go to Hipparga on the very day.

23. From the evidence of Ramrao and Anaji, it appears that on the next day i.e. on 20-8-1990, Ramrao went to Police Station, Kuntur, to lodge report against the accused without even caring to see the dead body of his sister and Anaji went to village Hipp-arga. This is rather strange behaviour of the father and brother.

24. It appears that there was some dispute regarding the dowry. Probably the entire agreed dowry was not given to the accused and that prompted Anaji and Ramrao to lodge report against the accused when they learnt about the death of Ansabai.

25. While considering the case u/s 304-B of I.P.C., it must be found out whether the prosecution has proved that the wife was being treated with cruelty or with harassment. The words "cruelty" and "harassment" are explained in the Explanation given to section 498-A of the I.P.C. The Court has to find out whether the prosecution has proved the case by stating exactly what type of treatment was being given to the deceased wife, by her husband and in-laws, to

brand that treatment as cruelty or harassment. No doubt the cruelty and harassment can be caused by infinite means, but in a particular case, the prosecution has to state exactly what was being done to hold that it was cruelty or harassment. It is not sufficient to use only these words while giving the evidence through the mouth of witnesses. In the present case, the witnesses are merely stating that Ansabai was being illtreated by the accused. This much evidence is not sufficient to hold that the prosecution has made out the case u/s 304-B of I.P.C. or u/s 498-A of I.P.C.

26. The learned Additional Sessions Judge has held that there was cruelty to Ansabai, but he has come to that conclusion only on the basis of the evidence that there was some dispute regarding non-payment of dowry and that Ansabai died due to drowning. He has lost sight of the circumstances that the period of 5 to 7 years of marriage, whatever it may be, was otherwise normal. Ansabai was visiting her parents' house every now and then and was returning to her husband's house for cohabitation. She was once pregnant, but suffered abortion and again at the time of death, she was pregnant. Only 8 to 10 days prior to her death, she had been to the house of her parents, but there was no serious complaint from her stating her parents and brother that she was being subjected to particular type of harassment or cruelty by her husband and in-laws. Her father-in-law had been to house of her father after Nagpanchami festival and this circumstance also shows that there was nothing abnormal to come to the conclusion that she was subjected to cruelty.

27. The inquest panchanama Exhibit 21 indicates that the well in which the dead body of Ansabai was found was not having wall around the well above the ground level as protection wall. So if Ansabai had gone to well to draw water, the possibility that she fell accidentally in the well cannot be ruled out. There is nothing on record to indicate that there was any immediate reason for her on that morning to commit suicide. There is also nothing on record to indicate that some foul play was played and, therefore, she fell into the well. The defence of the accused is that it was death due to accident and that is a probable explanation given by the accused which cannot be brushed aside.

28. Thus, it will be seen that there is no clear, sufficient and reliable evidence to hold that the deceased Ansabai was being treated with cruelty or was being harassed soon before her death on account of non-payment of dowry, and, therefore, the conviction and sentence for offence punishable u/s 304-B r/w 34 of I.P.C. has to be set aside. As the same evidence has to be considered for application of section 498-A of I.P.C., the same conclusion will have to be drawn that the conviction and sentence for offence punishable u/s 498-A r/w 34 of I.P.C. has to be set aside. The accused appellants are being acquitted for the said offences.

29. Hence, the appeal is allowed. The order of conviction and sentence passed in Sessions Case No. 9/93 by the Additional Sessions Judge, Biloli, for offences punishable u/s 304-B r/w 34 of I.P.C. and u/s 498-A r/w 34 of I.P.C. set aside.

The appellants-accused are acquitted for the said offences. The appellants, if not required in any other case, be released forthwith. Fine if paid be refunded.

30. Appeal allowed.