

(2017) 07 BOM CK 0178
In the Bombay High Court
Case No : 200 of 2003

Manik S/o Shriram Bondare, & Anr.

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 24-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 34](#), [Section 498A](#), [Section 306](#)

Citation : (2017) 07 BOM CK 0178

Hon'ble Judges : A. M. Dhavale

Bench : SINGLE BENCH

Advocate : J. R. Patil, M. B. Bharaswadkar

Judgement

1. This is an appeal by the accused from Sessions Case No.142 of 2001, before the Additional Sessions Judge, Udgir/Ahmedpur, who were convicted for offences and sentenced as follows:

Sr. No. Offence Substantive Fine In default

1 304B IPC RI 7 years

2 498A IPC - - -

3 306 IPC RI 7 years Rs. 500/- SI for three months.

2. The appellant's mother, who was accused No. 2, was also convicted but she has expired during the pendency of the appeal. Hence, the appeal stands abated as against appellant No.2 Gajrabai.

3. Deceased Bhagyashri, who was sister of PW1Hansraj and daughter of PW2 - Mangalabai, was residing with them at Babhalgaon, Tq. Ambajogai, Dist. Beed. On 15.05.2000, Bhagyashri married to appellant No.1 - Manik, who was resident of Omerga Yelladevi, Tq. Chakur, Dist. Latur. Both were belonging to farmer

families. Bhagyashri thereafter started cohabiting with appellant No.1 Manik. Appellant No. 2 Mangalabai was also residing with them. As per admitted facts, on 01.09.2000 at about 10:00 a.m., dead body of Bhagyashri was found in a public well at Omerga Yelladevi. The postmortem notes disclose that Bhagyashri died of drowning.

4. According to the prosecution case, at the time of marriage, there was agreement between the families of the appellant & deceased-Bhagyashri to pay dowry of Rs. 75,000/along with other domestic articles. Out of agreed sum of Rs. 75,000/, Rs. 65,000/was paid and balance amount of Rs. 10,000/was agreed to be paid within six months of marriage. The married life of Bhagyashri lasted hardly for three and half months. During the said period, she visited maternal house twice. About 15 days after the marriage, when Bhagyashri visited her maternal house, she told her parents and maternal relatives that her husband and inlaws were abusing her for nonpayment of remaining amount of Rs. 10,000/ and there was also additional demand of Rs. 1.00 Lakh for purchasing a Tractor. She used to weep while narrating the story to her maternal relatives. Her maternal relatives assured her to make some provision within 23 moths and persuaded her to resume cohabitation. Thereafter, PW1 Hansraj had been to her house 15 days before Nagpanchami festival to fetch her to her maternal house. That time, she wept before him and reported that there were demands of balance dowry of Rs.10,000/and Rs. 1.00 Lakh for purchasing a tractor. Her husband used to consume liquor and harass her. He requested Bhagyashri's inlaws to send her with him for Nagpanchami festival but they refused. Again 23 days before Nagpanchami he went to bring Bhagyashri and she again told him about the dowry demand and harassment meted out to her. Her inlaws unwillingly sent Bhagyashri along with him but told her that while returning, she should bring Rs.10,000/of balance dowry and Rs.1.00 Lakh for purchasing a tractor, otherwise she should not come. Then, after coming to her maternal house, she narrated the incident of dowry demand and harassment to her maternal relatives. After Nagpanchami festival, she was taken by her grandfather to her matrimonial house and he requested her husband and inlaws not to illtreat Bhagyashri. On 01.09.2000, maternal relatives of Bhagyashri received news that Bhagyashri died of drowning in a well. According to them, she committed suicide due to dowry demands and illtreatment. After postmortem and funeral, on the same day PW1Hansraj lodged FIR (Exh. 20). On the basis of the information, crime was registered at 23:05 hrs as C.R. No. 120/2000 with Police Station Chakur and same was investigated into by APIChate (PW6). Before the investigation, during inquiry of Accident Death Case No. 29/2000, inquest panchanama & spot panchanama were drawn and the dead body of deceasedBhagyashri was sent for postmortem. During the investigation, statements of relatives of Bhagyashri were recorded. Both the accused were arrested and after completing the investigation, chargesheet was submitted in the Court. In due course, the case was committed to the court of Sessions.

5. Learned Additional Sessions Judge, Ahmedpur framed charge against the

appellant and his mother u/s 498A r/w 34, 304B r/w 34 & 306 r/w 34 of IPC at Exh. 4. Both the accused pleaded not guilty. The prosecution examined six witnesses. The defence has examined one witness. After considering the evidence on record, the trial Judge held both the accused guilty for all the offences charged and convicted them as referred above. Hence, this appeal.

6. Heard Shri. J. R. Patil, learned counsel for the appellants and Shri. M. B. Bharaswadkar, learned APP for respondent/State.

7. Shri. Patil submitted that the allegations regarding illtreatment and abusing are vague. There are no independent witnesses. PW1 to PW5 are relatives of Bhagyashri and are interested witnesses. The appellant is having 10-12 acres agricultural land and, therefore, it is not probable that he would demand Rs. 10,000/or Rs. 1.00 Lakh. The evidence on record shows that, there was petty quarrel between accused No. 2 and Bhagyashri as Bhagyashri was called in the field for agricultural operation of plucking legume of mung. He argued that the water from the said well was being used for drinking and the probability of death by accident has not been ruled out. He relied on the evidence of defence witness. He submitted that, there are discrepancies in the evidence of PW1 to PW5 and their evidence is not credible and trustworthy. Hence, the appeal should be allowed and the appellant be acquitted.

8. Per contra, learned APP argued that there is consistent evidence of dowry demand by the appellant and his relatives. There is circumstantial evidence to show that there was no possibility of death by accident. There is no reason to disbelieve PW1 to PW5. The learned trial Judge has rightly appreciated the evidence and therefore the conviction & sentence do not need any interference.

9. The points for my consideration with my findings thereon are as follows:

Points Findings

1 Whether deceased Bhagyashri committed suicide? ..Proved.

2 Whether appellant/accused No. 1 and his mother in furtherance of their common intention abetted commission of suicide by deceased Bhagyashri? ..Proved.

3 In the alternative, the appellant and his mother soon before death of Bhagyashri subjected her to illtreatment and dowry demands and thereby caused her unnatural death within 7 years from the date of marriage and committed offence u/s 304B r/w 34 of IPC? ..Does not survive.

4 What order? The appeal is partly allowed. Conviction u/s 306 of IPC is upheld and conviction u/s 304B of IPC is set aside.

: R E A S O N S :

10. The prosecution has examined following witnesses:

PW1 Hansraj, brother of Bhagyashri and informant (Exh.20)

PW2 Mangalabai, mother of deceased-Bhagyashri.

PW3 Govind, Grampanchayat employee from Omerga, who first saw the dead body of Bhagyashri in the well.

PW4 Siddharam - Bhagyashri's uncle (cousin of her father).

PW5 Rasikalabai - Bhagyashri's paternal aunt (i.e. her father's cousin's wife).

PW6 API Chate.

11. The defence has examined DW1 Babru Somwanshi, who is neighbour of accused No. 1.

12. As per admitted facts, Bhagyashri married to appellant on 15.05.2000 and thereafter she started cohabiting with him at Omerga Yelladevi, Tq. Chakur, Dist. Latur. That time, mother of the appellant No. 1 was also residing with them. Appellant was having 1012 acres of agricultural land. Bhagyashri has died of drowning on 01.09.2000 i.e. just three and half months after the marriage.

13. The postmortem notes (Exh. 18) has been admitted by the defence. It shows no post antemortem injuries. There are injuries due to biting by waterborn animals. The probable cause of death recorded by Doctor is "Asphyxia due to Drowning". Consistent with this opinion, other symptoms like swollen, edematous & congested lungs, liver, spleen & kidney were also found. The death of deceased by drowning is not in dispute. Since there is no direct evidence, the possibility of accidental death has to be ruled out. It was argued that, the water of the said well was being used for drinking, however, spot panchanama (Exh. 15) has been admitted by the defence. It shows that the well was having a parapet wall of 4.00 ft. height and 2.5 ft. width from all the sides. Besides, there was iron ladder for entering into the well and there was also a pump house for fetching water. A pair of slipper chappal was found near the well. The existence of parapet wall around the well rules out accidental death of fall in the well. The evidence shows that, deceased Bhagyashri left her house in broad day light. The defence witness has also suggested that deceased Baghyashri left the house in the morning. Since there was a pump house and ladder, I find that there was hardly any possibility of accidental drowning. The existence of pair of slipper chappal near the well also indicates that it is a case of suicide and not a case of accidental death.

14. Thus, it is certainly a case of unnatural death occurred within three and half months after the marriage. Therefore, it is necessary to consider whether she was subjected to illtreatment soon before her death.

15. PW1 to PW5 are maternal relatives of deceased Bhagyashri. Their evidence shows that during the period of three and half months of cohabitation, Bhagyashri visited her house twice, once about 15 days after the marriage and thereafter at the time of Nagpanchami. Besides, her brother Hansraj PW1 had been to her house twice and on each occasion, Bhagyashri disclosed Hansraj and

her maternal relatives that there was demand of balance dowry of Rs. 10,000/. Their evidence shows that, there was agreement to pay Rs. 75,000/at the time of marriage but dowry of Rs. 65,000/was paid and it was also agreed that the balance amount would be paid within six months of the marriage. Bhagyashri also used to tell them about additional demand of Rs. 1.00 Lakh made for purchasing a tractor. Bhagyashri used to weep before them. The evidence of PW1 to PW5 on this point is consistent. The FIR was lodged on the very day of death of Bhagyashri immediately after the funeral was over. Therefore, these allegations cannot be said to be concocted.

16. The evidence of these witnesses is not shaken in the crossexamination. In cross, it was tried to be suggested that Bhagyashri was interested in marrying to a person employed somewhere whereas; the appellant No. 1 Manik was doing agricultural work and therefore she was not happy. This cannot be a ground for commission of suicide. Bhagyashri would have left his house and resided at her maternal house. It is pertinent to note that Bhagyashri was cohabiting with appellant No. 1 and was residing along with her motherinlaw but both of them have given no explanation whatsoever in their statements recorded u/s 313 of Cr.P.C. Their defence is of simple denial of everything.

17. It was suggested to PW1 to PW5 and evidence was led through defence witness that Bhagyashri was hardly having any cohabitation with her husband. After the marriage, she went along with her husband for taking darshan of their family gods. Thereafter, she went to maternal house and stayed there for 14 days. When she returned to her matrimonial house, she stayed there for one day and again went to maternal house. It was suggested that she stayed at her maternal house for 14 days and again she had gone to her maternal house for traditional stay of bride in the month of Ashadh. That time, she stayed there for 1 month and 21 days and she had returned to her matrimonial house 45 days before the incident. DW1 has led evidence to that effect, however, PW1 to PW5 categorically denied this fact and both the appellants have not stated anything like that in their statement recorded u/s 313 of Cr.P.C.

18. DW1 has stated that his house was abutting to the house of the appellant with a common wall in between. Bhagyashri used to visit his house and used to tell his wife that she wanted her husband serving in a company but her husband was doing work in the field and she was married to Manik against her will. He also stated that, his mother told him that on one day before discovery of dead body of Bhagyashri she had seen Bhagyashri wearing a new saree and all ornaments, while leaving her house. Evidence of DW1 as to what his wife & mother stated is hearsay. He was expected to be working in fields during the day time. Therefore, his evidence is not trustworthy.

19. The evidence on record shows that the appellant Manik was having eight elder sisters. Daughter of one of the sisters by name Baby was residing with him. He was very well known to the family of parents of Bhagyashri before marriage. PW1 to PW5 had no reason to falsely implicate both the appellants. The

suggestions made by defence and the evidence led by DW1 that Bhagyashri committed suicide on account of marriage with appellant, who was not as per her liking, is not acceptable. It is not probable that she would have committed suicide on this ground. Bhagyashri was residing in a small village. Her father was also farmer and therefore there was no reason for her to have disliking of farmer's family. There is consistent evidence that, there were persistent demands of dowry by both the accused from Bhagyashri. She was threatened that she should not resume cohabitation unless she brings the amount. She used to weep whenever she was visiting her maternal house. The evidence on record shows that the parents of Bhagyashri were not in a position to meet the dowry demands, made by accused. Thus the appellants have created a situation of extreme pressure where Bhagyashri was left with no option but to commit suicide. In this regard, I rely on *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* reported in AIR 2010 SC 1446, wherein it is observed that "where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred". I also rely on the judgment of the Hon'ble Supreme Court in the case of *Ramesh Kumar v. State of Chhattisgarh* reported in AIR 2001 SC 3837, wherein it is held that, "a reasonable certainty to incite the consequences must be capable of being spelt out. More so, a continued course of conduct is to create such circumstances that the deceased was left with no other option but to commit suicide".

20. It must be, however, stated that the evidence regarding harassment or illtreatment is quite vague and cannot be believed but it is well settled as held in *Arvind Kumar & Anr. v. State of M.P.* reported in AIR 2007 SC 2674 & *M. Narayan v. State of Karnataka* reported in AIR 2015 SC (Supp) 2001, that persistent demand of dowry amounts to illtreatment and such persistent demands have driven Bhagyashri to commit suicide. I, therefore, find that the finding of learned trial Judge that Bhagyashri committed suicide and the appellants had abetted the commission of suicide is proper and needs no interference.

21. However, the learned trial Judge committed error in convicting the appellant for both the offences u/s 304B r/w 34 as well as 306 r/w 34 of IPC. The charge could have been u/s 304B of IPC, or in alternative, u/s 306 of IPC and conviction for single act could have been only for one offence. The conviction for two offences was certainly not justified. As far as offence u/s 498A r/w 34 of IPC is concerned, it is already included in the charge u/s 306 r/w 34 of IPC. Therefore, the judgment of conviction will have to be altered to that much extent. I therefore hold the appellant No. 1 guilty for offence u/s 306 r/w 34 of the IPC only.

22. The appellant has been convicted u/s 306 r/w 34 of IPC and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs. 500/, in default to suffer simple imprisonment for three months. In absence of specific

evidence regarding illtreatment and harassment apart from the persistent dowry demand, this punishment is disproportionately high and therefore it deserves to be reduced.

23. Considering the facts & circumstances, I deem it appropriate to reduce the sentence to rigorous imprisonment for three years and to pay fine of Rs. 500/, in default to suffer simple imprisonment for three months. The points formulated are answered accordingly. Hence, the following order. ORDER

1. The appeal presented by appellant No. 1 Manik S/o Shriram Bondare is partly allowed.

2. The order of conviction u/s 304B r/w 34 of the IPC is set aside and conviction u/s 306 r/w 34 of IPC recorded against the appellant No. 1 in Sessions Case No. 142 of 2001 on 21.02.2003 is maintained, however, the sentence is reduced to rigorous imprisonment for three years and to pay fine of Rs. 500/, in default, to suffer simple imprisonment for three months. The appeal of appellant No. 2 is already abated.

3. The appellant No. 1 shall surrender before the learned trial Court within four weeks from today.