
(2013) 02 BOM CK 0025
In the Bombay High Court
Case No : Criminal Appeal No. 10 of 2004

Namdeo and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 11-02-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3479

Hon'ble Judges : M.T. Joshi, J

Bench : Single Bench

Advocate : Joydeep Chatterji, for the Appellant; G.R. Ingole, Assistant Public Prosecutor, for the Respondent

Judgement

M.T. Joshi, J.—The present appellants, who were charged for the offences punishable u/s 306, 498A read with section 34 of the I.P. Code, in Sessions Case No. 166/2000 by the learned IIIrd Additional Sessions Judge, Jalna and vide his judgment and order dated 26.12.2003, each of them have been convicted and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs. 100/- on the count of conviction for the offence punishable u/s 498A read with section 34 of the I.P. Code and to suffer rigorous imprisonment for five years and to pay fine of Rs. 100/- each on the count of conviction u/s 306 of the I.P. Code, have preferred the present appeal. Deceased Usha, the wife of present appellant No. 3 Ramesh has met with an un-natural death due to poisoning on 01.01.2000. Her father PW 1 Ramrao Dhondiba Gawli filed FIR at Exhibit-33 on 03.01.2000. It is an admitted fact that the deceased had married with appellant No. 3 Ramesh about 8 to 9 months prior to her un-natural death at the house of the present appellants. In the FIR, it was alleged that though dowry of Rs. 25,000/- alongwith certain other gifts were given in the marriage, about two months after the happy married life, all the present appellants started ill-treating the deceased physically as well as mentally on various counts. They also used to make an unlawful demand of Rs. 25,000/- for purchase of certain agricultural land. Deceased Usha, as and when she had an occasion, used to make complaint of

the same to her parental relatives. This has occurred for one or two times. The complainant, therefore, used to give understanding to the appellants that he was not able to make the said payment and used to request them to treat the deceased properly. On the Diwali festival preceding the death of the deceased, appellant No. 3 Ramesh had brought the deceased to the house of the complainant. At that time, he repeated demand of Rs. 25,000/- to the complainant. When the complainant showed his inability, the appellant No. 3 went away. The complainant narrated these facts to his wife i.e. PW 2 Dwarkabai and his brother-in-law Sandu Sapkal as well as his son Sheshrao as well as other relatives. After the Diwali festival, the deceased was sent back to the appellants' house alongwith son of the complainant, namely, PW 3 Sanjay. At that time also, the appellants made demand of the money to Sanjay. About a fortnight preceding the death of the deceased, appellant No. 3 Ramesh brought deceased Ushabai to her parental home and again made demand of Rs. 25,000/-. At that time, complainant told him that at the most he would be able to pay an amount of Rs. 2000/- to Rs. 4000/-. At that time also, deceased told the complainant as well as his wife that she was being ill-treated and beaten by the appellants over the said demand. In the circumstances on 01.01.2000, the complainant and his family members came to know that the deceased was admitted to the hospital in serious condition. On the next day, the inquest panchanama on the dead body was conducted and after the postmortem examination, the last rites were held at Surangali i.e. the native village of the appellants. At that time, appellant No. 3 Ramesh was absent and in the circumstances, on the next day, the FIR (Exhibit-33) came to be filed.

2. PW 8 API Somnath Malkar had conducted the investigation in the matter. In Accidental Death (A.D.) case, which was registered prior to the filing of the complaint, the inquest panchanama of the dead-body was recorded. Thereafter, during investigation, various formalities like recording of the spot panchanama, preserving of the clothes, sending viscera to the Chemical Analyzer, collection of provisional death certificate were carried by the Investigating Officer. The Chemical Analyzer's reports at Exhibit-44 and Exhibit-45 showed that the viscera contained poison. Besides this, the Investigating Officer has recorded the statements of various witnesses, out of which mostly were of the relatives of the complainant.

3. Before the learned Sessions Judge, in all eight witnesses were examined. PW 1 Ramrao is the father of deceased Ushabai as well as the complainant. PW 2 Dwarkabai is his wife. PW 3 Sanjay and PW 4 Sheshrao are the sons of the complainant. PW 5 Sandu Sapkal is the maternal uncle of deceased Ushabai. PW 6 Prabhakar Bhambarde is from the village of the complainant who was examined to show that the complainant had once told him about the harassment to Ushabai at the hands of the appellants. PW 7 Santosh Baviskar - a police constable had carried the viscera to the Chemical Analyzer's office at Aurangabad, while PW 8 API Somnath Malkar has carried the investigation in the case.

4. There is no serious dispute about the fact that the deceased had married with appellant No. 3 Ramesh about 8 to 9 months preceding her death and that she met with an un-natural death due to consumption of poisonous insecticide. The learned Sessions Judge appreciated the oral evidence on record. The fact that the brother of the deceased, namely PW 4 Sheshrao is serving in the police department was also taken into consideration in the light of the fact of alleged delay in filing the FIR. The learned Sessions Judge, however, came to the conclusion that the prosecution has proved beyond reasonable doubt that all the present appellants in furtherance of their common intention have subjected deceased Ushabai to cruelty and this cruelty has led to the abetment of commission of suicide of the deceased and therefore, the conviction and sentence, as detailed supra came to be recorded.

5. Mr. Joydeep Chatterji, learned counsel for the appellants submitted before me that the learned Sessions Judge ought to have taken into consideration that all the witnesses are the relatives or friends of the deceased. While some of the witnesses have deposed that the ill-treatment to the deceased was started after 3 to 4 months of the marriage, some have even made statements based on hearsay information which was believed by the learned Sessions Judge. He further submitted that the evidence on record would clearly show that on 2.1.2000, inquest panchanama was recorded in presence of all the parental relatives of the deceased, including PW 4 Sheshrao, a police personnel and brother of the deceased. However, no FIR was filed on that day. The relatives of the deceased in chorus parroted vaguely that the appellants used to "harass the deceased". Even if one comes to the conclusion that the deceased was subjected to cruelty during her life-time, no nexus between the alleged incidents of the cruelty and commission of the suicide by the deceased is established. The admitted evidence would show that the deceased was somewhat educated, was only 15 years old and as such, she was under stress of family responsibilities, which has been accepted in the different words by the witnesses. Mr. Chatterji further submitted that the statement of the Investigating Officer would further show that the appellants had already purchased agricultural land just a fortnight preceding the un-natural death of the deceased and, therefore, he submitted, the complaint of making an unlawful demand of the money to the complainant for purchase of land by the appellants does not hold any water. In the circumstances, it was submitted that appeal be allowed. Alternatively, it was submitted that the whole thrust of the statements of the prosecution witnesses is against only appellant No. 3 Ramesh i.e. the husband of the deceased.

6. On the other hand, learned A.P.P. Mr. G.R. Ingole submitted that the evidence on record would clearly show that just within 8 to 9 months of the marriage of the deceased, she was required to end her life abruptly. There is clear evidence on record that unlawful demand of Rs. 25,000/- was continuously being made through the deceased to her parental relatives and to them directly. On that count, she was being subjected to cruelty. Just preceding a fortnight of the unnatural death of the death, the said demand was continued which was

communicated to the parental relatives of the deceased and there is clear nexus between the cruelty and the commission of suicide of the deceased. He, therefore, submitted that the appeal be dismissed.

7. On the basis of the above material, the following points arise for my determination:-

(i) Whether the prosecution has proved that appellant No. 3 Ramesh, being husband of deceased Ushabai w/o Ramesh Dandge and appellants No. 1 and 2, Namdeo and Jijabai, being his relatives, from the date of the marriage of the deceased with appellant No. 3 Ramesh, in furtherance of their common intention, have subjected deceased Ushabai to cruelty and ill-treatment on account of unlawful demand of Rs. 25,000/-?

(ii) Whether the prosecution has further proved that on 01.01.2000, at village Surangali, deceased Ushabai committed suicide as a consequence of the abetment of commission of suicide given by the present appellants?

(iii) What order?

8. My answers to the above points No. 1 and 2 are in the affirmative as regards appellant No. 3 Ramesh and are in the negative as regards appellants No. 1 and 2 i.e. Namdeo and Jijabai respectively. The appeal is allowed as regards appellants No. 1 and 2 and stands dismissed so far as appellant No. 3 Ramesh is concerned.

REASONS:

9. The admitted facts on record would show that the deceased had married with appellant No. 3 Ramesh just about 8 to 9 months prior to her un-natural death due to consumption of poison. The FIR (Exhibit-33) filed by PW 1 Ramrao would show that the deceased not only used to make a statement about the ill-treatment and physical beating to her at the hands of the appellants over a demand of Rs. 25,000/-, but direct demand was made by appellant No. 3 Ramesh to the complainant during the Diwali festival. Besides, when brother of the deceased i.e. PW 3 Sanjay had escorted the deceased to her matrimonial house after Diwali festival, appellant No. 3 Ramesh again repeated the said demand to him. The FIR would further show that just a fortnight preceding death of the deceased, appellant No. 3 Ramesh came to the complainant and told him that he had to pay an amount of Rs. 25,000/- towards purchase of the land whereupon the complainant told him that he was able to pay only Rs. 2000/- to Rs. 4000/-. At that time also, as per the FIR, the deceased had told the complainant and other relatives that she was being beaten and ill-treated in order to meet the demand. Thereafter, within fifteen days, the deceased met with an unnatural death.

10. It would be first useful to deal with the submissions regarding belated filing of the FIR. It is an admitted fact that the deceased consumed poison on 01.01.2000. On that day, the parental relatives were informed and, therefore,

they went to village Surangali. On the next day, inquest panchanama as well as post-mortem examination was conducted. The dead-body was handed over. The final rites were held at village Surangali i.e. the native village of the appellants. As per the FIR, appellant No. 3 Ramesh was not present for the final rituals and on the next day i.e. on 03.01.2000, at about 12.45 in the noon, the complaint came to be filed with Police Station, Bhokardan. All the relevant witnesses candidly admitted that they were present when the police recorded inquest panchanama and the dead-body was sent for post-mortem on the preceding day of filing of the FIR. PW 4 Sheshrao, who serves in the police department was also present at that time. However, when a question was put as to why the FIR was not filed on the previous day i.e. 02.01.2000, it was explained by the father of the deceased i.e. PW 1 Ramrao that he was in the mourning state of mind on that day and, therefore, he did not think of filing of the FIR on that day.

11. Taking into consideration all these relevant facts, in my view, the belated filing of the FIR has been reasonably explained by the prosecution witnesses and, therefore, the learned Sessions Judge rightly did not suspect anything foul in filing the FIR after 24 hours of the actual death of the deceased.

12. The examination-in-chief of PW 1 Ramrao, the father of the deceased, coupled with the tone and tenor of the FIR filed by him at Exhibit-33 would show that appellant No. 3 Ramesh more specifically started beating and ill-treating deceased Ushabai after about 3 to 4 months of her marriage with him. In examination-in-chief, the witness was categorical in saying that present appellant No. 3 used to ill-treat the deceased and that was aggravated after the complainant told him that he was unable to fulfill his demand of money of Rs. 25,000/-. He did not name any of the appellants No. 1 and 2 as having been participated in ill-treatment to the deceased during her cohabitation with appellant No. 3 Ramesh. The FIR as well as his deposition would show that appellant No. 3 Ramesh had directly made demand of money to himself also.

13. The FIR would further show that about 15 days prior to the death of the deceased, the appellant No. 3 - Ramesh told the complainant PW 1 Ramrao that he was in dire need of money of Rs. 25,000/- to be paid towards purchase of agricultural property and that he (complainant) should pay the said amount to him (appellant No. 3). It is the defence itself that just 15 days prior to the death of deceased Ushabai, the brother of appellant No. 3 had purchased agricultural property. The photocopy of the sale-deed, filed by the defence, would show that the agricultural property was purchased for consideration of Rs. 31,000/- on 15.12.1999. The possession of the land was already delivered and the cash amount was received at the house itself by the vendor. If these facts are taken together, then it would be clear that prior to the purchase of the land, the appellants had already taken possession of the land agreed to be purchased by them and in the circumstances, mere fact of the execution of the sale-deed prior to 15 days of death of the deceased would not take us to conclude that since the agricultural property was purchased 15 days prior to death of the deceased,

there would not have been any demand of money for purchasing the land.

14. The rest of the witnesses i.e. PW 2 Dwarkabai, PW 3 Sanjay and PW 4 Sheshrao have deposed that it was appellant No. 3 Ramesh who used to harass or beat the deceased over the demand of money. Some of them vaguely deposed that other accused/appellants also used to "harass" the deceased. FIR (Exhibit-33) coupled with the categorical statement of PW 1 Ramrao that there was not merely harassment but beating to the deceased at the hands of appellant No. 3 Ramesh and more particularly the ill-treatment was aggravated after the complainant refused to fulfill the demand, would go to show that the allegations against him are definite.

15. It is no doubt true that PW 5 Sandu has made a statement that PW 1 Ramrao - the complainant told him about the harassment to the deceased at the hands of the appellants. Though this statement of PW 5 Sandu can be stamped as a hearsay evidence, it would be, however, in the nature of the corroboration to the statement of complainant PW 1 Ramrao that he had told the fact of ill-treatment to the deceased, to the other persons and it was not the first time that he did allege the same in the FIR. All this evidence on record would thus clearly show that appellant No. 3 Ramesh Namdeo Dandge i.e. the husband of the deceased had subjected the deceased to cruelty during her cohabitation with him and, therefore, the offence punishable u/s 498A of the I.P. Code is proved beyond reasonable doubt against him.

16. As regards abetment to commission of the suicide, the fact of the execution of sale-deed just a fortnight of the un-natural death of the deceased in favour of one of the family members of the appellants, the statements of the witnesses that just a fortnight of the death of the deceased, the appellant No. 3 - Ramesh had visited the complainant and told him that he was required to pay an amount of Rs. 25,000/- are fortified. According to the witnesses, at that time, appellant No. 3 Ramesh had brought the deceased to their house and thereat, the deceased again made a complaint of ill-treatment to her. Thus, soon before the death of the deceased i.e. just within a fortnight, there was ill-treatment to the deceased. Further, admittedly, the deceased has committed suicide while in the custody of the appellants. They were unable to explain as to under what circumstances, the deceased, who was only 15 years old, was required to end her life abruptly. This fact would go to show that she has committed suicide only due to ill-treatment at the hands of appellant No. 3 Ramesh.

17. In view of above facts, the ratio laid down in the cases of Ravindra Pyarelal Bidlan and others Vs. State of Maharashtra, and "M. Gananath Pattnaik v. State of Orissa" LAWS (SC) 2012-21-01, reliance on which is placed by Mr. Chatterji, learned counsel for the appellants, would not be applicable in the facts of the present case.

18. In "Ravindra Pyarelal Bidlan and others v. State of Maharashtra" (cited supra), a well established principle that mere proof of cruelty or suicide is not

sufficient but a reasonable nexus between the two is required to be proved by the prosecution, is underlined. In the present case, we have already found that there was nexus between the cruelty and suicide.

19. In the case of "M. Gananath Pattnaik v. State of Orissa" (cited supra), the accused therein were convicted for the offence punishable u/s 498A of the I.P. Code, but were acquitted of the offence punishable u/s 304B of the I.P. Code. In the circumstances, the Supreme Court of India underlined the well-established principle that once the Court comes to the conclusion that the statements made by the deceased were not leading to the circumstances of her death, solely on the basis of that material i.e. oral dying declaration made by the deceased to her parental relatives, there would be no conviction u/s 498A of the I.P. Code and such statements would be inadmissible u/s 32 of the Indian Evidence Act. In the present case, what we have found that the statements of the deceased were leading to the circumstance of death of the deceased and are, therefore, admissible in evidence. Besides, we have also found that there was direct evidence of making demand of money by appellant No. 3 Ramesh to the complainant.

20. In the light of above facts and the discussion hereinabove, while the appeal as regards appellants No. 1 and 2 would be required to be allowed, the appeal as regards appellant No. 3 would have to be dismissed. In the circumstances, the following order:-

21. The appeal to the extent of appellant No. 1 Namdeo Janu Dandge and appellant No. 2 Jijabai Namdeo Dandge is allowed. The order, dated 26.12.2003, passed by learned IIIrd Additional Sessions Judge, Jalna, in Sessions Case No. 166/2000, convicting and sentencing appellant No. 1 Namdeo and appellant No. 2 Jijabai for the offence punishable u/s 498A read with section 34 of the I.P. Code and u/s 306 of the I.P. Code, is hereby set aside. Both these appellants i.e. appellant No. 1 Namdeo and appellant No. 2 Jijabai are acquitted of the offence punishable u/s 498A read with section 34 of the I.P. Code and u/s 306 of the I.P. Code. In the circumstances, their bail bonds shall stand cancelled. The appeal as regards appellant No. 3 Ramesh Namdeo Dandge is hereby dismissed. He is directed to surrender before the learned Sessions Judge and shall serve the sentence, as directed by the learned IIIrd Additional Sessions Judge, Jalna vide his order dated 26.12.2003, passed in Sessions Case No. 166/2000. The learned Sessions Judge to take steps for execution of the sentence by appellant No. 3 Ramesh Namdeo Dandge.