
(2015) 01 BOM CK 0226
In the Bombay High Court
Case No : Criminal Appeal No. 315 of 2001

Nazir Shaikh and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Evidence Act, 1872 — Section 113-B

Penal Code, 1860 (IPC) — Section 304-B, 34, 498-A

Citation : (2015) ALLMR(Cri) 1301 : (2015) 3 DMC 838

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : A.N. Ansari, for the Appellant; R.P. Phatke, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

T.V. Nalawade, J.

1. The appeal is filed against judgment and order of Sessions Case No. 66/2001 which was pending in the Court of Additional Sessions Judge, Udgir, District Latur. The Trial Court has convicted and sentenced the appellants for offences punishable under sections 304-B, 498-A r/w. 34 of Indian Penal Code. Both the sides are heard. Deceased Salma was daughter of complainant Hannumiya. She was given in marriage to appellant No. 1 about six months prior to the date of incident. Appellant No. 2 is mother of appellant No. 1. Deceased started cohabiting with appellant No. 1 in his house from Udgir. The parents of deceased are also from Udgir. It is the case of prosecution that after four months of the marriage, ill-treatment was given to the deceased. She had visited the house of her parents one and half months prior to the date of incident and on that occasion, she had stayed in the house of Aaiyyubkhan Pathan, the husband of sister of mother of Salma. She had stayed there for about 8 days. According to the prosecution, on that occasion, she had disclosed that her husband, in laws and her two sisters in laws were harassing her by saying that she had not

brought any dowry or valuable articles with her at the time of her marriage. She had also disclosed that they were all giving abuses and on occasions, they were giving beating to her. According to the prosecution, about 5-6 days prior to the date of incident, Hannumiya had visited the house of appellants and on that occasion also, similar disclosure was made by the deceased to him. Hannumiya had somehow convinced the husband and his relatives to behave well with the deceased and he had returned to his house.

2. On 18.9.1999 at about 9.30 p.m. appellant No. 2 and her other son Gous visited the house of Hannumiya and informed that Salma was missing for about two hours and she had not left any message before leaving the matrimonial house. Search was made for tracing Salma. The dead body of Salma was found in a well on 20.9.1999 and then Hannumiya gave report against the husband and aforesaid relatives of the husband. He has contended that Salma had committed suicide due to ill-treatment .

3. After registering the crime, police recorded the statements of witnesses like relatives on parents side of deceased Salma. Spot panchanama was prepared. P.M. report revealed that the death took place due to drowning. The charge was framed for aforesaid offences. After arrest, husband of appellant No. 2 died. The trial Court has convicted both the appellants on the basis of evidence given by Hannumiya, his wife and husband of sister of wife of Hannumiya.

4. The evidence of Hannumiya and other witnesses shows that on 18.9.1999 itself it was informed by appellant No. 2 that Salma was missing and the information was given within two hours of leaving of matrimonial house by Salma. The missing report was given by Hannumiya on 19.9.1999 and in missing report, he vaguely contended that there was ill-treatment to Salma and there was possibility that there was danger to her life. No allegations were made that there was any demand of dowry from the husband or his relatives. Vague contention about the ill-treatment was made.

5. In F.I.R. given on 20.9.1999 also, Hannumiya contended that there was no problem for first four months after the marriage and deceased had disclosed about ill-treatment after the four months. The reason of ill-treatment is given that no sufficient dowry and no valuable articles were given during marriage. However, Hannumiya or other relatives did not make specific allegations that there was any demand of money or any valuable article made by the husband or his relatives to the parents of the deceased or even to the deceased. In F.I.R., vague allegations were made that there was ill-treatment to her and all these persons were giving abuses and beating to her. Both the families are resident of same place, but the evidence and the F.I.R. do not show that on any specific instance of ill-treatment the relatives of parent's side of deceased had made inquiry to ascertain the actual demand of husband or his relatives. Similar allegations were made against others, but the conviction is given to the husband and mother in law of the deceased. Other accused are acquitted.

6. For proving the offence punishable under section 304-B of I.P.C., the dowry death, it is necessary for prosecution to prove that there was the demand of dowry as defined under the provisions of Dowry Prohibition Act. Even from the evidence of the three witnesses like PW Nos. 2, 3 and 4, it cannot be said that there was any specific demand of dowry and as the demand was not fulfilled, harassment was given to the deceased by the appellants. No other reason for so called ill-treatment is given by these witnesses. The evidence of Hannumiya shows that during marriage, he had given Rs. 5,000/- as dowry, half tola of gold and he had born other expenses as per the custom. His evidence does not show that anything about dowry was settled at the time of marriage also. Thus, at the time of marriage, there was no settlement about the dowry and there is no specific allegation that after the marriage, specific amount was demanded by the husband or his relatives.

7. The evidence of PW 2, father and PW 4, other relative, in whose house so called disclosure was made shows that appellant No. 1 Nazir, the husband, is disabled in one leg. Suggestions are given that the deceased did not like appellant No. 1 and so, she probably committed suicide. The evidence shows that immediately after the marriage, for few days, she stayed in the house of PW 4 and husband had come there to take her back to matrimonial house. Thus, there was no condition put by anybody from the side of the husband and the deceased was never driven out of the house by the husband or his relatives. All the witnesses examined by the prosecution are interested witnesses, who are close relatives of deceased on parent's side. The evidence of PW 4 shows that house of one Jabbar is situated adjacent to the house of accused No. 1 Nazir. Prosecution did not examine the witnesses like neighbours of the accused, who could have been independent witnesses on the ill-treatment, if any, given to the deceased. For no reason, PW 3, mother of the deceased has tried to deny that the husband, Nazir is lame in one leg. She has denied some other suggestions also when there was no reason to deny those things which are admitted by other two witnesses.

8. The learned counsel for the appellants submitted that there is a possibility of accidental fall as the evidence is given that the ladies of that locality used to go towards that side to answer the nature's call. This suggestion has not created any probability as nobody has accepted it. The Investigating Officer has given evidence that the well where the dead body was found is covered by thorny bushes and police were required to remove the bushes to take out the dead body. No pot of the deceased was found in the vicinity. Thus, there is not a single circumstance to show that the deceased had gone towards that side to answer the nature's call and she fell accidentally in the well. Water of the well was very dirty and nobody would have gone there to take the water. Thus, Salma committed suicide.

9. For proving the dowry death, it was necessary for the State to bring on the record that there was ill-treatment due to demand of dowry and to force that

demand, there was ill-treatment . Unless the offence provisions of Dowry Prohibition Act is made out, it is not possible for the Court to draw the presumption under section 113-B of Evidence Act. This Court has no hesitation to hold that the aforesaid material is not sufficient to prove the offence punishable under section 498-A of I.P.C. and the prosecution has failed to prove that there was the demand of dowry and for that ill-treatment was given to the deceased. This Court holds that the Trial Court has committed error in giving conviction for aforesaid offences to the appellants. In the result, the appeal is allowed. The judgment and order delivered in Sessions Case No. 66/2001 by the learned Additional Sessions Judge, Udgir is set aside. The conviction given as against both the appellants for the offences punishable under sections 304-B, 498-A r/w. 34 of I.P.C. is set aside. Both the appellants stand acquitted of the aforesaid offences. Fine amount deposited, if any, is to be returned to them. Their bail bonds stand cancelled.