
(2001) 02 BOM CK 0079

In the Bombay High Court

Case No : Criminal Revision Application No's. 156 and 164 of 1997

Pandurang Shivram Kawathkar and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 05-02-2001

Acts Referred:

Dowry Prohibition Act, 1961 — Section 2, 4, 8A

Citation : (2001) 2 DMC 448

Hon'ble Judges : R.K. Batta, J

Bench : Single Bench

Advocate : J.N. Chandurkar and Girish Choubey, for the Appellant; D.B. Yengal, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Batta, J.—These revisions arise out of the same incident of which the applicants were tried in one trial. The applicants were convicted for the offence u/s 4 of the Dowry Prohibition Act, 1961 (hereinafter referred to as the said Act). Applicant Maroti was sentenced to suffer rigorous imprisonment for one year and fine of Rs. 300.00, in default, rigorous imprisonment for one month. Applicants Purushottam and Pandurang were sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs. 1,000.00, in default, to suffer rigorous imprisonment for 7 days. Anjanabai, who was accused No. 2 before the Trial Court, was also held guilty for the offence u/s 4 of the said Act and was sentenced to imprisonment till rising of the Court and to pay fine of Rs. 1,000.00, in default, simple imprisonment for 2 days. All the applicants as also Anjanabai preferred appeal before the Sessions Court, Amravati, but their appeal was dismissed. The applicants now challenge the concurrent findings of two Courts below by filing this revision. Accused Anjanabai has not filed any revision.

2. Arguments were heard. Mr. Dubey, learned Advocate argued on behalf of Maroti and Purushottam; Mr. Chandurkar, learned Advocate argued on behalf of applicant Pandurang and the learned Additional Public Prosecutor argued on

behalf of the State.

3. Learned Advocate for applicants Maroti and Purshottam urged before me that merely making of a demand of dowry until and unless dowry is given or agreed to be given in terms of Section 2 of the said Act does not make out any offence. Alternatively, it as argued that even assuming that demand for dowry is punishable, the prosecution has failed to make out the charge against the applicants inasmuch as all the witnesses being relatives of the complainant, and there is no independent corroboration from any independent witness. Thirdly, it has been argued that there is delay of 13 days in filing the First Information Report which has not been satisfactorily explained, which casts suspicion on the prosecution case. The learned Advocate for the applicants sought to produce legal notice dated 28.4.1998, which was sent by Maroti to the complainant which was not produced before the Trial Court, and according to learned Advocate for the said applicants, the complainant had admitted the receipt of the said notice in his cross-examination.

4. Learned Advocate for the applicant Pandurang urged before me that the Trial Court has not taken into consideration the statement of the accused recorded u/s 313 of the Criminal Procedure Code as also the certificate of Tahsildar produced before the Trial Court in order to substantiate the plea of alibi taken by the said applicant. He further contended that the opportunity should be given to the said applicant to produce the Tahsildar by remanding the matter to the Trial Court. It was pointed out by him that an accused can discharge the burden cast on him through his statement u/s 313 of the Criminal Procedure Code and it is not always necessary that in order to discharge the burden, the accused, should lead evidence. In this connection, reliance has been placed on a judgment of the Apex Court in State of Maharashtra Vs. Laxman Jairam, . On the question of production of the certificate from the Tahsildar in the statement of the said applicant, it is urged that the said document is admissible in evidence and being a public document, it was not necessary to prove the same by calling a witness. In this respect, reliance has been placed on a judgment of the Apex Court in Madamanchi Ramappa and Another Vs. Muthalur Bojjappa, .

5. Learned Additional Public Prosecutor argued that the plea of alibi is required to be proved with certainty and the onus of proving alibi is on the accused. In support of his submissions, he has placed reliance on State of Maharashtra Vs. Narsingrao Gangaram Pimple, . He also pointed out that admissibility of the documents is a one thing and its probative value is another and the two cannot be combined together. He has further urged that the document may be admissible and yet may not carry any value and its probative value may be nil. In support of this, reliance has been placed by the learned Additional Public Prosecutor on a decision of the Apex Court in State of Bihar Vs. Radha Krishna Singh and Others, . . According to him, prosecution, with the help of four witnesses, has clinchingly established that demand for dowry was made by the applicants. Anjanabai who has not preferred revision and that there is absolutely

no reason for this Court in the exercise of revisional jurisdiction to interfere with the concurrent findings of two Courts below.

6. Before the Trial Court, it was substantially argued that the marriage was forcibly settled; mere demand of dowry does not make any offence u/s 4 of the said Act and there has been delay in lodging the First Information Report of about 13 to 14 days. All these contentions were rejected by the Trial Court. The Appellate Court, vide detailed judgment, dismissed the appeal as also various contentions raised before it by learned Advocates for the defence.

7. The prosecution had examined four witnesses to prove the demand of dowry and the said witnesses are complainant Rajaram, father of the bride, bride herself Mala (PW 2), Sahebrao Burghate (PW 3) and Motiram Madge (PW 4). All of them have in categorical terms, stated that all the accused had come on 22.4.1988 and they had made demand of Rs. 20,000.00 as dowry for the marriage which was agreed to be performed on 5.5.1988. It is in evidence that applicant Maroti had some love affair with PW 2 Mala and this fact is deposed by Mala (PW 2) during a suggestion given to her in the cross-examination, which she accepted and stated that it is true that she was in love with accused No. 1. The theory of forcible marriage, under the circumstances, was, therefore, rightly rejected. The Courts below also accepted the explanation regarding delay in filing the First Information Report. Under the circumstances, the complainant expected that the marriage may still materialise since her daughter and applicant Maroti were in love. In so far as the argument that mere demand of money is not an offence, the same was rejected after placing reliance on judgment of the Apex Court in L.V. Jadhav Vs. Shankarrao Abasaheb Pawar and Others, .. The Apex Court has, in categorical terms, held therein that the offence u/s 4 of the said Act is complete when demand for dowry is made and consent for meeting the demand is not necessary. The following observations of the Apex Court, upon which reliance was also placed before the Trial Court, are crystal clear on the subject :

"Having regard to the dominant object of the Act which is to stamp out the practice of demanding dowry in any shape or form either before or after the marriage. The entire definition of the word "dowry" should not be imported into Section 4, and a liberal construction has to be given to the word "dowry" used in Section 4 to mean that any property or valuable security which if consented to be given on the demand being made would become dowry within the meaning of Section 2 of the Act. The object of Section 4 is to discourage the very demand for property or valuable security as consideration for a marriage between the parties thereto. Section 4 prohibits the demand for "giving" property or valuable security which demand, if satisfied, would constitute an offence u/s 3 read with Section 2 of the Act. There is no warrant for taking the view that the initial demand for giving of property or valuable security would not constitute an offence and that an offence would take place only when the demand was made again after the party on whom the demand was made agreed to comply with it".

Learned Counsel for the applicants has also urged before me that all the witnesses examined by the prosecution are relatives. There is absolutely no merit in the submission of the learned Advocate for the applicants since the evidence of PW 3 Sahebrao Burghate as also the witness Motiram Madge (PW 4) does not at all show that they are relatives of the complainant. Both of them had categorically stated that all the accused had demanded dowry of Rs. 20,000.00 in their presence. Their testimony could not be slackened at all during the cross-examination of these witnesses by the defence.

8. There is, thus, no merit in any of the submissions advanced by the learned Advocate for applicants Maroti and Purshottam. Even though the complainant admitted to have received the notice from the applicant Maroti, yet the said notice was never produced before the Court and as such, learned Advocate for the said applicants who wanted to produce the carbon copy of that notice in this Court, was not allowed to produce the same.

9. Coming now to the case of applicant Pandurang, it must be pointed out to start with that plea of alibi, was not pressed into service by the learned Advocate for the said applicant either before the Trial Court or before the Appellate Court. It is also pertinent to note at this stage that no specific suggestion was given to any of the prosecution witnesses (PW 1 to PW 4) in respect of the alibi taken by the applicant Pandurang. It was only suggested to them that no such incident had taken place on 22.4.1988. Learned Advocate for the applicant has urged before me that u/s 313 of the Criminal Procedure Code, the Court is bound to take into consideration the statement of the accused. Sub-section (4) of Section 313 of the Criminal Procedure Code lays down that, "the answers given by the accused may be taken into consideration in such enquiry and trial and if an evidence for and against him in any other enquiry into or trial, for, any other offence which such answers may tend to show he has committed." It is, therefore, clear that the answer given by the accused may be taken into consideration though answers given by the accused are, strictly speaking, not evidence.

10. The question which is required to be examined is whether applicant Pandurang can be said to have discharged the burden cast on him u/s 8-A of the said Act as also the burden on him regarding the plea of alibi. Section 8-A of the said Act provides that, "Where any person is prosecuted for taking or abetting the taking of any dowry u/s 3, or the demanding of dowry u/s 4, the burden of proving that he had not committed any offence under those sections shall be on him." Besides this, plea of alibi is required to be proved with absolute certainty so as to completely exclude the possibility of the presence of the person concerned at the place of occurrence. The Apex Court rulings in the case of State of Maharashtra v. Narsingrao Gangaram Pimple (supra) and Binaykumar Singh v. State of Bihar (supra) are crystal clear on this subject. The Apex Court, in the case of Binaykumar Singh v. State of Bihar (supra) has laid down that once the prosecution succeeds in discharging the burden, it is incumbent on the accused,

who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. It is further laid down therein that the burden on the accused is rather heavy.

11. The prosecution, with the help of four witnesses (PW 1 to PW 4), has discharged the burden cast on it. In this connection, the arguments advanced by the learned Advocate for the applicant Pandurang is that the Courts below have failed to take into consideration the statement of the accused u/s 313 of the Criminal Procedure Code as also the certificate of the Talathi which is public document. First of all, it is rather doubtful that the certificate in question, which was produced, would be a public document. Secondly, even if we take that it is a public document, the said certificate has not been proved. In this connection, I would like to refer to a judgment of this Court which has dealt with the question of proof of "contents of a document" in *Om Prakash Berlia and Another Vs. Unit Trust of India and Others*, . It has been noticed therein that there is a distinction between proof of contents of a document and proof of the truth of the contents of a document. The production of a public document merely proves its contents but it does not establish the truth of the contents of the documents and the truth has to be established. It has been laid down therein that the expression "contents of a document" only means what the document states and not the truth of what the document states. It is further observed that the truth of contents of document, even prima facie, cannot be proved by merely producing the document for inspection of the Court but the truth has to be established. It is further pointed out that production of original document as also secondary evidence makes a document admissible, but evidence has to be led what document states and secondary evidence can be led only of what the document states and not as to whether what the document states is the truth. Truth of what the document states must be separately established. Large number of cases on the subject have been referred in this judgment including *Madamanchi Ramappa and Anr. v. Mathaluru Bojjappa (supra)*, upon which the reliance was placed by the learned Advocate for the applicants. In respect of the said judgment of the Apex Court, it has been pointed out in *Omprakash Berlia and Anr. v. Unit Trust of India and Ors. (supra)* that no question arose before the Apex Court of the truth of the contents of the documents.

12. It is now well settled that the plea of alibi must be proved with absolute certainty so as to completely establish the persons concerned at the place of occurrence. Mere production of certificate in question would not be sufficient. The truthfulness of the certificate was required to be established by leading evidence in order to establish that the applicant was not present at the scene of offence. Besides this, if the said certificate is perused, it appears that the words which are crucial for the plea of applicant Pandurang appeared to have been written subsequently. The said words being "x x x x". The size of the words, spacing, the manner in which they have been inserted in the said certificate makes it very apparent. Moreover, plea of alibi was not at all pressed either before the Trial Court or before the Appellate Court and no specific suggestions were given to

any of the prosecution witnesses regarding the plea of alibi. Under these circumstances, at this stage, I am not inclined to accept the contention of learned Advocate for the applicant Pandurang that the matter be remanded for examination of the Tahsildar on the said certificate.

13. In the light of the above, I do not find any merit whatsoever in the revisions in question and both the revisions are hereby rejected.