
(2015) 08 BOM CK 0029

In the Bombay High Court

Case No : Criminal Appeal No. 583 of 2002 and Criminal Appeal No. 190 of 2003

Raju and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Dowry Prohibition Act, 1961 — Section 4

Evidence Act, 1872 — Section 113-B

Penal Code, 1860 (IPC) — Section 201, 302, 304(B), 34, 498-A

Citation : (2016) ALLMR(Cri) 494

Hon'ble Judges : A.B. Chaudhari, J;I.K. Jain, J

Bench : Division Bench

Advocate : A.M. Jaltare, for the Appellant; A.S. Fulzele, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

I.K. Jain, J—Criminal appeal No. 583/2002 is preferred by Raju Vishwanath Charde-original accused No. 1 against the judgment and order dated 12/9/2002 passed by the learned Additional Sessions Judge, Nagpur in Sessions Trial No. 672/2001. By the said judgment and order, learned Additional Sessions Judge convicted accused No. 1 Raju of the offence punishable under Section 304(B) of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 1,000/-, in default to undergo simple imprisonment for six months.

2. The State has preferred Criminal Appeal No. 190/2003 being aggrieved by the said judgment and order of acquittal of accused Raju and four others for the offence punishable under Section 302 and accused Nos. 2 to 5 under Section 304(B) read with Section 34 of the Indian Penal Code.

This Court vide order dated 01/8/2003 has not granted leave to appeal against accused Nos. 2 to 5. The scope of State appeal is thus restricted to accused No. 1 Raju.

3. The prosecution case briefly stated is as under.:

(a) Deceased Jyoti@ Vaishali was the daughter of P.W.-1 Sheshrao Marotkar. Sheshrao Marotkar was residing at village Valni Vasti in taluka Saoner, District Nagpur along with his family consisting of two sons, Devidas and Ramdas and two daughters Jyoti @ Vaishali and Archana.

(b) Jyoti @ Vaishali was married to accused No. 1 Raju Charde on 27/3/2000 as per the customary rites. At the relevant time, Raju Charde was residing at village Nimkheda, tahsil Ramtek district Nagpur.

(c) It is the prosecution case that initially, Jyoti was treated well by her husband and others in family. After some time, they started to ill-treat and harass her on unlawful demand of Rs. 1 lakh. She disclosed about the persistent demand of money and ill-treatment to her parents and other relations. They tried to pacify the accused, but their attempts to convince turned futile.

(d) On 29/8/2001, Raju called mother and brother of Jyoti to his house. One Gulab Kohle, who acted as mediator in the settlement of marriage, was also called. The meeting was held. It is alleged that in that meeting, Raju insisted to fulfill the demand of money, else to face the dire consequences. That time there was exchange of words between the members of both the families.

(e) On 31/8/2001 Raju lodged report with Ramtek police station stating therein that his wife was missing from the house since midnight of 30/8/2001. Then a telephonic message was sent to the parents of Jyoti informing that she was found dead in a well.

(f) On receiving telephonic message, father and other family members of the victim rushed to village Nimkheda. They noticed burn marks on her forearm, trunk, limbs and smell of kerosene emanated from her apparels.

(g) In the evening, Sheshrao, father of the deceased, lodged report to Ramtek police station. Crime No. 184/2001 came to be registered under Sections 498-A, 304(B), 302, 201 read with Section 34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act against the husband, father-in-law, mother-in-law and both the brother-in-laws.

(h) After completion of investigation, charge-sheet was filed and in due course case was committed to the Court of Sessions.

4. Charge was framed against the accused at Exh.15. Accused pleaded not guilty to the charge and claimed to be tried. Factum of relationship between the parties was not in dispute. Their defence regarding commission of offence was of total denial.

According to the accused, Jyoti was not happy in her matrimonial house. She was not discharging her duties properly and was reluctant to stay in the joint family.

According to the accused, father of Jyoti was found in a compromising position

with one lady in the village which led to an agitation and protest by the villagers at large. Jyoti was tense and being mentally disturbed, committed suicide by jumping into the well.

5. Prosecution examined in all ten witnesses to substantiate its case. Accused did not adduce any evidence in the matter. After going through the evidence laid by the prosecution, learned Additional Sessions Judge acquitted all the accused of the offence punishable under Section 302 read with 34 of the Indian Penal Code. Except accused No. 1 Raju Charde all other accused were also acquitted of the offence punishable under Section 304(B) read with Section 34 of the Indian Penal Code. Accused Raju was however convicted under Section 304(B) of the Indian Penal Code as stated in para 1 herein-above.

6. We have heard the learned Counsel for appellant/ respondents and learned A.P.P. for the State of Maharashtra. We have perused the impugned judgment and order and also the evidence adduced in the case. After carefully considering the matter, for the reasons stated herein below we are of the opinion that the judgment and order passed by the learned Additional Sessions Judge does not call for any interference.

7. To show that Jyoti was treated with cruelty, prosecution relied upon the evidence of P.W.-1 Sheshrao, P.W.-2 Devidas, P.W.-4 Ashok and P.W.-5 Gulab Kohle.

P.W.-1 Sheshrao is father of deceased Jyoti. He stated that for about six months Jyoti led normal marital life. On the eve of Dipawali when she visited his house along with her husband, she complained him about the demand of Rs. 1 lakh by her husband. He further stated that he tried to pacify Raju that he would not be in a position to fulfill his demand and whatever articles were to be presented, were given in the marriage. He stated that Raju remained adamant and insisted to fulfill the demand.

It appears from the evidence of P.W.-1 Sheshrao that on 29/8/2001 in pursuance to the telephonic message received from Raju, he along with his wife and daughter went to the house of Raju. On 30/8/2001 he received message about demise of his daughter. On receiving such message when he along with family members rushed to the village of accused, he saw dead body of his daughter near a well lying on the cot with burn marks on her forearms, trunk and her apparels smelling of kerosene. Having noticed the circumstances, he proceeded to Ramtek police station and lodged report. F.I.R. is proved by him at Exh.35. In the F.I.R. it is consistently stated that there was demand of money and Jyoti was ill-treated for non fulfillment of such demand. Nothing substantial could be elicited in the cross-examination of this witness to disbelieve his testimony.

8. P.W.-2 Devidas, brother of deceased Jyoti, stated that after marriage, his sister visited her matrimonial place on three occasions and during her third visit, at the time of Dipawali, she complained of harassment at the hands of accused for not fulfilling demand of Rs. 1 lakh. Once on his way to Bhandara he visited house of

Jyoti. She complained to him about harassment at the hands of accused on demand of not less than Rs. 25,000/-. P.W.-2 Devidas also attended meeting on 29/8/2001 at the house of accused Raju.

Accused has not denied that telephonic message was sent and mother, brother and mediator were called. However, he tried to justify that due to indifferent attitude of his wife, he called the meeting so that she can mend her ways. The defence raised by the accused is not supported by any convincing evidence. On continuous demand of Rs. 1 lakh and ill-treatment for non fulfillment of demand, evidence of P.W.-2 Devidas is consistent throughout and he fully supports the evidence of his father P.W.-1 Sheshrao.

9. The next witness examined by the prosecution is P.W.-4 Ashok. He is maternal uncle of deceased Jyoti. According to him, after three months of marriage, Jyoti along with Raju visited his house and that time Raju complained about shortcoming of Jyoti in attending the domestic work. He advised Raju that gradually she would learn. It is stated by P.W.-4 Ashok that Raju lost his temper. He demanded Rs. 50,000/- and threatened that if demand is not fulfilled face the consequences. P.W.-4 Ashok has also mentioned about the meeting called at the house of accused No. 1 in which Raju insisted to fulfill demand of money. This witness fully corroborates the evidence of P.W.-1 Sheshrao and P.W.-2 Devidas. No material inconsistency, contradiction or omission could be brought in the cross-examination of P.W.-4 Ashok.

10. Another witness P.W.-5 Gulab Kohle acted as a mediator in settling the marriage of Raju and Jyoti. He stated that whenever Jyoti visited his house along with her husband, Raju complained to him about misbehaviour of Jyoti. He states that on 29/8/2001 a meeting was called by Raju. He was one of the invitees. It is stated by Gulab that in that meeting, Raju asked Devidas (P.W.-2) not to speak anything upon which he expressed that since beginning of marriage such things are happening and he would take back his sister with him.

From the evidence of P.W.-5 Gulab, it is apparent that relations between Jyoti and Raju and both the families were not cordial. Though this witness does not speak about demand of money by Raju, it would not come in the way of the prosecution as credibility of three witnesses P.W.-1 Sheshrao, P.W.-2 Devidas and P.W.-4 Ashok has not been shaken in any way.

11. It is not in dispute that marriage of deceased Jyoti was performed on 27/3/2000 and she died in August, 2001. To establish the factum of mode of death, prosecution has relied upon the evidence of P.W.-7 Dr. Gajbhiye. He performed postmortem. During postmortem examination, Dr. Gajbhiye noticed burn injuries on various places like right and left forearms, right and left ankle, neck, right breast, buttock and upper part of back, right and left knee and left thigh. He also noticed redness of skin at some places. According to Dr. Gajbhiye deceased sustained first degree burns. The cause of death opined by the Medical Officer was hypovolemic and hemorrhagic shock due to burns and traumatic

injury to internal organs.

12. During the course of arguments, Mr. Jaltare, learned Counsel for the appellant-accused submitted that no specific instances of alleged cruelty or harassment soon before the death of Jyoti have been quoted and in the absence of such material, evidence of prosecution witnesses cannot be relied upon. In support, learned Counsel placed vehement reliance on Manohar Lal Vs. State of Haryana, (2014) AIRSCW 3923 : (2014) 8 JT 265 : (2014) 8 SCALE 89 .

13. It is significant to note that dead body of deceased Jyoti was found in a well near the house of P.W.-9 Sukhlal. It is not in dispute that at the relevant time she was residing with her husband Raju. If the ocular evidence on the point of demand of money is considered along with the other circumstances revealed from the medical evidence, irresistible conclusion could be drawn that victim died in unnatural circumstances and she met with unnatural death.

14. The learned Counsel for the appellant-accused relied upon the decision of the Hon'ble Supreme Court in Hira Lal and Others Vs. State (Govt. of NCT) Delhi, AIR 2003 SC 2865 : (2003) CriLJ 3711 : (2003) 2 DMC 206 : (2003) 7 JT 596 : (2003) 5 SCALE 445 : (2003) 8 SCC 80 : (2003) 1 SCR 734 Supp : (2003) 2 UJ 1278 : (2003) AIRSCW 3570 : (2003) 5 Supreme 112 . In this case the marriage of deceased took place before five years of her death. Though allegation of demand of dowry was made, none of the witnesses stated that deceased was harassed soon before her death for or in connection with demand of dowry. In the given facts and circumstances, it was held that prosecution has miserably failed to prove that accused harassed the deceased soon before her death for or in connection with the demand of dowry.

15. In the present case, as indicated above, the death occurred within 1 1/2 years of marriage. The deceased had complained to her parents, brother and uncle about the consistent demand of Rs. 1 lakh and ill-treatment to her on non fulfillment of demand. Just before a day or two, accused Raju called a meeting and insisted to fulfill demand of money. Therefore test of proximity applies here in view of the facts and circumstances established by the prosecution. The facts which have been proved by the prosecution show existence of proximate live link between the factum of cruelty based on dowry demand and the death of the victim.

16. Soon the factum of "cruelty" and "unnatural death" within seven years of marriage are established, presumption under Section 113-B of the Indian Evidence Act comes into play and the presumption of dowry death can be drawn. In the case on hand, as stated above, the prosecution has succeeded in proving that death of Jyoti was in unnatural and suspicious circumstances within 1 1/2 years of marriage and the unnatural death is further linked with dowry demand and harassment for non fulfillment of such demand by husband Raju. The learned Additional Sessions Judge has recorded sound and convincing reasons to hold that offence under Section 304(B) IPC is proved beyond doubt against

accused No. 1 Raju. We find no reason to take a view different than taken by the trial Court.

17. So far as the appeal preferred by the State against acquittal under Section 302 read with Section 34 IPC is concerned, we find that conclusion arrived at by the learned Additional Sessions Judge is based on legal appreciation of evidence. The view taken by the trial court is a reasonable and possible view and we are not inclined to interfere in the judgment and order of acquittal of the accused under Section 302 read with Section 34 of I.P.C.

18. The plenitude of power available to the Court hearing an appeal against acquittal is the same as that available to a court hearing an appeal against an order of conviction, but, however, the court hearing appeal against acquittal, will not interfere solely because a different possible view may arise on the evidence. The Supreme Court in the case of C. Antony Vs. K.G. Raghavan Nair, AIR 2003 SC 182 : (2006) 4 BC 295 : (2002) 112 CompCas 611 : (2003) CriLJ 411 : (2003) 1 SCC 1 : (2003) 1 UJ 36 has observed that while hearing an appeal against an order of acquittal, if two reasonable conclusions can be reached on the basis of evidence on record, the appellate court should not disturb the finding of the trial court. The trial court after elaborate discussion and proper appreciation of evidence came to the conclusion that the prosecution has not proved that victim met with homicidal death.

19. In our view the reasons and findings recorded by the learned Additional Sessions Judge are based upon due appreciation of evidence and are consistent with the evidence on record as well as the settled legal principles. We have, therefore, no hesitation in confirming the judgment and order of conviction under Section 304(B) of I.P.C. against accused No. 1 Raju.

20. In the light of the above and in the totality of circumstances, criminal appeal Nos. 583/2002 and 190/2003 are dismissed.