
(2017) 07 BOM CK 0112
In the Bombay High Court
Case No : 48 of 2002

Ramu @ Rameshwar s/o Ramkishan Aathave

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 378](#), [Section 437A](#) - Appeal in case of acquittal
[Indian Penal Code, 1860](#), [Section 34](#), [Section 306](#)

Citation : (2017) 07 BOM CK 0112

Hon'ble Judges : K.K. Sonawane

Bench : SINGLE BENCH

Advocate : Joydeep Chatterji, A.P. Basarkar

Final Decision : Allowed

Judgement

1. This appeal is directed against the Judgment and Order of conviction of the appellant for the offence punishable under Section 4 of the Dowry Prohibition Act, 1961 (Hereinafter, referred to as "Act, 1961", for sake of brevity) and resultant sentence to suffer rigorous imprisonment for six months and to pay a fine of Rs.500/-, in default, to suffer further rigorous imprisonment for 25 days awarded by the learned Additional Sessions Judge, Jalna, in Sessions Case No. 53 of 1997 dated 05-01-2002.

2. It has been alleged on behalf of prosecution that, the victim Sudhamati was the daughter of first informant Janardhan Laxman Argade, resident of village Dhangar-Pimpri, Taluka Ambad, District Jalna, The marriage of victim Sudhamati was solemnized with appellant Ramu @ Rameshwar Aathave prior to six years of her death. After the marriage, victim Sudhamati joined the company of husband Rameshwar for cohabitation. Initially for about a year, husband and in-laws behaved with her in proper manner. Thereafter, victim Sudhamati was subjected to maltreatment and harassment by the husband and in-laws for demand of

money. They were insisting victim Sudhamati to bring Rs.15,000/- from the parents for digging the well. They used to beat and torture her. Whenever victim Sudhamati visited to the parents house, she used to divulge about her ordeals to mother and uncle. Thereafter, when the appellant came to fetch Sudhamati, that time, father Janardhan paid Rs.9,000/- to him and after about six months, he paid Rs.6,000/- to the father-in-law of victim Sudhamati for digging the well. There was also a demand of one bull for agricultural operations on the part of appellant-accused. The father of victim Sudhamati had given one bull to appellant and satisfied the demand. However, prior to one month of incident of death of victim Sudhamati, the appellant Ramu with wife Sudhamati came see - Sarangdhar, brother of victim Sudhamati for his fracture injury. That time, appellant/husband made a demand of Rs.5,000/- for agricultural expenses, but the father expressed his inability to cough up the demand. The appellant became angry and returned to his village with wife Sudhamati in tantrum. After about a month, the father received message of worsened condition of victim Sudhamati. He rushed to village Taka of the appellant and saw that his daughter Sudhamati was no more. After inquiry, he came to know that, the daughter Sudhamati committed suicide by consuming poisonous insecticide. The police of Gondi Police Station received the message about the death of victim Sudhamati due to poison. Therefore, Police of Gondi P.S. registered the A.D. No. 28 of 1996 and rushed to village Taka to take stock of situation. The police drawn inquest panchanama on the dead body of victim Sudhamati. The corpse of deceased was referred to Government Hospital, Ambad, for post-mortem. Police also drawn panchanama of scene of occurrence located at the dwelling house of appellant Rama in village Taka, Taluka Ambad. The Medical Officer of Rural Hospital, Ambad, conducted the post-mortem on the dead body of victim Sudhamati and opined that, she died due to cardio-respiratory arrest owing to poisoning.

3. Meanwhile, first informant Janardhan visited to the police station and ventilated the grievances against the appellant and his parents for the charges of cruelty, demand of dowry and suicidal death of victim Sudhamati. Pursuant to F.I.R. of father Janardhan, police of Gondi P.S. registered the crime No. I-113 of 1996, under section 498 (A), 306 read with 34 of the Indian Penal Code (for short, "IPC") , and set the criminal law in motion.

4. Investigating Officer (I.O.) recorded the statement of witnesses acquainted with the facts of the case. He apprehended the accused for the sake of investigation. I.O. collected relevant documents of post-mortem, C.A. Report, etc., and after completion of investigation, I.O. filed chargesheet against the appellant and his parents for the offence punishable under sections 498(A), 306, 304-B, read with section 34 of the IPC and sections 3 and 4 of the Act, 1961. Learned trial Court framed the charges against the appellant and his parents for offence of cruelty, dowry death as well as abetment of suicide and demand of dowry. The appellant/accused denied the charges pitted against them and claimed for trial.

5. In order to bring home guilt of the accused, prosecution examined in all five witnesses, including the parents and uncle of victim Sudhamati. Prosecution also examined Dr. Gothwal to prove the postmortem report and PW-5 Investigation Officer - A.P.I. Shri. Andurkar, in this case. The learned trial Court on appreciation of evidence adduced on record, was pleased to acquit the accused-appellant and his parents for the offence punishable under sections 498-A, 306, 304-B read with 34 of the IPC. However, the learned trial Court held the sole appellant guilty for the offence punishable under section 4 of the Act, 1961, and imposed the resultant sentence as mentioned above. The learned trial Court acquitted the parents of the appellant for the charges under the Dowry Prohibition Act. The appellant being dissatisfied with the findings of conviction preferred the present appeal and agitated the legality and validity of the impugned judgment and order of conviction and sentence awarded by the learned trial Court.

6. Learned counsel Mr. Joydeep Chatterji appearing for the appellant vehemently submits that, the impugned findings of the learned trial Court convicting the appellant for the offence punishable under section 4 of the Act, 1961 are erroneous, illegal and contrary to the provisions of law. Learned trial Court did not appreciate the facts and circumstances of the case in it's proper perspective. The inference drawn by the learned trial Court against the appellant is perverse, imperfect and not sustainable at all. He contends that, the learned trial Court while acquitting the appellant under section 304-B of the IPC, observed that prosecution failed to prove the basic ingredients of section 304-B of the IPC The cruelty or harassment in connection with demand of dowry was one of the ingredients of section 304- B of the IPC The prosecution did not succeed to prove the basic ingredients of section 304-B of the IPC, including demand of dowry. In such circumstances, it would fallacious to record conviction of the appellant under section 4 of the Act, 1961.

7. The learned counsel also criticized the evidence of parents and uncle of victim Sudhamati, on the issue of demand of dowry in connection with the marriage. Learned counsel Shri. Chatterji drawn attention to the fact that the learned trial Court refused to take into consideration the circumstances of initial demand of Rs.15,000/- or bull for agricultural work being demand of dowry and exonerated the appellant and his parents for the offence punishable under section 3 of the Act, 1961. However, the learned trial Court considered the demand of Rs.5,000/- for agricultural expenses, as a "dowry" within the meaning of section 2 of the Act, 1961 and convicted the appellant for the offence punishable under section 4 of the Act, 1961. According to learned counsel, the demand of Rs.5,000/- was not in connection with the marriage, at the most it can be appreciated as unlawful demand for incurring agricultural expenses. Therefore, section 4 of the Act, 1961, would not be attracted in this case. The evidence of witnesses is also silent on the issue that, victim Sudhamati was subjected to maltreatment due to non-fulfillment of demand of Rs.5,000/-. According to learned counsel Shri. Chatterji, death of victim Sudhamati was accidental one. There was no demand

of dowry by the appellant. The prosecution failed to prove the main part of allegations nurtured against the accused. In such circumstances, it would unjust and improper to record conviction of the accused-appellant under section 4 of the Act, 1961. He prayed upset the impugned finding of conviction expressed by the learned trial Court and exonerate the appellant for the charge pitted against him. In support of his arguments, the learned counsel Shri. Chatterji relied upon exposition of law in case of - [1] Sakhi Mandalani Vs. State of Bihar and Ors., reported in 2000 All MR (Cri) 552, [2] Thomas Dana Leo Roy Frey Vs. State of Punjab, reported in, 1959 AIR (SC) 375.

8. Per contra, the learned A.P.P. raised objection to the contention propounded on behalf of appellant and submits that, the learned trial Court appreciated the attending circumstances on record within the ambit of law. There was no error in the conclusion drawn by the trial Court to hold the appellant guilty for the offence punishable under section 4 of the Act, 1961. He further contends that, the parents and uncle of victim Sudhamati categorically stated about the demand of Rs.5,000/-, when the spouses had been to see the brother of victim Sudhamati, for his fracture injury. The parents expressed the inability to satisfy the demand, thereafter, the appellant became furious and in rage, left the house of the parents of victim Sudhamati and returned to village Taka. The victim Sudhamati was subjected to ill-treatment for demand of Rs.5,000/- and eventually, she committed suicide by consuming poisonous insecticide. According to learned A.P.P., these circumstances establish that the appellant demanded dowry which was in connection with the marriage of the spouses. The inference drawn by the trial Court is just, proper and no interference is warranted in the impugned judgment and order of conviction of the appellant. Therefore, he prayed to dismiss the appeal. The learned A.P.P. kept reliance on the judicial pronouncement in the case of Modinsab Kasimsab Kanchagar Vs. State of Karnataka, reported in, (2013) 4 SCC 551.

9. I have given anxious consideration to the arguments canvassed on behalf of both sides. I have also delved into the record and proceedings as well as other documents produced on record. Admittedly, the appellant and his parents were arraigned for the offence punishable under Sections 498-A, 306, 304-B, r/w. 34 of IPC and section 3 and 4 of the Act, 1961. The learned trial court on appreciation of oral and circumstantial evidence adduced on record, arrived at the conclusion that prosecution failed to prove the charges of cruelty, suicidal death as well as dowry death of victim Sudhamati beyond all reasonable doubt. The learned trial court did not come across with sufficient evidence pertains to taking or giving dowry amount, as contemplated under Section 3 of the Act 1961. Therefore, the learned trial court ventured to exonerate the appellant and his parents from the charges under Section 498-A, 306, 304B r/w. 34 of IPC as well as under section 3 of Act 1961. However, the learned trial court found the sole appellant guilty for the offence of demand of dowry, punishable under section 4 of the Act 1961. In the aftermath, learned trial court convicted the appellant under Section 4 of the Act 1961 and imposed the sentence as

mentioned above. The appellant agitated the validity and legality of the impugned finding of conviction passed by the learned trial court, in this appeal.

10. It is to be noted that the prosecution/State did not file appeal and put into controversy the findings of acquittal of the appellant and his parents, under Sections 498-A, 306, 304-B read with 34 of IPC as well as section 3 of the Act, 1961, expressed by the trial court, nor the respondent/first informant i.e. father of deceased Sudhamati availed the remedy to prefer an appeal under Section 378 of Cr.P.C. Therefore, the findings of the learned trial court relating to acquittal of appellant and his parents for the charges under Sections 498-A, 306, 304-B read with 34 of the IPC, became final and conclusive one.

11. In such circumstances, the abbreviated issue remained to be determined in this appeal is only in regard to guilt of the sole appellant for accusation of demand of dowry, as contemplated under Section 4 of the Act 1961. The provision of Section 4 of the Act of 1961 reads as under :-

"4. Penalty for demanding dowry. - If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months."

12. Section 2 of the Act, 1961 gives the definition of the word, "Dowry" to mean :-

".. .. any property or valuable security given or agreed to be given either directly or indirectly :-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at on or before (or any time after the marriage) (in connection with the marriage of the said parties, but does not include) dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies"

13. It would be reiterated that, the appellant has already been put on trial for the allegations of dowry death of his wife victim Sudhamati punishable under Section 304-B of IPC. The learned trial court considered the entire evidence of prosecution witnesses and exonerated the appellant for the offence of dowry death following dearth of sufficient evidence. Undisputedly, the demand of dowry is one of the decisive factor to seek conviction for the offence of dowry death under Section 304-B of IPC. It is held that in view of explanation to Section 304-B of IPC, the word "dowry" will have the same meaning as given in Section 2 of Act, 1961. The provisions of Section 304-B is reproduced as below :-

"304B. Dowry death (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation- For the purpose of this sub-section, "dowry" shall have the same meaning. as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

14. It is evident from the aforesaid penal provision that the cruelty or harassment of a woman by her husband or any relatives of her husband, for or in connection with any demand of dowry, are the essential ingredients of the offence under Section 304-B of IPC. At this juncture, I find force in the submissions advanced on behalf of learned counsel Shri Chatterji that once the prosecution failed to prove the primary ingredients of Section 304- B of IPC, the conviction under Section 4 of Act 1961 is not sustainable and valid one. He has rightly kept reliance on the observations of Their Lordships of the Apex Court in Sakhi's case (referred supra). It is true that the provisions of Section 3 and 4 of the Act, 1961 make the offences under Dowry Prohibition Act, 1961 as independent offences. But, in case the prosecution failed to prove the ingredients of Section 304-B of IPC pertains to demand of dowry, the further conviction of the appellant under Section 4 of the Act, 1961, is contrary to the provision of law. Their Lordship's of the Apex Court in Sakhi's case (supra) held in para. Nos. 6 & 7 as under :

"6. These sections make out independent offences, but in the instant case it was the demand for dowry coupled with harassment which constitutes the basis of the prosecution case. Once the main part of the charge under Section 304-B was not found established, it was not possible to record conviction under Sections 3 and 4 of the Dowry Prohibition Act.

7. Consequently, the appeal is allowed. The judgment of the High Court, so far as the appellant is concerned, is set aside and she is acquitted of the charges under Sections 3 and 4 of the Dowry Prohibition Act."

15. In the matter in hand, the learned trial Court did not find sufficient evidence to convict the appellant and his parents for the charges of dowry - death. Therefore, learned trial Court proceeded to acquit the appellant and his parents for the offence punishable under section 304-B of IPC. In such peculiar circumstances, on the touchstone of legal guidelines, delineated by the Honourable Apex Court in Sakhi's case referred supra, there is no propriety to proceed further for appreciation of evidence of prosecution witnesses to record

the conviction of appellant, under Section 4 of the Act, 1961, which is not possible at all in the eye of law. Ultimately, the findings of the learned trial court convicting the appellant under Section 4 of the Act 1961 rendered otiose and worthless. Therefore, the impugned finding of conviction deserves to be upset and quashed on this legal infirmity.

16. Now, turning to the factual matrix in regard to allegations of demand of dowry, I find that the learned trial Court did not appreciate the attending circumstances on record in its proper perspective and committed error for adverse inference against the appellant. Learned trial Court on the basis of evidence of PW-1 Janardhan, PW-2 Saraswatibai and PW-3 Lahu, who are parents and uncle of deceased Sudhamati, respectively, held the appellant guilty for the offence of demand of dowry as envisaged under section 4 of the Act 1961. PW-1 Janardhan deposed that, prior to one month of alleged incident of suspicious death of victim Sudhamati, the appellant had been to his house, with wife Sudhamati, to see the fracture injury of son Sarangdhar. At that time, the appellant demanded Rs.5,000/- from him for agricultural work. PW-2 Saraswatibai and PW-3 Lahu also corroborated the version of PW-1 Janardhan for the demand of Rs.5000/- by the appellant. In the FIR (Exh.44), there was reference that, the appellant demanded an amount of Rs.5,000/- for agricultural expenses. The contents of the FIR are relevant to corroborate the version of it's maker under section 157 of the Evidence Act, being former statement of the witness. The prosecution witnesses further deposed that, when the PW-1 Janardhan shown his inability to cough up the demand, the appellant returned to his village with wife Sudhamati in tantrum. However, after about a month, PW-1 Janardhan received the message of death of his daughter victim Sudhamati. Learned trial Court appreciated the aforesaid evidence of parents and uncle of victim Sudhamati and arrived at the conclusion that, appellant made demand of dowry of Rs. 5,000/- and thereby committed an offence under section 4 of the Act, 1961. The learned trial Court in it's Judgment at paragraph Nos. 25 and 26 observed as under :-

"25. However, I find the evidence of PW 1 to 3 about the demand of Rs. 5,000/- just one month before the death of Sudhamati very much consistent. The discrepancy as to time, if any is very minor and is not sufficient to disbelieve the prosecution witnesses, particularly when the burden is on the accused. Hence I believe PW 1 to 3 and in absence of evidence from the accused, I hold that the accused have failed to show that accused no. 1 did not demand Rs. 5000/- just one month before Sudhamati's death.

26. Every demand of money by in-laws of a bride would not amount to dowry demand. But in the present case accused no. 1 had demanded cash of Rs. 5000/- and when PW 1 Janardhan expressed inability to pay the same he got angry and left the house of PW1 alongwith Sudhamati. This conduct of accused no. 1 clearly discloses that it was a demand of dowry. The accused have not even suggested that the demand was for some other transaction or purpose.

Therefore, I hold that accused no. 1 Rameshwar has committed offence punishable u/s 4 of Dowry Prohibition Act."

17. The aforesaid observations of learned trial Court appear based on misconception of facts and circumstances of the matter, I am at a loss to understand as to how the demand of Rs.5,000/- made by the appellant to meet agricultural expenses, would be treated as demand of "dowry" within the meaning of section 2 of the Act, 1961. It is hard to believe that, the demand of Rs.5,000/- for agricultural expenses would be in connection with marriage of appellant with victim Sudhamati. In the case of Appasaheb and another Vs. State of Maharashtra, reported in 2007 (9) SCC 721, it has been held that demand of some money for meeting domestic expenses and for purchasing manure can not be treated as dowry, and therefore, provision of section 304-B of IPC which applies to only demand in connection with dowry, cannot be attracted. The Honourable Apex Court, in paragraph No. 11, held that :-

"11. In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well-known social custom or practice in India. It is well-settle principle of interpretation of statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India V. Garware Nylons Ltd. and Chemical and Fibres of India Ltd. V. Union of India.) A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304- B IPC viz. Demand for dowry is not established, the conviction of the appellants cannot be sustained."

18. The ratio laid down in the aforesaid Appasaheb's case was also followed by their Lordships of the Apex Court, in the case of - Modinsab Kasimsab Kanchagar Vs. State of Karnataka, reported in (2013) 4 SCC 551. It has been observed in paragraph No. 11 of the said Judgment as under :-

"11. Thus the demand of Rs. 10,000 was not a dowry demand but was in connection with a society loan of Rs. 10,000 of the appellant. This Court in

Appasaheb case has referred to the provisions of Section 304-B IPC and in particular the Explanation appended to sub-section (1) thereof which says that the word "dowry" under Section 304-B will have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 and has held that the word "dowry" in Section 304-B IPC would, therefore, mean "any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties." (SCC p.726, para 11)

In this case, the amount of Rs. 10,000 demanded by the appellant through the deceased was for repayment of a society loan of the appellant and it had no connection with the marriage of the appellant and the deceased. Hence, even if there was demand of Rs. 10,000 by the appellant, it was not a demand in connection with the dowry and the offence under Section 304-B was not attracted."

It is manifestly clear from the aforesaid judicial pronouncement that, each and every demand of money from the parents of a bride would not be construed as "dowry" within the meaning of Section 2 of the Act, 1961. In the instant case, the circumstances adumbrate that the appellant made demand of Rs.5,000/- from the PW-1 Janardhan to meet the agricultural expenses. In such circumstances, it would be cumbersome to appreciate that the appellant is guilty of offence under section 4 of the Act, 1961, for demand of amount of Rs.5,000/- as dowry within the meaning of section 2 of the Act, 1961.

19. It is worth to mention that, the aforesaid judicial pronouncement in the case of Modinsab was relied upon by the prosecution in support of conviction of the appellant. But, the textual fact in the aforesaid Modinsab's case and the quality of evidence on record, do not advance the case of prosecution any-further; but, on the contrary, it comes to rescue of appellant/accused in this case.

20. In the above premises, I am of the considered opinion that, the evidence adduced on behalf of prosecution to book the appellant under section 4 of the Act, 1961, is dubious and incredulous one. The finding of learned trial Court for conviction of sole appellant under Section 4 of Act, 1961 appears erroneous, imperfect and not within the ambit of law. The learned trial Court overlooked or glossed over the serious legal infirmity in the prosecution case and held the appellant/accused guilty for the offence of demand of dowry as envisaged under section 4 of the Act, 1961. Once the trial Court arrived at the conclusion that, prosecution failed to prove the charge under section 304-B of the IPC, in such an eventuality, it would be fallacious to record conviction of the appellant under section 4 of the Act, 1961. Moreover, on factual aspect also, it would be hazardous to conclude that, the demand of Rs.5,000/- for agricultural expenses on the part of appellant would be an demand of "dowry" within the meaning of section 2 of the Act, 1961. Therefore, I have no alternative but to upset the findings of learned trial Court for conviction of the appellant under section 4 of the Act, 1961.

21. In the result, appeal is allowed. The impugned Judgment and Order of conviction and resultant sentence of appellant for the offence punishable under section 4 of the Dowry Prohibition Act, 1961, is hereby quashed and set aside. The appellant is acquitted of the offence punishable under section 4 of the Dowry Prohibition Act, 1961. The fine amount, if any, paid by the appellant, be refunded to him. The bail bonds furnished by the appellant stand cancelled. However, the appellant to furnish bail bonds and surety bond of Rs.15,000/- afresh, before the trial Court, Jalna, as prescribed under section 437-A of the Criminal Procedure Code, 1973.