

(2021) 04 BOM CK 0020

In the Bombay High Court

Case No : Criminal Appeal No.825 Of 2012

?Sachin Ramchandra Teke And Others

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 06-04-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 304B. 498A
Dowry Prohibition Act, 1961 — Section 3, 4
Evidence Act, 1872 — Section 113B

Citation : (2021) 04 BOM CK 0020

Hon'ble Judges : Sadhana S. Jadhav, J;N. R. Borkar, J

Bench : Division Bench

Advocate : Hrishikesh Mundargi, Jayant Bardeskar, M.H. Mhatre

Final Decision : Disposed Of

Judgement

Sadhana S. Jadhav, J

1. The appellants herein seek to challenge the judgment and order dated 29th June 2012 passed by the Ad-hoc Additional Sessions Judge, Malshiras thereby convicting the accused for the offences punishable under sections 498-A, 302, 304-B r/w 34 of Indian Penal Code and sections 3 and 4 of the Dowry Prohibition Act in Sessions Case No.69 of 2010 and sentencing them to suffer RI for a period of one year and to pay a fine of Rs.1,000/- each, in default to undergo further RI for one month for the offence punishable under section 498-A r/w 34 of Indian Penal Code. The appellants are further sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- each, in default to undergo further RI for a period of one year, for committing the offence punishable u/s.302 r/w 34 of IPC. The appellants are further sentenced to suffer RI for a period of seven years and to pay fine of Rs.3,000/- each, in default to undergo further RI for a period of six months for committing the offence punishable under section 304B r/w 34 of IPC. The appellants are further sentenced to suffer RI for a period of five years and to pay a fine of Rs.15,000/- each, in default to undergo further RI for a period of

one year for committing the offence punishable u/s 3 of the Dowry Prohibition Act. The appellants are further sentenced to suffer RI for a period of six months and to pay a fine of Rs.500/- each, in default to undergo further RI for a period of 15 days for committing the offence punishable u/s.4 of the Dowry Prohibition Act.

2. Such of the facts necessary for the decision of these appeals are as follows :-

(i) The accused no.1 - Sachin was married to daughter of Netaji Bhanudas Dhavalshankh - P.W.2 on 28th July 2010. The couple was residing in a joint family at Malshiras. On 6th September 2010 Ramchandra Teke, father of accused no.1 approached Malshiras Police Station and lodged a report contending therein that at about 8.30 am Sachin and his brother-in-law Mahesh (brother of deceased Megha) had left the house as Mahesh was to return to Shingoli and at about 9.30 am his daughter-in-law Ishwari had gone to the bedroom of Sachin for the purpose of sweeping, however, his wife had not opened the door. Mansi had called upon her husband Sunil who was working in Zilla Parishad School. All the family members requested Megha to open the door however, there was no response and therefore, they had to break open the door and they saw Megha hanging to the rafter with a stole. The family members cut the stole lowered her and placed her on the bed. Thereafter, they informed Sachin about the same. On the basis of his statement A.D. No.20 of 2010 was registered at Malshiras Police Station at about 1.15 pm. A message was sent to the parents of Megha at village Shingoli. The parents had arrived at Malshiras. The A.D. report is at Exh.67. The scene of offence panchanama and the inquest panchanama were conducted in the A.D. inquiry. The panchas for the inquest and the spot are the family members and relatives of the deceased Megha who had accompanied her father P.W.2 - Netaji Dhavalshankh. The scene of offence panchanama is marked at Exh.41. P.W.2 - Netaji lodged a report at the police station alleging therein that Megha had complained to him that she has been subjected to ill-treatment and harassment for not fetching 1 tola golden ring for her husband, she was also subjected to starvation. That, on the occasion of Nagpanchami, Megha had visited her maternal house on 28th August 2010 and had reiterated her complaint against the accused persons. On 19th September 2010 when accused no.3 - Sunil, brother-in-law of Megha had come to fetch her, he was requested by P.W.2 not to harass Megha on account of demand for dowry. On 22nd August 2010, she had reiterated her complaints to her father. On 4th September 2010 on the occasion of Raksha Bandhan, brother of Megha i.e. Mahesh - P.W.4 had been to the matrimonial home of Megha and that she was abused by accused no.2 - her mother-in-law. On 6th September 2010 the accused no.1 Sachin had dropped Mahesh on S.T. stand Malshiras at 8.00 am on his motor-cycle. Mahesh had boarded bus for Shingoli from Malshiraj and soon thereafter, accused no.3 called upon P.W.2 and informed him about the death of Megha in their house. P.W.2 saw his daughter laid on a bed in her bedroom. There was a ligature mark on the neck of Megha and a stole was seen suspended to the rafter in the house. The other piece of the stole was lying near the dead body of Megha. P.W.2

approached the Police Station and lodged a report on the basis of which C.R.No.102 of 2010 was registered against the accused for the offences punishable under sections 302, 498A, 304B r/w 34 of IPC. The A.D. report was registered by P.W.6. Arun Hartad was attached to Malshiras Police Station as Head Constable. The prosecution has examined as many as 9 witnesses to bring home the guilt of the accused. Implicit reliance is placed upon the evidence of P.W.2 Netaji, father of deceased Megha. P.W.4 - Mahesh, brother of deceased Megha, P.W.1 - Laxman Pakale, relative of deceased Megha who has proved the inquest panchanama and the spot panchanama, P.W.7 - Dr. Ganesh Waghmode who performed autopsy on the dead body of Megha and P.W.8 - Investigating Officer - Suhas Bhosale.

3. Accused had examined 4 witnesses. The defence witness no.1 is Dr. Shirish Valsangkar a Neurologist in Solapur City, with whom deceased Megha was taking treatment, D.W. 2 - Eknath Ingawale working as trainee Clerk in Sinhgad College of Engineering Korti, Taluka Pandharpur, D.W.3 - Charudatta Bhangale who was officiating as a Principal of S.K.N. Sinhgad College of Engineering and D.W.4 - Shivaji Patil who was attached to Malshiras Police Station as a writer of PI Mr. Bhosale.

4. It would be relevant to discuss the substantive evidence of P.W.2 - Netaji Dhavalshankh, father of deceased Megha. According to him, Megha was a Post-Graduate in M.Sc. (Mathematics) from Aurangabad. That, at the time of marriage, the bridegroom was gifted with Rs.75,000/- and golden ornaments weighing about 5 tolas. It was agreed between both the families that as pure gold ornaments were not available in Osmanabad, the accused would purchase the ornaments from Baramati, the price of which would be paid by P.W.2. That the value of the golden ornaments was about Rs.1 Lakh and P.W.2 had paid it in 4 installments of Rs.25,000/- each. The amount was deposited in the account of accused no.1 by R.T.G.S. That, accused no.1 Sachin i.e. the husband of Megha is working as a Lecturer in S.K.N. Sinhgad College of Engineering, Tal. Pandharpur (Korti), Dist. Solapur. His qualification is M.Sc (Mathematics), M. Phil.

5. The mark-sheets of Megha were handed over to Investigating Officer on 3rd August 2010. P.W. 2 has proved the contents of the FIR at Exh.48. It is admitted by P.W.2 that in 2005 Megha was studying in 12th Standard. She had complained of headache and therefore, on 17th January 2005 she was taken to Dr. Valsangkar at Solapur. According to him, it was accused no.3 who had informed him that Megha had committed suicide by hanging. It is the contention of P.W.2 that he had informed the investigating officers that Megha had died a homicidal death however, the said contention was not reduced into writing.

6. The admissions in the cross-examination are as follows :-

(i) That, he had no knowledge about the cause of death of Megha and he had only suspected that Megha had died an unnatural death.

(ii) That, soon after passing the M.Sc. Examination, Megha wanted to pursue

Bachelor of Education Course, however, he preferred to get her married as her name was registered in the marriage bureau. There was no mediator in the settlement of marriage. The marriage was settled and performed within one month. He had received the proposal on 30th June 2010 and the marriage was performed on 28th July 2010. He got their daughter married to Sachin - accused no.1 since it was the most suitable proposal for his daughter. He had learnt that the accused no.1 was in the employment of Sinhagad Institute at Korti as a Lecturer and that Sunil - accused no.2 also was serving as Teacher in a Zilla Parishad School at Motewadi. The accused resided in a big bungalow at Malshiras. They also have Wedding Hall at Malshiras in the name of 'Ramrath'. Both the families had the same economic status. The marriage was settled peacefully and that P.W.2 had no regrets for settling the marriage of his daughter Megha with accused no.1 Sachin even after her death. They had no grievance against the accused after solemnisation of marriage as there was no quarrel between the members of both the families.

(iii) It is also admitted that the accused persons had also made golden ornaments for Megha. It is admitted that village Korti is at a distance of 45 kms from Malshiras and that the accused no.1 was commuting from Malshiras to Korti on his motor-cycle. P.W.2 has also admitted that he had been to the Sinhagad College to inquire as to whether the accused Sachin was on duty on 6th September 2010. He has admitted the contents of the spot panchanama and that the door of the bedroom was broke open. He had not witnessed any injuries indicating the scuffle on the body of Megha neither he had met medical officer who conducted post-mortem of Megha for ascertaining the cause of death.

7. P.W.1 - Laxman Pakale is the panch for the scene of offence panchanama and a relative of P.W.2. He has proved the contents of the scene of offence panchanama. It is admitted that a hole was made near the latch of the room since the plank of the said door was of ply wood. It was clearly seen that there were two pieces of the veil/ stole. One was suspended to the rafter and another one was on the bed. The said stole had two knots. She was lying in the corner of the room. A scissor was lying on the bed. The photographs of the scene of offence were taken by the police. He had accompanied P.W.2 to Malshiras. He was serving as Hawaldar in Zilla Parishad at Osmanabad. Height of the slab was 9 ft. 8 inches whereas height of the dead body was 5 ft. 6 inches and therefore, it was clear that a person with height of 5 ft. 7 inches could not have touched the slab easily. There were no blood stains on any of the seized articles. It is categorically admitted that they all suspected that Megha must have committed suicide by hanging herself and therefore, no complaint was made to the police in the course of A.D. Inquiry.

8. It is the specific case of the prosecution that in fact P.W.4 Mahesh Dhavalshankh, brother of the Megha had visited the house of the deceased on 4th September 2010 on the occasion of Raksha Bandhan. On 5th September 2010, P.W.4 had travelled with the accused and the family members. They had

also been to Baramati. According to him, the sister of accused no.1 and accused no.2 abused Megha. They returned home on 5th September 2010 at about 1.00 am. P.W.4 had occupied a room adjacent to the bedroom of the accused no.1 and Megha on the first floor of the house. It is admitted by him that about 8.00 am he had left the house along with accused no.1 to proceed to the S.T. Stand as he was going to Shingoli. At about 12.30 in the afternoon, he received a call from his father and was asked to wait at Barshi. He was further informed that Megha has died hence, they were to go to Malshiras from Shingoli. He had accompanied his father to the house of the accused and had seen Megha lying dead on a bed in her bedroom. One piece of the stole was lying near the dead body of Megha and the other was suspended to the rafter. Thereafter, the FIR was lodged. It is admitted that he had found that his sister would be compatible with the present appellant. P.W.4 has identified certain photographs of the victim. In his presence on 22nd August 2010, no phone call was made to Megha. It is admitted in the cross-examination that the accused had left the house in the morning at 8.30 am to reach to the hospital. It is admitted position that Sinhadgad College at Korti was about 45 kms away from Malshiras.

9. P.W.6 - Arun Haral was attached to Malshiras Police Station. He has proved the statement of accused no.4 on the basis of which A.D. No.20 of 2010 was registered. P.W.6 has also admitted that since the door of room of Megha was latched from inside it was broke open and that Mansi, Suman and accused nos.3 and 4 had seen the body of Megha in a suspended position from the rafter and only because they thought that she might be alive her body was brought down on the bed. A.D. Inquiry was then handed over to Mr. Bhosale.

10. P.W.7 - Dr. Ganesh Waghmode had performed autopsy on the dead body of Megha. According to him, the ligature mark was found above the thyroid bone cartilage. The cause of death was asphyxia due to hanging. No external injuries except the ligature mark were noticed at the time of post-mortem. He had found the following external injuries :

"1. Ligature mark around the neck on left side extended from angle of left mandible to the hyoid bone of about 8 cm x 2 cm.

2. Ligature mark on the right side extending from hyoid bone to 5 to 6 cm inferior to the angle of right mandible laterally upto right trapegius muscle with dimension of 8 cm x 2.5 cm."

11. In the cross-examination P.W7 has categorically stated that in case of hanging ligature mark is always above the thyroid cartilage. That upon the completion of autopsy P.W.7 and Dr. Sarje were of the firm opinion that the cause of death of Megha was "asphyxia due to hanging". Moreover, there was no fracture of hyoid bone and fracture of the hyoid bone is rare in case of hanging. There were no marks of struggle on the dead body just unlike in the case of strangulation. In case of death by strangulation, marks of struggle are very common. According to him, the police had not asked him to give his opinion in

writing as to whether death of Megha was by hanging or by strangulation. The substantive evidence of P.W.7 would lead to a conclusion that the possibility of strangulation is ruled out at the threshold.

12. According to P.W.8 - Suhas Bhosale, the accused had committed murder of Megha and camouflaged. It is admitted that it was on the basis of the FIR that he had registered an offence under sections 498-A, 304-B, 302 r/w 34 of IPC. He has demonstrated before the Court the steps taken by him in the course of investigation. It is admitted that he had visited the scene of offence prior to the arrival of the complainant but had not filed any FIR on his own. The major part of A.D. Inquiry was done after arrival of the prosecution witnesses i.e. father and relatives of Megha. No complaint was made to the Police in the course of A.D. Inquiry. It is admitted by P.W.8 that the room in which Megha had committed suicide had only one door. Wooden pieces of a hole in door were lying on the floor. He had also taken opinion of the Forensic Department of Civil Hospital at Solapur and the opinion he received was:

"Death of Megha can occur by entangling her neck into noose of odhni."

13. The same was the opinion of the medical officer at Rural Hospital, Malshiras.

14. P.W.8 has fairly admitted that even before sending the dead body of Megha for post-mortem his personal opinion was that Megha had died due to hanging. It is also admitted that it had transpired in the course of investigation that the accused no.1 was present in the institute from 9.00 am to 11.15 am on the date of incident. Admittedly, the death of Megha had come to light only after 9.00 am. The Principal of the College had also sent a letter to the Police informing them about the presence of the accused no.1 in the college from 9.00 am to 11.15 am. It is also admitted that accused no.3 - Sunil was serving as a teacher in a Zilla Parishad School at Manevasti even before marriage of Sachin with Megha. The accused has examined defence witnesses.

15. D.W.1 - Dr. Shirish Valsangkar whose qualification is M.D (Medicine) and Neurology. He is practising as a Neurologist in Solapur City. On the basis of the records of the Hospital, he has deposed before the Court that on 17th January 2005, Megha had visited the Hospital along with her father with a history of headache. She was clinically examined. Megha had disclosed to the Doctors that for the past two years she had a peculiar feeling over occipital region, pain in temporal region occurring occasionally and lasting for 6 to 7 hours generally brought on by loud noise and stress. Megha had also disclosed that she was suffering from sleeplessness. He had prescribed certain medicines to her and the date of follow-up was 17th February 2005. She had reiterated that she was feeling better but the peculiar feeling persists. She had also disclosed that in a state of stress and hunger she was suffering from headache. D.W.1 has placed on record the photocopies of the OPD register which is at Exh.151. He had received a letter from the police inquiring about the ailment of Megha and he had communicated his opinion on 16th March 2010. That, Megha had not visited for

further follow-up after 17th February 2005. The opinion of Dr. Valsangkar is that the ailment of Megha could be categorised as tension type headache which occurs secondary to anxiety or depression. Her tolerance level was low. She was sensitive by nature and therefore, D.W.1 thought that she was suffering from emotional stress because of her sensitive nature. Symptoms of Megha were related to mental depression. He has opined in the cross-examination that it could not be said by any stretch of imagination that a person who is a post-graduate M.Sc. in Mathematics is not likely to have mental stress.

16. D.W.2 - Eknath Ingavale was working as Trainee Clerk in the Sinhgad College of Engineering at Korti, Taluka Pandharpur. He had brought along with him the list of time-table, duty hours of the lecturers and professors and the muster roll of the lecturers and professors. According to him, the accused no.1 was teaching degree classes of Engineering and M.B.A. also. He was working as Assistant Professor of Mathematics. On the basis of the muster roll he has stated before the Court that on 6th September 2010 accused no.1 had arrived in the college at 9.00 am and signed the muster in his presence. Accused no.1 had left the college between 11.00 to 11.15 am since somebody had come to call him. He was in a hurry and therefore, had not signed the movement register while leaving college. That all staff members and lecturers use the Bio-metric machine which is installed in the college since the year 2011.

17. D.W.3 - Charudatta Bangal was officiating as Principal of S.K.N. Sinhgad College. He has proved that on the date of incident i.e. 6th September 2010 accused no.1 had reported to the college at about 9.00 am.

18. D.W.4 - Shivaji Patil was also attached to Malshiras Police Station. He was also a part of investigation in Crime No.102/2010. He had accompanied Mr. Bhosale. He has also recorded the statement of witnesses. He was a writer for Mr. S.S. Bhosale, Senior PI of Malshiras Police Station. He has recorded the statement of witnesses as per the directions of Mr. Bhosale and had also received the letter from S.K.N. Sinhgad Engineering College.

19. The learned counsel for the appellants submits that there is cogent and convincing evidence to show that there was no dispute between the members of both the families over dowry or the golden ornaments. That, Megha had committed suicide just within two months of her marriage which would prima facie show she was getting married against her wish. It is submitted that the main consideration for the accused no.1 to get married with Megha was her qualification as M.Sc (Mathematics) since the accused no.1 himself was M.Phil. and was working as a lecturer in Sinhgad College whereas accused no.3 was working as a teacher in Zilla Parishad School. It is also submitted that Dr. Valsangkar has clearly established that Megha was a sensitive person. She used to be under mental stress in 2005 itself. That, the accused cannot be held responsible for the suicide of Megha. The medical evidence on record coupled with the substantive evidence of P.W.7 would clearly establish that the cause of death was "asphyxia due to hanging". The reasons for commission of suicide by

Megha were unknown to the accused and hence, according to the learned counsel, the accused deserves to be acquitted of all the charges.

20. Per contra, the learned APP submits that Megha has died in her matrimonial home and the reason for her mental depression and suicide ought to have been known to the accused persons. That, on three occasions before the incident Megha has been said to have complained to her father and brother about ill-treatment meted out to her on the ground that the family members and relatives of the accused were not honored properly at the time of marriage and that P.W.2 had not fulfilled the demand of golden ring of one tola. The learned APP supports the judgment of the Sessions Court and submits that no interference is called for.

21. The evidence on record clearly establishes that the deceased Megha had married accused no.1 only in July 2010. That, there were no disputes between the members of both the families. The spouses were matching in their educational qualifications. There is absolutely no material on record to show that there were any differences between the spouses.

22. It is established beyond reasonable doubt that on the day of incident i.e. on 6th September 2019 the accused no.1 was accompanied by none other than his younger brother-in-law, P.W.4 Mahesh. The accused no.1 had dropped him at the S.T. stand and had proceeded to Korti to attend his duties. The muster roll also shows that he had actually attended the college at about 9.05 am. The clerical staff, the Principal and the writer of the Investigating Officer Ms. S.S. Bhosale has proved the same. Moreover, the door was latched from inside. The door had to be broke open. Only in a hope that Megha must be surviving, she was lowered from the suspension of the noose of veil/stole. The medical evidence also proves beyond reasonable doubt that the cause of death was asphyxia due to hanging and therefore, conviction for an offence under section 302 of IPC was unwarranted.

Besides the defence witness no.1 - Dr. Valsangkar has proved that ever since 2005 Megha was suffering from mental stress and that she was sensitive girl.

23. By no stretch of imagination, the accused could be convicted for an offence punishable under section 302 of the Indian Penal Code in view of the medical evidence on record. P.W.7 has proved that the cause of death was asphyxia due to hanging. Moreover, the deceased had committed suicide soon after her brother had left the house. The submission of the learned counsel for the appellants that the possibility that her brother had refused to take her along with him to her maternal house also cannot be ruled out, needs to be taken into consideration. In any case, there is cogent and convincing evidence to show that she was not in the company of her husband or her brother-in-law just before the incident. There was no grievance against mother-in-law and the death had come to light only when her co-sister had been to her room. The door had to be broken open. Therefore, no case is made out for conviction under section 498A of IPC. In cases like the present one just because wife has died in her matrimonial house within

two months of marriage, the entire family cannot be stigmatized as having committed offences as serious as an offence under section 302 of IPC. In absence of legally admissible evidence there cannot be moral conviction.

24. It is true that the presumption under section 113B of Indian Evidence Act was attracted in this case as the wife had died in her matrimonial house within 7 years. However, it is a rebuttable presumption and this presumption does not absolve the prosecution from proving its case beyond reasonable doubt. In this case, the accused have rebutted the presumption by examining the defence witnesses. The evidence of the defence witnesses is to be treated at par with the evidence of the prosecution witnesses. The surrounding circumstances also need to be taken into consideration. In the present case, it cannot be said that she has died in suspicious circumstances. It is a case of suicide within two months of marriage. The prosecution has failed to prove any ill-treatment meted out to the victim within two months of her matrimony. The offence under sections 3 and 4 of the Dowry Prohibition Act are not proved beyond reasonable doubt. The money was transferred in favour of the accused in lieu of the golden ornaments purchased by them as per the agreement between both the parties.

25. It prima facie appears that the deceased Megha was willing to continue her education, however, she was married hurriedly by her parents since they found a suitable match for their daughter in all aspects. However, she did not seem to be happy with the marriage and in all probabilities, in a state of stress had committed suicide. All these facts speak for themselves and the appellants/accused deserve to be acquitted.

26. In view of the evidence discussed above, the impugned judgment deserves to be quashed and set aside and the appeals deserve to be allowed. Hence, we pass the following order :-

ORDER

- (i) Appeals are allowed;
- (ii) The conviction and sentence passed by the Adhoc Additional Sessions Judge, Malshiras vide judgment and order dated 29th June 2012 in Sessions Case No.69 of 2010 stands quashed and set aside;
- (iii) The accused - appellants are acquitted of all the charges levelled against them;
- (iv) Bail bonds stand cancelled;
- (v) Fine amount, if paid, be refunded;
- (vi) Appeals are disposed of in above terms.