

(2014) 11 BOM CK 0163
In the Bombay High Court
Case No : Criminal Appeal No. 570 of 1993

Sanjay Subbarao Khade

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174 — Evidence Act, 1872 - Section 106, 113-B — Penal Code, 1860 (IPC) - Section 304-B, 306, 498A, 498-A

Citation : (2015) ALLMR(Cri) 1861 : (2015) 3 DMC 488

Hon'ble Judges : Sadhana S. Jadhav, J.

Bench : Single Bench

Advocate : Abhishek Yende, Advocate, for the Appellant; S.S. Pednekar, APP, for the Respondent

Final Decision : Partly Allowed

Judgement

Sadhana S. Jadhav, J.?The appellant herein was accused No. 1 in Sessions Case No. 77 of 1991. The learned VIth Addl. Sessions Judge, Kolhapur, vide judgment and order dated 23.8.1993 was pleased to convict the present appellant for the offence punishable under Section 498A of Indian Penal Code and sentenced to R.I. for one year and to pay fine of Rs. 1,000/- in default R.I. for three months. He is also convicted of the offence punishable under Section 304-B of IPC and sentenced to suffer R.I. for seven years. Being aggrieved by the said judgment and order, the original accused No. 1 has preferred the present appeal. Such of the facts, necessary for the decision of this appeal, are as follows:-

(a) The accused-appellant herein was married to Chhaya on 18.2.1990. After the marriage, she had started residing at Village Savarde in a joint family. It is alleged that the family of the appellant was engaged in labour work. They used to earn their livelihood by working as agricultural labourers in the agricultural land of other land-holders. After 1-1/2 month of the marriage, Chhaya was also sent to do labour work in the field of others. It is alleged that she was not provided proper food, proper clothes, hair oil, etc. That the appellant and Chhaya

had then been to Kolhapur and stayed at the maternal house of Chhaya. There the appellant herein was employed in the workshop of Vardhamane. After staying there for about 1-1/2 month, the appellant had left Kolhapur and returned to Village Savarde. At that time, Chhaya was residing with her parents. He returned to Kolhapur after 15 days to fetch Chhaya. At that time, Chhaya had expressed her apprehension that she would again be ill-treated and harassed. She did not accompany the accused-appellant to the matrimonial house and, therefore, her mother has asked him to bring some respectable members of the community who would lend an assurance that she would be treated well. The appellant had not taken any member from his family. After Ganpati festival, father of Chhaya, her brother-in-law and her brother Mahesh reached her to her matrimonial house. On the occasion of Dasera, Chhaya had been to her maternal house along with her mother-in-law. At that juncture, she had disclosed to her mother that she was again ill-treated. She was not served with proper food, clothes, hair oil etc. Thereafter, Chhaya had left the maternal house along with her mother-in-law. She had her clothes and Bormal along with her. At the time of Diwali, the mother of Chhaya had visited the house of the appellant along with her son i.e. brother of Chhaya, namely Mahesh. It is alleged that Chhaya was not permitted to perform the rituals of Bhaubij and hence she felt humiliated. Upon objection raised by her mother, they were driven out from the house.

(b) On 25.10.1990, brother-in-law of Chhaya namely Babasaheb had been to the matrimonial house of Chhaya and had enquired with them as to whether Chhaya had visited their house. On 25.10.1990, Chhaya had been to answer nature's call and had not returned home and therefore everybody was searching for her. Thereafter, on 26.10.1990, mother of Chhaya namely Vijaymala filed a missing complaint. On 26.10.1990, the dead body of Chhaya was found in a well situated on the outskirts of Village Sarvade. The appellant had identified the dead body which was on the verge of decomposition. The parents of Chhaya were informed immediately about the same. They visited Village Savarde and had taken the custody of Chhaya. A.D. No. 41 of 1990 was registered under Section 174 of Cr.P.C. The funeral was performed at Kolhapur. On 27.10.1990, mother of Chhaya i.e. Vijaymala lodged report No. 97 of 1990 with Wadagaon Police Station alleging therein that Chhaya was ill-treated and harassed in her matrimonial house. That there was a demand for a wrist watch, new clothes and a golden ring and upon non-fulfillment of the said demand, she was being harassed and, therefore, she has died in suspicious circumstances. Hence, Crime No. 97 of 1990 was registered against the appellant and all other members of his family for the offence punishable under Sections 304-B and 498A of IPC. The appellant was arrested on 28.10.1990. The case was committed to the Court of Sessions and registered as Sessions Case No. 77 of 1991. The prosecution examined five witnesses to bring home the guilt of the accused.

2. P.W. - 1 Vijaymala Vilasrao Salokhe happens to be the mother of deceased Chhaya. She is complainant who had lodged the missing complaint as well as the first information report. She has deposed before the Court that after 1-1/2

month of marriage, there was ill-treatment meted out to Chhaya. The members of her matrimonial home sent her to the field of others for doing labour work. They were not giving her proper food. She was also not provided with proper clothes, hair oil, etc. That the present appellant had been to Kolhapur along with Chhaya. The couple stayed at Kolhapur with the family of P.W. - 1. The appellant was working in the workshop of Vardhamane. According to P.W. - 1, the appellant had left their house and service without informing Chhaya or the other members of family. He had returned after 15 days to fetch Chhaya back to her matrimonial home. Since her daughter started weeping and demonstrated her reluctance to return to matrimonial house as she had the apprehension that she would be again ill-treated she was not sent along with the appellant. P.W. - 1 insisted upon the appellant to send some matured persons from his family. They did not send anybody. She has deposed in consonance with the first information report. She has proved the contents of the first information report which is marked as Exhibit 14. After demise of Chhaya, P.W. - 1 received all the articles offered by them at the time of marriage or after the marriage. She has admitted in the cross-examination that before the marriage, they were aware that the family of the appellant is engaged in labor work. She has also admitted that after marriage, Chhaya had resided with the appellant for 5 days and thereafter they had come to Kolhapur. They resided at Kolhapur for about 8-10 days and then returned to Savarde. Deceased Chhaya used to accompany her husband i.e. the present appellant to the land of Mr. Kulkarni, where they were engaged in agricultural work. Within one month of marriage, the father of P.W. - 1 had visited the matrimonial house of Chhaya and had noticed that Chhaya was being sent for labour work. He felt bad as prior to the marriage, Chhaya had never done any hard work or labour work and therefore he had arranged for them to come to Kolhapur. She has further stated that the appellant could not do the work in the workshop and therefore he decided to return to Savarde. The appellant had visited Kolhapur along with one Vishnu Kulkarni to take Chhaya but she was not sent. Chhaya and her mother-in-law had also visited Kolhapur.

There are inherent omissions in the substantive evidence of P.W. - 1 which have been brought on record and which go to the root of the matter. The visit of Chhaya along with her mother-in-law at the time of Dasera to Kolhapur is also a material omission. According to P.W. - 1, Chhaya was ill-treated and harassed in her matrimonial home.

3. The prosecution has examined-

P.W. - 2 Mahesh, who happens to be the brother of deceased Chhaya. He has deposed in respect of the incident on Bhaubij.

P.W. - 3 Babasaheb Gaikwad is the co-brother of the present appellant.

P.W. - 4 Shripati Kadam is the Head Constable who had recorded A.D. Report and the first information report and

P.W. - 5 is the Investigating Officer.

4. P.W. - 1 has categorically stated that the application dated 26.10.1990 which is the missing complaint, was scribed by her son-in-law Babasdaheb Gaikwad P.W. - 3. However, he has not stated the same before the Court.

5. At this stage, the learned Advocate (appointed) for the appellant submits that Chhaya had initially stayed in her matrimonial house for hardly 5-6 days. Thereafter, she had returned to Kolhapur. She was residing at Kolhapur for a maximum period. It is true that she has died within 8 months from the marriage.

The learned counsel has rightly submitted that the prosecution witness has not deposed about the nature of ill-treatment, cruelty and harassment meted out to Chhaya. According to him, the entire family was engaged in labour work as they earned their livelihood by working as agricultural labourers and this fact was known to the parents of deceased Chhaya as well as Chhaya herself. In fact, for the convenience and comfort of Chhaya, the present appellant had also resided in the maternal house of Chhaya and had sought employment. However, he had to return to his roots and therefore returned to Village Savarde.

The learned counsel has rightly submitted that although there is an omnibus allegation in respect of demand of wrist watch, clothes and a golden ring, the prosecution witnesses have not specifically stated the day and date on which the demand was made which would be relevant for the purpose of testing the proximity of demand with the death of Chhaya. Hence, according to the learned counsel for the appellant, it cannot be said that the present case is a case of dowry death and hence according to him, the appellant deserves to be acquitted of the offence punishable under Section 304-B of IPC.

6. As against this, the learned APP has drawn attention of this Court to the missing complaint filed by P.W. - 1 on 26.10.1990. It was stated in the missing complaint that P.W. - 1 had spent Rs. 12,000/- for the purpose of purchasing a golden chain weighing about 1-1/2 tola, ear-rings, anklets, nose-ring, toe-ring and clothes. After one month of the marriage, Chhaya had disclosed that she was being subjected to ill-treatment and cruelty. According to learned APP, the demand is specifically stated in the missing complaint itself and therefore, it is a case of dowry death. It is further submitted that it is incumbent upon the appellant to explain the circumstances in which Chhaya has died as contemplated under Section 106 of the Indian Evidence Act. It is further submitted by learned APP that this is a case of custodial death as Chhaya had died in suspicious circumstances when she was residing with the present appellant. It is then submitted that since Chhaya has died within 7 years of marriage, this would be a fit case for drawing presumption under Section 113-B of the Indian Evidence Act. Hence, the learned APP supports the conviction and sentence recorded by the Addl. Sessions Judge.

7. Upon perusal of the evidence adduced by the prosecution, it is apparent on the face of the record that there are omnibus allegations in respect of demand of dowry. In fact, Chhaya was missing since the early hours of 25.10.1990. The

information was immediately given to her parents. On 26.10.1990, the missing complaint was filed. It is pertinent to note that P.W. - 1 has stated that the missing complaint was scribed by her son-in-law i.e. P.W. - 3. However, he has not deposed to that effect before the Court. There is nothing on record to indicate that P.W. - 1 had read the missing complaint before it was filed. She has not proved the contents of Exhibit 15 i.e. the missing complaint and, therefore, it cannot be said that the said contents are proved. Secondly, the parent of deceased Chhaya i.e. P.W. - 1 was present at the time of inquest panchnama and other formalities. Her statements were recorded in A.D. Enquiry. However, there is no allegation or suspicion that Chhaya must have died in suspicious circumstances due to the ill-treatment meted out to her at the hands of the appellant alone. At this juncture, it is necessary to take into consideration that Chhaya was a member of a joint family. There is no specific allegation against the present appellant in respect of demand or ill-treatment or cruelty meted out to her at the hands of the present appellant. All other persons living in the said family have been acquitted. It cannot be said that Chhaya was living in the exclusive custody of her husband. The post-mortem notes would reveal that the cause of death is Asphyxia due to drowning. It could be a case of suicidal death. There is no charge under Section 306 of IPC. Upon perusal of the evidence, it prima facie appears that Chhaya was unwilling to do labour work. It was a economically stricken family and she could not bear the difficulties in her matrimonial home. It is true that she has died within 8 months of the marriage. However, the appellant cannot be attributed with any act which must have resulted into her death. Hence, the appellant deserves to be acquitted under Section 304-B of IPC.

8. Although there are no specific allegations of cruelty and ill-treatment at the hands of the appellant, it was incumbent upon him to see that Chhaya had led a comfortable life at least for one year and that she could be saved from any ill-treatment at the hands of any other member of the family. He has neglected to discharge the said responsibility and, therefore, he would be liable for being convicted of an offence punishable under Section 498A of IPC. The appellant was taken into custody on 23.8.1993 and he was enlarged on bail by the orders of this Court on 28.12.1993. He has undergone more than 4 1/2 months after conviction and therefore, he is sentenced to the period already undergone for an offence punishable under Section 498A of IPC. Before parting with the judgment, it would be necessary to appreciate the efforts taken by the learned Advocate appointed to espouse the cause of the appellant. His professional fees is quantified at Rs. 3,000/- (Rupees three thousand only), to be paid to him within three months from the date of this order.

ORDER

(i) The appeal is partly allowed.

(ii) The appellant is acquitted of the offence punishable under Section 304-B of Indian Penal Code.

(iii) The conviction of the appellant for the offence punishable under Section 498-A of IPC by the VIth Addl. Sessions Judge, Kolhapur vide judgment and order dated 23.8.1993 in Sessions Case No. 77 of 1991 is upheld and he is sentenced to the period already undergone.

(iv) The bail bonds are cancelled.

Appeal is disposed of.