
(2014) 02 BOM CK 0294
In the Bombay High Court
Case No : Criminal Appeal No. 282 of 2011

Santosh Prakash Jadhao

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 09-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Dowry Prohibition Act, 1961 — Section 4
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 201, 203, 302, 304B, 306

Citation : (2014) ALLMR(Cri) 3088

Hon'ble Judges : C.V. Bhadang, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : U.K. Kalsi, Advocate for the Appellant; S.S. Doifode, APP, Advocate for the Respondent

Judgement

C.V. Bhadang, J.—The appellants were prosecuted for the offences punishable under Sections 302, 304-B, 201, 203 r/w Section 34 of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act and in alternative under Section 306 r/w Section 34 of the Indian Penal Code in Sessions Case No. 93/2010 on the file of the learned Principal Sessions Judge, Buldana. By a judgment and order dated 30.4.2011, the appellants came to be convicted for the offences as charged. For the offence punishable under Section 302 r/w 34 of the Indian Penal Code, the appellants have been sentenced to undergo imprisonment for life and to pay a fine of Rs. 1,000/- each, in default to undergo rigorous imprisonment for one year. For the offence punishable under Section 304-B r/w 34 of the Indian Penal Code, they have been sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 1,000/- each, in default to undergo rigorous imprisonment for one month. For the offence punishable under Section 201 r/w 34 of the Indian Penal Code, they have been sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/- each and for the offence punishable under Section 203 r/w 34 of the Indian Penal Code, they have

been sentenced to undergo rigorous imprisonment for one year and lastly for the offence punishable under Section 4 of the Dowry Prohibition Act, they have been sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 500/-, in default to undergo rigorous imprisonment for three months. Feeling aggrieved, the appellants have filed this appeal. The prosecution case may be briefly stated thus:

"That, now deceased Sharda, daughter of P.W. 1 Manohar Shankhe, was married to appellant No. 1 Santosh Jadhao on 6.3.2009. Her maternal place is at Shegaon, District-Buldana. After marriage, the deceased went to reside at her matrimonial place at Amdapur, Tahsil-Chikhali, District-Buldhana. The appellant No. 3 is the father of the appellant No. 1, while the appellant No. 2 is his paternal aunt. According to the prosecution, PW3 Ashok Chaure, a maternal uncle of the deceased and who was staying at Amdapur, had been instrumental in settling the marriage of the deceased with the appellant No. 1. It is said that the deceased was treated well only for initial 2 to 4 months of the marriage and, thereafter, she was subjected to harassment and ill-treatment on account of non satisfaction of the remaining demand of the dowry which was settled at Rs. 5,000/- and out of which Rs. 3,000/- were said to be outstanding."

2. The incident in question is alleged to have occurred between 28.4.2010 and 29.4.2010, in which, according to the prosecution, the deceased was done to death by the appellants by smothering her and her dead body was disposed of in a well situated in the field of one Naresh Wankhede behind the house of the appellants. It appears that the appellant No. 1 lodged a complaint with Police Station, Amdapur of the deceased having gone missing. The dead body of Sharda was found in a well in the field of Naresh Wankhede, the following morning i.e. 29.4.2010 and on the basis of an information received in this regard, a case of accidental death being AD No. 19/2010 was registered. During investigation of the said case, an inquest panchanama of the dead body was drawn. It was sent for postmortem examination and the medical officer opined that the deceased had died on account of asphyxia due to smothering. It further appears that on the basis of a complaint lodged by P.W. 1 Manohar Shankhe, an offence under Sections 302, 304-B, 201, 203 r/w 34 of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act was registered. During the course of the investigation, the appellants came to be arrested. According to the prosecution, on the basis of confessional statement by the appellant No. 1, a pillow was recovered from the house of the appellants. The investigating officer recorded the statements of the witnesses, drew a spot panchanama of the house of the appellants and on completion of the investigation, a chargesheet came to be filed in the Court of Judicial Magistrate, First Class at Amdapur, which was committed to the Court of Sessions.

3. The learned Sessions Judge framed the charge for the offences as aforesaid to which the appellants pleaded not guilty and claimed to be tried. The defence of the appellants, as elicited from the cross-examination and the statements under

Section 313 of the Code of Criminal Procedure, is that the deceased was short tempered and on account of this, there were quarrels and deceased had accidentally fallen in the well.

4. At the trial, the prosecution examined in all nine witnesses and produced the record of the investigation. The appellants did not enter into the witness box, however, they have examined D.W. No. 1 Usha Sakharam Jadhao and D.W. No. 2 Ashwin Narayan Mankar, their neighbours, as defence witnesses.

5. The learned Sessions Judge came to the conclusion that this was not a case of an accidental death. The learned Sessions Judge found that Sharda had died within seven years of marriage, under unnatural circumstances and soon before her death, she was subjected to ill-treatment on account of non-satisfaction of demand of dowry. It was also found that the appellants, in furtherance of their common intention, had intentionally caused the death of Sharda by smothering her and dead body was disposed of in the well. It has also been found that the appellant No. 1 had lodged a false report Exh. 12 with the Police. In that view of the matter, the appellants came to be convicted and sentenced as aforesaid.

6. It is submitted by Dr. Kalsi, learned counsel appearing for the appellants, that all the material witnesses, speaking about the ill-treatment meted out to the deceased, are her close relatives and as such their evidence would need a close and cautious scrutiny. It is submitted that all these witnesses have admitted that they have not lodged any written complaint about ill-treatment and on account of this conduct, their evidence cannot be accepted. It is submitted that admittedly the appellants were staying along with old and infirm grandmother of the appellant No. 1, as also his younger brother and as such there was no opportunity for the appellants to cause the death of the deceased and dispose of her body. It is submitted that it is the appellant No. 1 who himself had gone to the house of P.W. 1 Manohar along with one Golu Mankar to inform about Sharda having gone missing and there is also evidence to show that the appellant No. 1 along with Golu Mankar and PW5 Gajanan Shankhe, who is the brother of the deceased, had made search for the deceased during the night and the following morning, her dead body was found in the well. It is submitted that appellant No. 1 is serving as a Compounder with one Dr. Wagh and was in dispensary from 8.00 a.m. to 8.00 p.m. and, in fact, appellant No. 1 was informed about Sharda having left the home by appellant No. 2. Thereupon, he started the search. It is submitted that the evidence of the defence witnesses would also show that the deceased had gone towards the well in the afternoon where women folk in the village used to go for easing and in the face of the defence evidence, there is no possibility of the appellants having caused the death of Sharda and of disposing her body in the well.

7. The learned counsel for the appellants also submitted that the evidence about the so called discovery of a pillow made by appellant No. 1 is inconsequential. It is submitted that, in the first instance, the discovery is not proved on record, secondly a pillow is an ordinary article found in every household and cannot be

termed as incriminating evidence by itself. Thirdly, it is submitted that the pillow has not been sent for the report of the Chemical Analyser and even otherwise was not found to bear any blood stains. It is, therefore, submitted that the circumstance as to discovery of the pillow is inconsequential.

8. Lastly, the learned counsel for the appellants has taken exception to the evidence of the medical officer of the deceased having died of asphyxia due to smothering. Learned counsel, on the basis of the principles, as mentioned in Modi's Jurisprudence, has submitted that there are cases which are termed as dry drowning and immersion syndrome. The postmortem symptoms/indication may be similar to a case where a dead body is disposed of in water. In other words, it is submitted that the medical evidence, in this case, does not rule out the possibility of it being a accidental or suicidal death. Learned counsel, therefore, submitted that the appeal be allowed.

9. On the contrary, the learned APP supported the impugned judgment. It is submitted that the deceased had met with unfortunate death within less than year of the marriage, other than under normal circumstances. It is submitted that there is evidence to show that she was subjected to ill-treatment on account of non satisfaction of demand for dowry. The learned APP submitted that it is only natural in such cases that the girl narrates about ill-treatment meted out to her to her close relatives. Thus, merely because, it is the close relatives of the deceased, who are speaking about this aspect, would not be material to discard their evidence. The learned APP submitted that medical evidence is also clear and unequivocal to show that the deceased died on account of asphyxia due to smothering. The learned APP submitted that there is statutory presumption which arises under Section 113-B of the Evidence Act which has rightly been called into aid by learned Sessions Judge. The learned APP submitted that there is an additional circumstance of the appellant No. 1 lodging a false report in order to misled the police. He, therefore, submitted that the charges on all counts are rightly been held to be proved and the judgment does not call for any interference.

10. At the outset, it may be mentioned that inter-se relationship between the parties is not in dispute. It is also not in dispute that the marriage between the deceased and the appellant No. 1 was solemnized on 6.3.2009 and the deceased was found dead in a well on 29.4.2010. Thus, she had met with an unnatural death less than in a year of her marriage. It has also come on record that the appellant No. 2, who has been deserted by her husband, was staying along with her brother i.e. the appellant No. 3. In fact, this part of evidence has come by way of a suggestion in the cross-examination to the prosecution witnesses. It has also come on record that appellant No. 1 was serving as a Compounder with one Dr. Wagh at village Amdapur. The appellant No. 2 was serving as a midwife in Zilla Parishad High School, Amdapur and the appellant No. 3 was doing business as an ice candy seller. It has also come on record that old and infirm mother of the appellant No. 3 and his younger son Vishal (the younger brother of the

appellant No. 1) were the other inmates of the house which comprises of two rooms. It has further come on record that there were two doors, one in front and other on the back side of the house. There is a open space on the back side followed by land of Naresh Wankhede having the well in which the deceased was found,. It has also come on record that it was a public well and the women folk in the village used to pass by the side of the well for easing.

11. Undoubtedly, the evidence, as regards ill-treatment purportedly narrated by the deceased in this case is that of close relatives of the deceased namely P.W. 1 Manohar Sankhe, PW2 Rukhminibai Shankhe, who are her parents, PW3 Ashok Chaure, who is her maternal uncle and PW5 Gajanan, who is her brother. All these witnesses have consistently deposed about dowry of Rs. 5,000/- being settled in the marriage between the deceased and appellant No. 1, out of which, Rs. 2,000/- was paid and Rs. 3,000/- was remaining. All the three witnesses have deposed about the deceased having narrated about ill-treatment meted out to her by the appellants on account of non satisfaction of the demand of the remaining dowry amount.

12. P.W. 1 Manohar Shankhe has stated that on 15.2.2010 the deceased had visited Shegaon, her maternal place and had narrated about she being ill-treated over the remaining dowry amount of Rs. 3,000/-. She had narrated about all the three appellants abusing and assaulting her on this count. It is further evidence that the appellant No. 1 had visited after one hour of the deceased coming to his house and the deceased was sent along with appellant No. 1 after assuring appellant No. 1 that demand would be met within 8 to 10 days. This witness, thereafter, has spoken about the incident dated 15.4.2010, when deceased had telephonically informed about escalated ill-treatment being meted out to her. When again this witness assured that some arrangement would be made. On 28.4.2010, the deceased had telephonically informed PW5 Gajanan, when Gajanan has said that he would go and meet his sister on the next day. On the same day around 10.30 pm, appellant No. 1 and one Golu Mankar came to his house and informed, whether Sharda had come. He has, thereafter, spoken about he having accompanied appellant No. 1 and Golu Mankar in search of Sharda.

13. The evidence of PW2 and PW5 is on similar lines and all of them have spoken about ill-treatment meted out being narrated by the deceased to them. PW3 Ashok Chaure is the maternal uncle of the deceased and had been instrumental in settling the marriage. This witness has also spoken about dowry amount being settled at Rs. 5,000/- out of which, Rs. 3,000/- was outstanding. This witness was staying at Amdapur itself and has stated about the deceased having informed this witness of ill-treatment. He has stated that on 27.4.2010 i.e. a day earlier the deceased had come to him and of having stated that appellant No. 1 is beating her over demand of dowry. On 28.4.2010 the deceased again came to this witness at about 11.00 am and was there till 1.00 pm. At that time also, she was narrating that she was beaten every day, when this witness assured that he

will talk with the appellants. This witness has stated that she was looking nervous. Shortly thereafter i.e. at 3.30 pm, the appellant No. 2 came to him stating that the deceased had run away from home. The evidence of these witnesses have been mainly attacked on account of they being close relatives of the deceased. By itself, it is not a circumstance to discard their evidence. The only requirement is that in such cases the court would act with greater circumspection and scrutinize their evidence closely and cautiously in order to find, whether the same inspires confidence. It is only normal that a newly married girl would narrate about her ill-treatment to her close relatives including a person who had been instrumental in settling the marriage and particularly when he is her maternal uncle. Thus, in our considered view, the evidence of these witnesses cannot be discarded on the ground that they are close relatives of the deceased. Even so far as the contention that none of these witnesses have lodged a written complaint, we find that the marriage was hardly seven months old when the unfortunate incident occurred. In such cases, it is not unusual for the parents and the other relatives to wait for a while when the marriage settles and to hope that evidently the conduct of the in-laws would improve. Filing of a police complaint, many times, has an effect of making any reconciliation effort difficult. We find that non filing of complaint by these witnesses cannot be a reason to disbelieve them. We find that there is consistent evidence on record to show that the deceased had narrated about ill-treatment meted out to her on account of non satisfaction of demand of dowry and this part of evidence has been rightly believed and acted upon by the learned Sessions Judge.

14. This takes us to the nature of the circumstances in which the dead body of the deceased was found in a well. PW8 Dr. Jagannath Chate is the Medical Officer, who had conducted the postmortem examination. This witness had found that on compression of chest, there was no oozing of water and froth from nose. The medical officer has found bleeding on right ear and both nostrils and no signs of decomposition. On external examination, the following injuries were found:

"(i) Five bruises over forehead, each measuring about 1.2 cm. width and 4.5 cm. length.

(ii) Two bruises over nose of size 1.2 x 3 cm. each.

(iii) Sub-cutaneous tissue oedematous and congested (forehead and nose). Injuries were ante mortem in nature.

On internal examination, the following findings are recorded:

Larynx, Trachea and Bronchi: Congested, no froth.

Right Lung : red coloured minimally fluid. Intact congested, red coloured, very minimally oedematous.

Left Lung: Intact, congested, red coloured, very minimally oedematous.

Uterus: Normal sized.

Stomach contained 50 CC semi digested food."

Ultimately the Medical Officer has opined that the cause of death was asphyxia due to smothering. This witness has also stated that smothering was in all probability with "obstructing object possibly smooth" and the death may have been caused within 24 hours of the postmortem which was conducted on 29.4.2010 itself between 2.05 pm to 3.30 pm. This witness has stated thus:

"Smothering could be seen on the basis of congestion of both lungs, red colour and very minimal oedematous, larynx, bronchi and trachea congested and red coloured. Overall organs congested and bleeding from right ear, nostrils. Death is possible if person is smothered with the help of pillow. Article No. 1 - Injuries in Column No. 17 are possible while smothering pressure of fingers and hand is applied and due to resistance."

15. This witness was cross-examined on the point of the symptoms found in the case of dry drowning and immersion syndrome. This witness has admitted that the postmortem appearances are similar in dry drowning and smothering. He has further stated that this could be true also in respect of immersion syndrome wherein the symptoms are similar to dry drowning. In case of dry drowning smothering, there would be differences. This witness has further stated that minimal blood oozing from nostrils and ears are possible in dry drowning or immersion syndrome. This witness was suggested that in case of difficulty in diagnosing whether it is a case of dry drowning or smothering, viscera has to be analyzed by diatom test. The witness has volunteered that in this case there were no difficulties.

16. The relevant portion relating to asphyxial death vis-?-vis a case of dry drowning and immersion syndrome, from Mod's Jurisprudence are reproduced as under:

"(i) Asphyxia : The mechanism of death in acute drowning is irreversible cerebral anoxia. The present thought is that the most important physiological consequences of drowning is hypoxia. This is a common cause in the majority of cases, as water getting into the lungs gets churned up with the air and the mucus, and produces a fine froth, which block the air vesicles."

In a few cases, death may occur from obstructive asphyxia also known as dry drowning caused by the laryngeal spasm set up by a small amount of water entertaining the larynx. In such a case, water does not enter the lungs and the classical signs of drowning will be absent. It should be noted that spasmodic closure of the vocal cord is not detectable in postmortem examination.

In drowning under the influence of alcohol, the death is sudden without any struggle. Sudden cooling of the skin on the chest and the abdomen causes dyspnoea, and often, an uncontrollable hyperventilation - a reaction triggered from the cold receptors in the skin, which may result in a cardiovascular collapse

through ventricular fibrillation (Immersion Syndrome, Hydrocution).

17. We find that the medical officer has in categorical terms stated that in this case there is no ambiguity or difficulty in arriving at the conclusion and this was a case of asphyxial death due to smothering and not of dry drowning and immersion syndrome as has been tried to be submitted on behalf of the appellants. We do not find any reason to disbelieve the expert medical evidence in this regard. Thus, the prosecution has established that Sharda died an unnatural death within seven years of marriage and soon before her death she was subjected to ill-treatment on account of non-satisfaction of part of dowry which was settled.

18. In the given circumstances, in our view, the learned Sessions Judge has rightly placed reliance on the statutory presumption available in such cases in the form of Section 113-B of the Evidence Act. It is true that while the prosecution is obliged to prove its case beyond reasonable doubt, the appellant-accused can discharge any such burden (arising out of a statutory presumption) on preponderance of probability. It would be necessary to see, whether the same stands discharged.

19. The appellants have examined D.W. 1 Usha Jadhao and D W2 Ashwin Mankar as defence witnesses and both of them are neighbours. D.W. 1 Usha has stated that the deceased and the appellant No. 1 were carrying on happily, however, the deceased was not behaving well as she was "hot-headed". On the "date of death" around 2.00 pm, when she was doing work behind her house, appellant No. 2 had come to her inquiring about whereabouts of Sharda, when this witness told that she had proceeded for nature's call. Thereafter, appellant No. 2 went in search at the well. This witness and others also searched for Sharda along with all the family members and they were so searching till night up to 11.00 pm.

20. D.W. 2 Ashwin has stated that the deceased and appellant No. 1 were living happily. However, Sharda was not behaving well as she used to abuse neighbourers and quarrel with them. At around 3.30 pm on the date of the incident, appellant No. 2 had come and questioned if Sharda had come. This witness has told her that he does not know. When this witness came out, Usha i.e. D.W. 1 told that Sharda had gone to attend the nature's call. Thereafter, this witness has deposed about a search being made till 1.00 am in the night. This witness has admitted that there were some disputes between Sharda and appellant No. 1, however, this was on account of behaviour of the deceased. Be that as it may, in the face of the consistent prosecution evidence about ill-treatment and the medical evidence about nature of death, we are not inclined to accept the evidence of these defence witnesses as tendered.

21. Insofar as the evidence of the alleged discovery is concerned, in our view, the same would be indeed inconsequential as the pillow would be common article found in every household and as same has not been referred for the report of the chemical analyser. However, this may not affect the prosecution case in the face

of consistent direct evidence available of ill-treatment and the other circumstances being proved about ill-treatment, the death being unnatural death and the same being caused within seven years of the marriage.

22. The learned counsel for the appellants has placed reliance on the decision of the Hon''ble Apex Court in the case of Subramaniam Vs. State of Tamil Nadu and Another, in order to submit that circumstances as to death of the wife, in matrimonial home and no explanation as to cause of death being averred by the husband, would not be sufficient, although a strong circumstance. We find that the ratio, as laid down, would not come to the aid of the appellants for more reasons than one. In the first instance, that was a case of murder and not of dowry death which would attract the presumption under Section 113-B of the Evidence Act, secondly there is clear evidence of violence in this case, in the form of medical opinion of the death being asphyxial death due to smothering and thirdly in that case the appellants were acquitted by the learned trial court and in an appeal, the High Court had convicted the appellants under Section 302 of the Indian Penal Code. It was inter alia found that the circumstances were not sufficient, so as to interfere with the finding of acquittal, as the judgment of the learned Sessions Judge was not found to be wholly unreasonable or otherwise perverse. In that view of the matter, we do not find any reason to interfere with the finding of guilt as recorded by the learned Sessions Judge. Consequently, the appeal is hereby dismissed.