
(1998) 08 BOM CK 0034

In the Bombay High Court

Case No : Criminal Appeal No. 254 of 1990

Satish Shankarrao Ghorge

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 27-08-1998

Acts Referred:

Evidence Act, 1872 — Section 3, 61
Penal Code, 1860 (IPC) — Section 302, 304

Citation : (1999) 5 BomCR 77 : (1999) 1 DMC 691

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : Dilip B. Bhonsale, for the Appellant; Smt. Usha V. Kejriwal, Assistant Public Prosecutor, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—The appellant has been convicted u/s 304-B of the Indian Penal Code and sentenced to suffer R.I. for four years and to pay a fine of Rs. 1000/- in default to suffer R.I. for three months more and he has also been convicted u/s 498-A of the I.P.C. and sentenced to suffer R.I. for three years and to pay a fine of Rs. 300/- in default to suffer R.I. for one month more by Additional Sessions Judge, Satara. The substantive sentences were directed to run concurrently.

2. The prosecution's case, in short, is that P.W. No. 2's (Shamrao Dhondiba Wagh) daughter Ujvala was given in marriage to accused Satish on 24-5-1987. Accused Satish had started harassing and ill-treating deceased Ujvala and demanding an amount of Rs. 2000/- for his tempo. The accused wanted to purchase a new tempo or wanted to repair his old tempo by that amount. In January 1988 deceased Ujvala had informed her parents that she had a fall from the cot and she had sustained an incised wound on her forehead and the injury was sutured. Thereupon P.W. 2 Shamrao Wagh went to see his daughter Ujvala at her matrimonial home at Bhadale. She was taken for delivery in or about July 1988. She delivered a male child on 12-8-1988, While deceased Ujvala was in

her parent's house she had informed her parents that the injury was actually not caused to her by a fall from the cot but caused by her husband by assaulting her with stick.

3. After the delivery deceased Ujvala again went to her husband's house on 10-4-1989. It is the case of the prosecution that P.W. No. 2 Shamrao has received a letter from Ujvala on 3-5-1989 stating that she was coming to Satara with her husband and son in the Hospital of Dr. Darbhe for the treatment of her son. Accordingly, P.W. No. 2 with his wife P.W. 3 Shantabai went to Satara to meet her in the hospital. It is the case of P.W. No. 2 that there was some talk between deceased Ujvala and her mother P.W. No. 3 Shantabai. At that time she had in fact seen that there were burn injuries caused to both wrists of the deceased. According to P.W. Nos. 2 and 3, deceased Ujvala then told to them that the accused was demanding Rs. 2000/ and he was harassing her on that count. It is also disclosed from the conversation between deceased and her mother that the accused had also threatened the deceased that she should not disclose that fact to her parents or else she would be killed. P.W. No. 4 Nandkumar who is the brother of deceased Ujvala was sent to the matrimonial home of deceased Ujvala. He went to the matrimonial home of the deceased on two successive occasions and he came back and reported to his parents that the ill-treatment was continued unabated. On 20-5-1989, at about 12-00 noon, the parents had received a message from their relatives of Bhadale that Ujvala had sustained certain burn injuries at about 9.00 a.m. to 9.30 a.m. Immediately on the receipt of said message P.W. No. 2 Shamrao left for Bhadale and reached the matrimonial home of the deceased. Then he and the other relatives saw that Ujvala was already expired. Her dead body was kept in the house and it was covered with bed sheet. After some times they left the place.

4. On the following day i.e. on 21-5-1989 P.W. No. 2 Shamrao went to Vathar Police Station and lodged a complaint/F.I.R. of Exhibit 16 before P.S.I. Shivte. It was reduced into writing as per his narration. Earlier, the offences were registered under sections 302, 304-B, 306 and 498-A of the I.P.C. It was transpired during the course of investigation that the accused was not in the village Bhadale on the date of the incident. Consequently, the offence was altered and registered under sections 304-B, 306 and 498-A of the I.P.C. The spot panchanama Exhibit 11 was drawn in presence of P.W. No. 1 Sampat Jadhav. The post mortem was conducted in the Civil Hospital, Satara. The report of the post mortem reveals that the cause of death of Ujvala was due to 100% superficial to deep burns. Investigating Officer, then recorded the statements of witnesses. After completing the usual investigation the Investigating Officer filed chargesheet in the Court of J.M.F.C., Koregaon, from where it was committed to the Sessions Judge. Before the Court below the accused/appellant has denied the charges.

5. I have examined the judgment of the Court below and also the evidence adduced in this case. The prosecution's case, in short, therefore, is that there

was an ill-treatment from the accused to the deceased Ujvala and there was a demand of Rs. 2000/- soon before the death of the deceased, and therefore, the offence against which the accused charge sheeted is committed. In order to appreciate the case, the prosecution has produced two letters in the Court below written by the deceased to her parents at the undisputed point of time. Mr. D.B. Bhonsale, Counsel for the appellant, has taken me to those letters. The dates of those letters are 25-2-1988 and 3-5-1988. In these two letters there were absolutely no mentions that the accused or his parents were ill-treating the deceased in their house. In fact, she said that she was very happy in the accused house. She also narrated her fall from the cot, and the injuries sustained to her forehead and treatment. If she received any ill-treatment during this period, definitely this fact would have found place in these two letters, particularly in the context that those two letters were addressed to her mother. Therefore, till writing of these two letters, one can safely conclude that there was no ill-treatment or any demand of dowry.

6. It has also come out from the evidence that she was in her parents house for about 10 months from July 1988 to 10th of April 1989. During the said period, at any time, the deceased did not state about any incident of ill-treatment or demand or harassment made by the accused on account of demand of money to P.W. No. 2 father, P.W. No. 3 mother and P.W. No 4 brother. Admittedly she was taken to the matrimonial home with the child and she was there till 20-5-1988. After she went to the matrimonial home she also wrote a letter to her parents informing them that she was coming to Satara with her husband and son in the hospital of Dr. Darbhe. In that letter also she did not say about any incident of harassment. The said letter did not produce, if there is any incriminating statement contain in that letter, it would have been produced by the prosecution. In the absence of production of that letter I have to infer that there is no incriminating statement in that letter either of the harassment or demand of dowry. It is only in the complaint made at first time by P.W. No. 2 before the police the incident of harassment and demand of money was disclosed. The statement made by P.W. No. 2 before the Court about the ill-treatment is extracted below:--

"Deceased Ujvala told me that it was not an injury by a fall, but it was the accused who had assaulted her by a stick. That time, Ujvala further told me that her husband was demanding an amount of Rs. 2000/- for purchasing a new tempo or for repairing of his old tempo. Ujvala also told me that in case, if she was not in a position to pay the amount of Rs. 2000/- she would be harassed at the hands of the accused."

There is no corroborative evidence before the Court below about the ill-treatment and the demand of money, as deposed by P.W. No. 2, the Court cannot rely on the interested testimony of P.W. No. 2. The learned A.P.P. Smt. Usha Kejriwal submitted that the statement of P.W. No. 2 was corroborated by P.W. No. 3 and 4, the mother and brother of the deceased, respectively. I am afraid whether this

contention could be accepted. Corroboration is to be required by an independent witness to corroborate the statement of the relatives and not otherwise. As I have discussed earlier the very important documents which go against the case of the prosecution are the two letters referred to above. It is to be noted that P.W. 2 says that one Ghorpade had informed him about the incident of death of deceased Ujvala, but said Ghorpade has not been examined in this case.

7. In this context I have to examine other independent witnesses i.e. Panch P.W. No. 1. He says that at the instance of police he went to the house of accused Satish. He also says that there are several houses in the locality surrounding the accused house. He says that he saw nylon pieces of the saree seen on the ground. He also saw that there were house-hold articles in the front apartment and one vessel containing the water was found. There is a sink and beyond that sink, there was earthen fire place. He also noticed that a stove and certain other implements in the padchitti. He also saw rock oil and two tins. In cross-examination he says that he was sure that immediately prior to the incident, the deceased was cooking meals and there is another house of one Yashwant Nanasaheb Gharge situated 30/35 feet from the house of accused. He also stated in the cross-examination that there is house of one Hanmant Gharge uncle of the accused situated adjacent to the house of accused. He also stated that on the date of incident the accused came to Satara. There is no circumstance to disbelieve this witness. He is an independent witness staying in the neighbourhood and who says that on the date of that incident the accused was not there at all. In view of these evidence and in the absence of other corroborating materials to establish the case of the prosecution the findings entered by the Court below will have to be perverse and erroneous. The prosecution has failed in all respect to establish the offences against the appellant.

8. In the result, the appeal is allowed. Conviction and sentences awarded by the Court below in the impugned judgment is set aside. The accused is on bail. He need not surrender. Bail bond stands cancelled and sureties are discharged.

9. Appeal allowed.