

(2003) 02 BOM CK 0124
In the Bombay High Court
Case No : Criminal Appeal No. 228 of 2001

Savalram

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 05-02-2003

Acts Referred:

Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 304B, 306, 498A

Citation : (2003) 2 ALD(Cri) 106 : (2003) BomCR(Cri) 1457 : (2003) CriLJ 2831 : (2004) 1 DMC 339 : (2003) 4 RCR(Civil) 203

Hon'ble Judges : R.S. Mohite, J

Bench : Single Bench

Advocate : A.M. Dixit, for the Appellant; D.B. Patel, APP, for the Respondent

Judgement

R.S. Mohite, J.—This is an appeal filed by the appellant (hereinafter referred to as accused) for quashing and setting aside the judgment and order dated 13-7-2001 passed by the Ad hoc Assistant Sessions Judge, Gondia, in Sessions Trial No. 58 of 2000, convicting the accused for the offence punishable under Sections 498-A read with Section 34, Sections 304-B, 306 read with Section 34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, 1961.

2. For the conviction u/s 498-A read with Section 34, the accused is convicted and sentenced to suffer S.I. for a period of one year and to pay a fine of Rs. 200/-. For the conviction u/s 304B, the accused is sentenced to suffer R.I. for 7 years; for the conviction u/s 306 of IPC, he is sentenced to suffer R.I. for five years and to pay a fine of Rs. 1,000/-, in default of payment of fine, to suffer S.I. for two years; and for the conviction u/s 4 of Dowry Prohibition Act, 1961, he is sentenced to suffer S.I. for one year and to pay a fine of Rs. 500/- in default of payment of fine to suffer further S.I. for a period of one month.

3. The relevant facts of the case in brief are as follows :

(a) The deceased Bhumika married the present accused Savalram on 28-4-1999.

After her marriage, she went to reside at her marital home at Meghatola. The original accused Nos. 2 and 3 were in-laws of Bhumika and were residing together with Bhumika. The original accused No. 4 was the brother of original accused No. 2.

(b) After about five months of marriage i.e. in or about September 1999, Bhumika visited her father's house. It is alleged by the prosecution that at that time Bhumika told her father P.W. 1 Bhagwat that the present accused was demanding cash amount of Rs. 50,000/- and Motorcycle and that her in-laws were subjecting her to cruelty on the ground of illegal demand of dowry. That the present accused used to beat her and that the in-laws were also harassing her and were raising doubt about her character.

(c) In the month of November 1999, the present accused again visited the house of P.W. 1 -- Bhagwat and complained to Bhagwat that his daughter Bhumika was not doing agricultural work.

(d) Sometime thereafter P.W. 1 Bhagwat and his nephew went to village Meghatola where his daughter Bhumika told him that the accused used to beat her on account of dowry and motorcycle.

(e) P.W. 1 Bhagwat refused to give said dowry amount and motorcycle and told the parents of the accused that he will take his daughter back to his house. Later, Bhumika is said to have written a letter addressed to the brother of accused i.e. Parmeshwar and on that count of writing a letter also, there was some disharmony between Bhumika and the present accused. The nephew of P.W. 1 Bhagwat took the said letter in his custody and then they returned back to their village. Though complainant does not specifically state as to when he has gone to Meghatola along with his nephew, the nephew Pendharu has been examined as P.W. 3 and he talks about this incident and having gone to Meghatola along with the complainant in November 1999.

(f) In or about April 2000, one of the other nephews of the complainant Bhagwat--Bharatlal P.W. 4 had gone to Meghatola to give an invitation of the marriage of his younger brother, which was to take place in April 2000. At the time he visited the house of the accused, according to his version, the accused Nos. 1 to 3 were not present and Bhumika alone was present in the house. He contends that at that time Bhumika told him that she was given good treatment for a period of 2-3 months after marriage, thereafter the family members started to ill-treat her. Bhumika told him that accused Nos. 2 and 3 i.e. her in-laws were ill-treating her on the ground that she was not doing agricultural work and use to abuse her everyday and that the present accused used to beat her at night because he doubted her character.

(g) That on 16-5-2000, there was a marriage in the house of the nephew of P.W. 1 -- Bhagwat. Bhumika and the accused attended that marriage. The accused left his wife Bhumika in her parental house and he returned back to his home. 15 days thereafter, the brother of Bhumika by name Ghanshyam reached Bhumika

to her marital home.

(h) On 2-7-2000, Bhumika committed suicide by consuming poison known as Endosulphan. She died immediately after consuming poison and there is no suicide note.

(i) On 2-7-2000, the father of Bhumika P.W. 1 Bhagwat, lodged a complaint at Police station Goregaon and investigation commenced.

(j) Ultimately on completion of investigation, the Police filed the charge-sheet and the matter was committed to trial.

(k) At the sessions trial which ensued, the prosecution examined as many as nine witnesses and on appreciation of evidence of these witnesses, the Ad-hoc Assistant Sessions Judge, Gondia, passed the impugned judgment and order, convicting and sentencing the accused as aforesaid.

4. The learned Advocate appearing on behalf of the appellant-accused submitted that the entire evidence of the prosecution witnesses on the point of demand of dowry, cruelty and harassment, consisted of only interested witnesses who were the relatives of the deceased. He contended that the evidence of P.W. 2 Ghanshyam and P.W. 3 --Pendharu would indicate that they had changed their original version and material omission in this respect has been brought on record by the defence. He contended that last person to go to Meghatola was Bharatlal who was on friendly terms with the complainant being the relation of the complainant. That the evidence of Bharatlal did not refer to any demand in relation to dowry. He contended that the evidence relating to demand of dowry was not proximate to the date of commission of the suicide, therefore, the conviction u/s 304B was improper and bad in law.

5. As against this the learned Additional Public Prosecutor vehemently argued that the evidence of interested witnesses could not be disbelieved merely on the ground that they were interested witnesses. At the most, they could be scrutinised with caution and accepted if found believable. He contended that proximity test relating to cruelty or harassment was flexible and must vary from case to case. That the words "soon before the death" accruing in Section 304B of Indian Penal Code could not be put in a straight-jacket or in any particular time scale. According to him, in September 1999 and further in November 1999 at the time of Diwali, the demand of dowry was repeated. According to him, this demand for dowry could be said to be "soon before" the commission of suicide on 2-7-2000.

6. I have perused the impugned judgment. From the evidence of the complainant, it is clear that there was harassment in relation to demand of dowry in the month of September 1999 and November 1999. There is no evidence to show that any dowry was demanded after November 1999. In this context, it is significant to note that in April 2000, when one of the close relations of Bhumika i.e. her maternal uncle Bharatlal visited the house of accused, Bhumika

specifically complained of harassment by all members and gave specific reasons as to why she was harassed by them but did not mention any dowry related harassment or cruelty. Again her father the complainant-Bhagwat talks about an even more later event which occurred on 16-5-2000 when his daughter along with her husband i.e. accused attended the marriage in the house of complainant's nephew. At that time also he does not state about his daughter complaining about any dowry related harassment. In this view of the matter, I find that the last allegation relating to dowry related harassment is of November 1999. The suicide took place on 2-7-2000 i.e. after the period of eight months. In my opinion, dowry related harassment cannot be proximate in the special facts and circumstances specially when there was no such complaint made by Bhumika either to P.W. 4 Bharatlal in April 2000 or to the complainant-Bhagwat in May 2000.

7. On the question of proximity, two judgments have been pointed out to me. The first judgment is the judgment of the Apex Court in the case of *Kans Raj Vs. State of Punjab and Others*, . In this judgment, it is observed by the Apex Court as under :

"14. It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to be cruelty or harassment by the husband soon before her death. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straight-jacket formula can be laid down by fixing any time limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114. Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before the alleged such treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough."

8. The another judgment which is cited by the Advocate for the appellant-

accused is in the case of Satvir Singh and Others Vs. State of Punjab and Another, . In this case, the Apex Court while dealing with the question of requirement of proximity u/s 302 of Indian Penal Code has observed as under :

"22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304B is to be invoked. But it should have happened "soon before her death". The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasis the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the Court would be in a position to gauge that in all probabilities the death would not have been the immediate cause of her death. It is hence for the Court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death".

9. From the above referred judgments of the Apex Court, it is clear that the words "soon before her death" accruing in Section 304B are required to be interpreted with the degree of flexibility and considering the facts and circumstance of the each case. I have dealt with this aspect of the matter in accordance with the evidence and special facts which arise in the present case. I find that it would be difficult to say that the demand for dowry can be said to be soon before the death and hence on this count, in my opinion, the conviction u/s 304B of Indian Penal Code cannot be sustained, As regards the general allegation of cruelty, there is sufficient evidence on record to show that the cruelty continued well into the year 2000. There is clear from the evidence of P.W. 4 Bharatlal that Bhumika was complaining of cruelty in April 2000 to the date when she committed suicide. There is no plausible explanation by the defence as to why Bhumika should have committed suicide. In such cases, one cannot lose sight of the fact that Bhumika would had no access to her relations on day-to-day basis and she was extremely unhappy and her life had become intolerable. In such circumstances, I am in agreement with the findings of the trial Court in connection with the offence under Sections 306, 498-A of IPC and Section 4 of Dowry Prohibition Act, 1961 and the conviction and sentence in these sections are maintained.

10. In the result, Criminal Appeal succeeds partly. The conviction and sentence imposed by the impugned judgment and order u/s 304-B of IPC is set aside. The conviction and sentence imposed u/s 498-A read with Section 34 of IPC, Section 306 read with Section 34 of IPC and u/s 4 of Dowry Prohibition Act, 1961, are maintained. The impugned judgment and order will stand modified accordingly,

only to this limited extent and all other directions given in the operative portion of the order will remain undisturbed.