

(2015) 04 GUJ CK 0035

In the Gujarat High Court

Case No : Criminal Appeal Nos. 90 and 442 of 1993

Shaligram Ramkrsishna Patil

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374, 378
Penal Code, 1860 (IPC) — Section 114, 304-B, 306, 498-A

Citation : (2015) 4 Crimes 355 : (2015) 2 GLR 1723

Hon'ble Judges : G.B. Shah, J.; Jayant M. Patel, J.

Bench : Division Bench

Advocate : Shakeel A. Qureshi, for the Appellant; Hardik Soni, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

G.B. Shah, J.—As both these appeals arise out of a judgment and order dated 17/12/1992 passed in Criminal Case No. 175 of 1990 by the learned Additional Sessions Judge, Surat (for brevity, "the learned trial Judge"), they are being decided and disposed of by this common judgment and order.

2. Criminal Appeal No. 90 of 1993 has been preferred by the appellant - original accused No. 1 - Shaligram Ramkrishna Patil under Section 374 of the Code of Criminal Procedure, 1973 (for brevity, "the Code") challenging the aforesaid judgment and order by which the learned trial Judge has convicted him and sentenced to undergo 07 years" rigorous imprisonment for the offence punishable under Section 304-B of the Indian Penal Code (for brevity "the IPC") and 01 year rigorous imprisonment and fine of Rs. 250/- and in default of payment of fine, further 5 days" simple imprisonment for the offence punishable under Section 498-A of the IPC.

2.1 Whereas, Criminal Appeal No. 442 of 1993 has been preferred by the appellant - State of Gujarat under Section 378 of the Code challenging the aforesaid judgment and order qua original accused Nos. 2 to 5 by which the

learned trial Judge has acquitted them for the offence punishable under Sections 304-B, 306 and 498-A, r/w. Section 114 of the IPC.

3. Facts of the prosecution case are that marriage of daughter of complainant - Dhondu Bhavji Chaudhary, the father of deceased - Sunanda had solemnized in the year 1984 with one Satishbhai S/o. Shaligram Ramkrishna Patil. Out of the said wedlock, they have two children. It was the case of the prosecution that while betrothal, aforesaid Shaligram Ramkrishna Patil, the father of the husband of the deceased and appellant in Criminal Appeal No. 90 of 1993 - original accused No. 1, who is a retired policeman, had said the complainant that he did not want any Mool (dowry) and he only wanted his daughter since he had no daughter, however, after betrothal and marriage, the accused started demanding mool. In fact, as per the custom, at the time of marriage, the complainant had given gold ring, watch, radio, fan and clothes etc. but afterwards the appellant - original accused No. 1 had started demanding mool. That, for the same, they used to harass and taunt the deceased. Due to such unbearable harassment, the deceased was not even ready to return to her matrimonial house when she had gone to her parental house. Even, her husband and the father-in-law, by various letters, had asked her for bringing mool. That, by letter dated 01/06/1989 which was required to be treated as telegram, the appellant - original accused No. 1 had conveyed the complainant that time being, put all the things aside and send the deceased urgently as the operation of ear of Kiran had been fixed and hence, the complainant had arranged for the things worth Rs. 11,000/- and further assured to give colour television and the cupboard later, and requested him to bring the deceased and accordingly, the brothers-in-law of the deceased and others brought the deceased back with them. At that time, the complainant had asked the deceased to convey whether the disturbance had settled or not. However, since her returning to her matrimonial home, there was no communication from the deceased and only on 16/07/1989 the complainant received a message about the death of the deceased due to burning. The complainant did not believe such story and apprehended that as the colour television and the cupboard were not given to the in-laws of the deceased, they were disappointed and the death of the deceased was caused by attacking the deceased with acid like substance and accordingly, on 25/07/1989 he gave an application before the Salabatpura police station and after inquiry, the complaint for the alleged offence punishable under Sections 498-A, 306, 304-B and 114 of the IPC was lodged against the accused on 03/09/1989 vide CR No.I-241 of 1989.

4. In support of the case, the prosecution recorded statements of witnesses and collected several documentary evidence and after having found sufficient evidence and material against the accused, they came to be charge-sheeted for the alleged offence.

5. As the case was triable by the Court of Sessions, learned Judicial Magistrate First Class, Surat committed the same to the Sessions Court at Surat. The learned trial Judge framed Charge against the accused for the alleged offence.

The Charge was read over to the original accused to which, they pleaded not guilty and claimed to be tried.

6. In order to bring home the charge against the original accused, the prosecution has examined as many as 13 witnesses and also produced several documentary evidence.

7. On submission of closing pursis, Further Statements of the accused under Section 313 of the Code were recorded. The accused denied involvement in the crime and claimed that they have not committed the offence alleged against them and that, they have been falsely implicated in the crime. After hearing both the sides and on appreciation of the evidence adduced, the trial Court delivered the impugned judgment and order by which, the appellant - original accused No. 1 was convicted and sentenced as aforesaid, whereas, the other accused came to be acquitted.

8. We have heard Mr. Shakeel A. Qureshi, learned counsel appearing for the appellant - original accused No. 1 in Criminal Appeal No. 90 of 1993 as well as for respondent Nos. 1 to 4 -original accused Nos. 2 to 5 in Criminal Appeal No. 442 of 1993 and Mr. Hardik Soni, learned Additional Public Prosecutor, for the State of Gujarat in the respective Criminal Appeals.

9. Mr. Qureshi, the learned counsel appearing for the original appellant - accused No. 1, has submitted that the learned trial Judge has not properly appreciated the oral as well as documentary evidence produced on record and has erred in holding that the prosecution has proved the charge against the accused No. 1 beyond reasonable doubt. He has submitted that the prosecution has examined in all 13 witnesses, however, the learned trial Judge has not properly appreciated the evidence of the said witnesses and thereby, the finding recorded by the learned trial Judge that the prosecution has proved the charge against the accused No. 1 by leading legal, reliable and impeachable evidence, is contrary to the evidence available on record. It is submitted that the first and foremost thing which goes to the root of the matter is that no specific allegations of harassment and cruelty have been made against the accused No. 1 or even any other accused persons. He has submitted that there is considerable delay in lodging the FIR, which is fatal. He has submitted that only on the next day of the incident i.e. on 17/07/1989, the statements of the parents of the deceased were recorded, however, there was no allegation against the appellant and the other accused persons by them in the same and on 25/07/1989 one application was being given by the complainant before the Salabatpura police station alleging harassment, cruelty and demand of dowry by the appellant - original accused No. 1 and other accused and on 03/09/1989, the alleged FIR was being lodged against the accused for the alleged offence, which speaks volume and it appears that only with a view to harass the accused, after due deliberation and consultation with one Mr. Deshmukh, who is the father-in-law of the son of the complainant and serving in the police department at Surat, the FIR has been lodged against them. Mr. Qureshi, the learned advocate appearing for the original

accused No. 1 has submitted that the learned trial Judge has failed to appreciate the circumstantial evidence of the scene of offence, which is clearly suggestive of the fact that it was not a case of suicide as projected by the prosecution but was the case of a mere accident in which the deceased received burn injuries while preparing hot water on a stove in the chowkadi, which can be inferred from the facts that the incident had taken place in the chowkadi; there was no smell of kerosene in the chowkadi area and on the handkerchief which was lying there and also on the body of the deceased; the stove was lying in the chowkadi; a pot containing water was also there; no kerosene was found on the floor; two burnt matchsticks and the match box were lying there. He submitted that all these things go to suggest that the deceased got burn injuries while preparing hot water on the stove and the death of the deceased was merely an accidental death and not suicidal.

9.1 Mr. Qureshi, the learned advocate for the appellant - original accused No. 1, has further submitted that it was the case of the prosecution in the complaint which was lodged after a considerable long time that death of the deceased was caused by throwing acid on the deceased by the appellant - original accused No. 1 and other accused persons, however, the said story of prosecution is falsified by the Panchnama of scene of offence as well as by the medical evidence. The Panchnama of scene of offence suggests the case of accident. Moreover, he submitted that if the deposition of Dr. Vasantkumar J. Barot at exh. 34 is perused, he has clearly admitted in his cross-examination that there is no injury on the face of the deceased which could have been caused by acid and the injuries sustained by the deceased are possible by accident.

9.2 Mr. Qureshi, the learned advocate for the appellant - original accused No. 1, has further submitted that so far as letter dated 25/05/1989 written by the husband of the deceased asking to sale out the land of the complainant to satisfy their demand of mool (dowry), is concerned, the said letter was received by the deceased on 06/06/1989 and as per the deposition of Rupchand, the brother of the deceased, at exh. 38, pursuant to said letter, they had sold the land, however, if the Sale Deed of the land is seen, it is dated 02/06/1989 meaning thereby, the land was already sold four days prior to the aforesaid letter received by the deceased. Mr. Qureshi has submitted that all the above are suggestive of fact of material contradictions and improvements appearing in the evidence only with a view to implicate the accused persons wrongly in the crime and thereby harass them. He has submitted that, however, for the same no direct evidence is there on record, which fact, the learned trial Judge has failed to appreciate. He has submitted that there are no material and/or direct evidence on record to show that the deceased was subjected to cruelty and/or harassment and/or torture and the demand of dowry can be the only allegation, by which the accused can be implicated for the offence punishable under Sections 498-A and 304-B of the IPC. Even the statements of the parents of the deceased, recorded on the very next day of the incident, do not reveal any such allegations and accordingly, the alleged FIR can be said to be nothing but an afterthought on the

part of the complainant. Moreover, so far as demands of colour television, freeze, motorcycle etc. are concerned, it is evident from the evidence on record that no such articles were given and only with a view to make baseless allegations, such case is projected against the accused. He has submitted that even as per the provisions of the Dowry Prohibition Act, mere demand of dowry or suggestion regarding the same does not amount to demand of dowry and valuable security or property must have been given or agreed to be given.

9.3 Mr. Qureshi, the learned advocate for the appellant - original accused No. 1, has further submitted that the learned trial Judge has erred in interpreting the letter dated 01/06/1989 at exh. 20, written by the appellant - original accused No. 1. He has submitted that in the said letter it was clearly stated by the appellant - original accused No. 1 to send back the deceased as early as possible without caring for "Ana" (dowry), meaning thereby, the appellant was interested only in the deceased's returning home and not in "Ana", however, the learned trial Judge has failed to appreciate the said aspect.

9.4 Moreover, Shri Qureshi has submitted that no independent witnesses are there to support the case of the prosecution and the witnesses examined by the prosecution are only related and interested witnesses.

9.5 Shri Qureshi, the learned advocate for the appellant - original accused No. 1 has also submitted that by now, the appellant has attained the age of 83 years and has age related dependency. Moreover, he has produced on record the Undertaking of Bequeathal of the appellant herein - original accused No. 1 bequeathing his property in the names of the daughters of deceased as well as Satishbhai - the husband of the deceased - original accused No. 3 as well as the Affidavits of No Objection of the sons of the appellant - original accused No. 1, to the aforesaid bequeathal.

9.6 Making above submissions, the learned advocate appearing for the appellant - original accused No. 1 has submitted that, in aforesaid view of the matter, the learned trial Judge has committed a grave error in convicting the appellant - original accused No. 1 for the offence charged against him and requested to allow the present appeal. No other submissions are made by him.

10. Per contra, Mr. Hardik Soni, learned Additional Public Prosecutor for the State of Gujarat, has submitted that the learned trial Judge, on conclusion of the trial, has held the original accused No. 1 - Shaligram Ramkrishna Patil only liable for the offence punishable under Sections 498-A and 304-B of the IPC and recorded conviction and sentence accordingly, discarding the case of the prosecution that all the accused persons have committed the offence charged against them, which is erroneous. He has submitted that the learned trial Judge has not properly appreciated the oral as well as documentary evidence produced on record. He has further submitted that the witnesses examined by the prosecution, have supported the case of the prosecution, however, the learned trial Judge has not properly appreciated the evidence of the said witnesses and thereby, recorded

such finding, which is contrary to the evidence available on record. The learned Additional Public Prosecutor has further submitted that the learned trial Judge ought to have considered the deposition of Shri Dangal Dagdu, who is the cousin brother of the complainant, recorded at exh. 33, in which he has categorically stated the fact of demand of mool (dowry) by the accused and causing harassment to the deceased on that count. The learned Additional Public Prosecutor has further submitted that the learned trial Judge has failed to appreciate the evidence of Rupchand Dhondu Chaudhary at exh. 38, who is the brother of the deceased. He has also fully supported the case of the prosecution and has deposed that while engagement, the accused had demanded motorcycle, however, since the complainant disagreed for the same as he was not in a position to give anything and if the demand persisted, not to carry on relations any more, the accused had given up their demand, however, after marriage, they started demanding mool, which fact was known to him while the deceased used to visit her parental home time and again. This witness has also deposed that, since the demand made by the accused could not be fulfilled, they started harassing and torturing the deceased. He has also deposed that only because of unbearable harassment and cruelty perpetrated to the deceased for mool, the deceased was not even ready to return to her matrimonial home without bringing mool from her parental home.

10.1 The learned Additional Public Prosecutor has further submitted that the learned trial Judge has also failed to appreciate the fact that original accused No. 3 - Satish Shaligram Patil - the husband of the deceased, had also written a letter to the deceased produced at exh. 24 and perusal of the same clearly establishes the fact of demand of mool. He has also submitted that by the said letter, it was suggested by the original accused No. 3 to sale out the land possessed by the father of the deceased to fulfill the demand of mool.

10.2 The learned Additional Public Prosecutor has further submitted that the learned trial Judge has failed to appreciate the fact that other accused persons also used to harass and torture the deceased for mool (dowry) and/or on the count of routine household work and thereby, they played a major role in the commission of the alleged offence against them and they are equally responsible for the same. The accused used to treat the deceased as a maid and perpetrated cruelty to her. He submitted that the reasons given by the learned trial Judge for acquitting the accused Nos. 2 to 5 are not convincing and cogent and are contrary to the oral as well as the documentary evidence on record. Last but not the least, he has requested that the appeal filed by the original accused No. 1 may be dismissed and the appeal filed by the State may be allowed in the interest of justice. No further submissions are made by the learned Additional Public Prosecutor.

11. We have heard the learned counsel appearing for the respective parties and perused the impugned judgment and order passed by the learned trial Judge. In light of the same, we have also gone through the record and proceedings related

to the Sessions Case No. 175 of 1990 and re-appreciated the evidence on record. The case of the prosecution appears to be that after passage of some time of the marriage of deceased - Sunanda was solemnized with Satish Shaligram Patil, the original accused No. 3, in the year 1984, the accused, more particularly, the original accused No. 1, started demanding mool (dowry) from the father of the deceased and as the father of the deceased was not in a position to satisfy the said demand of the accused, the original accused No. 1 and the other accused perpetrated cruelty, harassment and torture to the deceased, which led the deceased to commit suicide. Whereas, the case of the accused, more particularly, the appellant - original accused No. 1 is that the offence alleged to have been charged against the accused is not committed by any of the accused and is a got up and fabricated story of the prosecution, only with a view to harass the accused. It is submitted that the death of the deceased was the accidental and not suicidal. It is further submitted that amongst other aspects, the delay in lodging the FIR substantiates their aforesaid contention.

11.1 In support of the case of the prosecution, the prosecution has examined several witnesses and also produced documentary evidence. The letters written by the deceased as well as the original accused No. 1 and the original accused No. 3 can be said to be the crucial documentary evidence besides others. We have carefully gone through such letters available on record viz. letters at exh. 20, 22, 23 and 24. The learned trial Judge, in the judgment and order impugned herein, has also discussed the letters at length, more particularly, from para 23 onwards. From the evidence on record, following aspects can be abstracted:

"1) At the time of engagement, the accused No. 1 had asked for motorcycle from the complainant - the father of the deceased, which was categorically denied and when the demand persisted, the complainant was not ready to maintain relations, however, at that time, the accused No. 1 had shown his willingness to maintain relations and conveyed that he wanted nothing towards mool.

2) In spite of aforesaid specific denial by the father of the deceased during engagement and readiness on the part of the accused No. 1, the accused, more particularly, the accused No. 1 started demanding mool after the marriage, which had persisted till the deceased died.

3) That, as the father of the deceased - complainant, could not give any mool, the accused, more particularly, accused No. 1 started perpetrating cruelty, harassment and torture to the deceased. They also used to taunt the deceased on that count.

4) Due to the aforesaid cruelty, harassment, torture and taunting, it had become unbearable for the deceased to live at her matrimonial home and hence, time and again, she used to stay at her parental home. Even, before happening of the alleged incident, she stayed at her matrimonial home for a long time.

5) Due to the aforesaid cruelty being perpetrated by the accused, more particularly, the deceased No. 1, the deceased was not ready to return to her

matrimonial home until the mool is arranged.

6) The husband of the deceased i.e. original accused No. 3 also vide his letter suggested to sale of the land of the father of the deceased to arrange for the mool (dowry).

7) Moreover, the accused were using the deceased as a maid only for the purpose of their routine household work. Also, when the deceased was at her parental home the accused No. 1, by letter, asked the deceased to return to her matrimonial home as they needed her due to operation of Kiran."

11.2 If the letter dated 05/08/1985 at exh. 21 as well as the letter dated 01/06/1989 at exh. 20 and also the other letters written by the deceased are referred, it appears that demand of mool (dowry) was made by the appellant - original accused No. 1 and the said demand remained continued. If the letter at exh. 20 is perused, as observed by the learned trial Judge, as the son of the accused No. 1 namely Kiran - original accused No. 4 was admitted in the hospital, it was a dire need of the family to do the daily household activities and therefore, it was mentioned in the letter to keep aside the issue related to mool and to send the deceased at her matrimonial home at the earliest. The entire tenor of the letter appears not natural but if certain words and sentences are considered, it would appear that threat was administered by the accused No. 1. It was not a case of accidental death and the story related to deceased having got burn injuries by fire blazing while preparing hot water by stove, prima facie appears unconvincing and unbelievable for the reason that the stove was found from chowkadi and as such, if the Panchnama of scene of incident is perused carefully, as observed by the learned trial Judge, no smell of kerosene was found from chowkadi and this entire story appears to have been concocted and got up with an oblique motive. It is also a fact that the incident appears to have occurred at about 5:30 a.m. on 16/07/1989 and instead of shifting the victim to the hospital, at about 7:00 o'clock, the accused reached the police station and disclosed the fact related to accidental death. It further appears that the Inquest Panchnama was carried out between 7:15 a.m. and 7:30 a.m. and the entire investigation has been geared up at about 8:15 a.m. In short, this conduct of the accused No. 1, who is a retired policeman speaks volume. As referred herein above, though the statements, which were given on the next day by the parents of the deceased, for the sake of argument, are considered to be the correct, then also, looking to the conduct of the accused No. 1, one can easily come to the conclusion that, as such, the accused No. 1 had tried his best on the next day to close the issue and accordingly, on the next day of the incident in question i.e. on 17/07/1989, the original accused No. 3 - the husband of the deceased and son of the original accused No. 1 - Satish Shaligram Patil had deposited Rs. 40,000/- in the bank in the names of his two daughters in the joint account of the original accused No. 3 -husband of the deceased. It is pertinent to note that it has been said that the accused No. 1 had never made demand of mool (dowry), and so far as colour television is concerned, the same was purchased by

the accused No. 1 by taking loan from the bank. It is important to note that though the defence has come with the story that they have purchased the colour television by obtaining loan from the bank, nothing has come on record in support of their said defence and thus, the said fact also goes against accused No. 1. As referred herein above, the learned advocate for the appellant - original accused No. 1 has put much weightage on the statements of the parents of the deceased recorded on the next day of the incident i.e. 17/07/1989 and has submitted that thereafter, after about two months, the complaint was lodged, which is nothing but an afterthought and in fact, just to harass the original accused, the same had been filed upon instigation of concerned relatives of the complainant. However, from the above aspects and taking into consideration the facts and circumstances of the case in entirety, it can be said that there was a constant and persistent demand and pressure for mool (dowry) by the accused, more particularly, the original accused No. 1 and for that, the deceased had to undergo mental cruelty, harassment, taunting and torture perpetrated by the accused, which led the deceased to commit suicide. It has also come on record that after marriage of the deceased till the deceased died, the said demand was continued by the accused, more particularly, the original accused No. 1 and as the father of the deceased was unable to fulfill the demand, she was harassed, tortured and taunted by the accused and constantly remained under pressure. Under the circumstances, we are in agreement with the finding recorded by the learned trial Judge that the death of the deceased was suicidal and was caused due to cruelty perpetrated on her on account of demand of dowry by the accused more particularly, the original accused No. 1. Moreover, considering evidence on record and observations made by the learned trial Judge in para 27 of the impugned judgment and order, we are also in agreement with the finding recorded by the learned trial Judge that death of the deceased was dowry death punishable under Section 304-B, however, there seems no abetment to suicide on the part of the accused and hence, the accused could not be held liable for the offence punishable under Section 306 of the IPC.

11.3 So far as the contention on behalf of the learned Additional Public Prosecutor that other accused persons were also liable for the alleged offence and the learned trial Judge has erred in acquitting them is concerned, from the facts and circumstances narrated and discussed herein above and considering the documentary evidence on record, more particularly, the aforesaid letters and also considering the observations made by the learned trial Judge in the impugned judgment and order qua the issue, it is evident that the demand of mool was made by the accused No. 1 only. Moreover, if the letter dated 01/06/1989, written by the accused No. 1 and also the other letters written by the deceased are perused carefully, it can be said that it was only the accused No. 1 who was demanding mool and no other accused - family members of the accused No. 1 including the husband of the deceased were after that. As discussed by the learned trial Judge and as referred herein above, the original accused No. 1 initiated the demand of motorcycle near about engagement and

on categorical denial of the same by the complainant, he had conveyed that he wanted nothing towards mool and suppressed his desire and then, soon after the marriage of the deceased, the accused No. 1 started demanding mool and continued till she died and as observed herein above, persistent demand of mool and resultant harassment and torture led the deceased to commit suicide. It is submitted by the learned Additional Public Prosecutor that the original accused No. 3 - husband of the deceased, in his letter, had suggested to sale out the land of the father of the deceased for satisfying his demand of mool and hence, it can be said that the husband of the deceased was also interested in receiving mool, however, if the letter written by the husband of the deceased at exh. 24 is perused carefully, the intention of the husband of the deceased can be inferred to be that, since long the father of the deceased could not pay the mool and due to which, disturbance was created besides their relations were also affected and if the mool is paid, then peace might prevail. No other specific instances are there to show that the husband of the deceased was after getting the mool and was causing harassment to the deceased. On the contrary, the deceased herself has written in her letter that her husband is a weak person and he has no voice in the family issues. Accordingly, no role can be attributed to the husband of the deceased- original accused No. 3 in the alleged offence as observed by the learned trial Judge in the impugned judgment and order and we are in agreement with the said observation made by the learned trial Judge. So far as other accused - family members of the accused No. 1 are concerned, no specific instances could be noticed against them to show that they were demanding mool and perpetrating harassment and torture and taunting the deceased on that count. The trivial issues like reading of personal letters of the deceased by the brothers-in-law of the deceased and showing mistakes in household work cannot be termed as harassment and cruelty to the deceased more particularly, considering their tender age. Moreover, it has come on record that after the letter/s written in the year 1985, there appears no letter or happenings to show that they were harassing the deceased. So is the case qua the accused No. 2 - Sumanben Shaligram Patil, the mother-in-law of the deceased. Thus, in our considered opinion, the learned trial Judge has rightly come to the conclusion that the appellant herein - original accused No. 1 was the sole responsible person for the offence in question and no other accused.

11.4 Thus, on going through the impugned judgment and order carefully dealing with all the aspects of the matter, this Court is in agreement with the conclusion arrived at and findings recorded by the learned trial Judge and with a view not to burden the Court record any more, the Court stays its hands.

12. In view of the above and for the reasons stated above, there appears no perversity and/or illegality and/or arbitrariness in the impugned judgment and order dated 17/12/1992 passed by the learned Additional Sessions Judge, Surat in Sessions Case No. 175 of 1990, which require interference at the hands of this Court. Hence, the present appeals having found without any substance, fail and are dismissed accordingly.

12.1 It is reported that the original accused No. 1 - Shaligram Ramkrishna Patil, the appellant of Criminal Appeal No. 90 of 1993 is on bail. Therefore, his bail bond stands cancelled and he is hereby directed to surrender before the jail authority within a period of 08 weeks from today to undergo the remaining sentence imposed by the trial Judge.

12.2 Registry to send back the record and proceedings to the trial Court forthwith after following due procedure for the same.