
(2018) 03 BOM CK 0131

In the Bombay High Court

Case No : CRIMINAL APPEAL (APEAL) NO. 550 OF 2007

STATE OF MAH. THRU. P.S.O.

APPELLANT

Vs

GOKUL KALICHARAN GUPTA & 4 ORS.

RESPONDENT

Date of Decision : 15-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 304-B, 498-A, 498-A(b)
Code of Criminal Procedure, 1973 — Section 235

Citation : (2018) 03 BOM CK 0131

Hon'ble Judges : B. R. GAVAI , J, M. G. GIRATKAR, J

Bench : Division Bench

Advocate : S.M. Ghodeswar, V.R. Borkar

Final Decision : Dismissed

Judgement

M.G. Giratkar, J.

1.By way of present appeal, the appellant/State has challenged the judgment and order of acquittal dated 13.07.2007 passed by the learned Additional

Sessions Judge, Gondia in Sessions Trial No. 82 of 2005, thereby acquitting the accused/respondents for the offence punishable under Section 235 of

the Code of Criminal Procedure and the offence punishable under Sections 498-A, 304-B and 302 read with Section 34 of the Indian Penal Code.

2. The facts in brief, which give rise to filing of the present appeal, can be summarized as under :-

Deceased Sheetal was married with accused No.1 on 18.02.2005. Accused Nos.2 to 5 are the relatives of accused No.1. After marriage, Sheetal

came to reside with accused at Ramnagar, Gondia. She lived for six months after marriage. Her brother Sachin came to Gondia to fetch Sheetal. The

accused persons were not satisfied on seeing dowry articles i.e. one Godrej

almirah and a cot. They demanded one motorcycle of Hero Honda make.

They also told that they would take the dowry articles after giving the motorcycle. The mother of deceased Sheetal namely Rekhabai (PW-1) told

them that she had no capacity to give a motorcycle. Accused No.4 - Narayaneebai told that the almirah was not of good quality and in stead of it, she should give money. Accused No.1 and his mother not taken articles. Accused Nos.1 and 4 took Sheetal. She lived in the house of accused for 15 to

18 days. Thereafter, for holi festival, Sachin went to fetch Sheetal. Sachin brought Sheetal to Kewlari. Sachin told PW-1 Rekhabai that the accused

Nos.3 and 4 told him that he should bring Sheetal to Gondia with motorcycle and other dowry articles. She lived there for ten days.

Accused No.1 informed PW-1 that she should send Sheetal at Gondia along with dowry articles. After eight days, he reached Sheetal at the house of

accused at Gondia. Accused No.1 -Gokul, accused No.2 - Vijay and accused No.3 - Smt. Bhagwatibai were present in the house. Accused No.3

asked Sheetal as to whether she brought dowry articles. PW-1 - mother of Sheetal told them that she had no capacity to give the said articles. Sheetal

lived at Gondia for about four months. Sheetal came for Rakhi festival. Sheetal told her mother that it will not be proper if she did not take the dowry

articles. On 03rd September, 2005, her mother received telephonic message from accused No.2 that they should send Sheetal along with the articles.

On 04.09.2005, PW-1 and Sheetal went to the house of Mahadeoprasad Gupta at Nainpur. PW-1 told him to take Sheetal to the house of accused and

give understanding to the accused persons and thereafter Mahadeoprasad Gupta taken Sheetal to the house of accused on 05.09.2005.

On 09,09.2005, Laxminarayan Gupta, brother of Mahadeoprasad came to Kewlari and told that Sheetal was burnt. PW-1 along with Laxminarayan

immediately went to Shioni. Laxminarayan informed her that Sheetal was dead and brought to Gondia. Thereafter they went to Gondia at about 10:00

p.m. They could not see her dead body. They stayed whole night in the house of Rajesh Gupta. On the next day in the morning, they saw the dead

body of Sheetal. PW-1 suspected that she was killed by accused persons. Therefore, she lodged a report (Exh.65). On her report, crime was

registered against the accused persons for the offence punishable under Sections 498-A, 304-B and 302 read with Section 34 of the Indian Penal

Code. After completing investigation, charge-sheet came to be filed before the JMFC, Gondia, who, in turn, committed it to the Court of Session,

Gondia. Charge was framed at Exh.55. The same was read over and explained to the accused persons, to which, they pleaded not guilty and claimed to be tried.

3.The prosecution has examined in all 13 witnesses. At the conclusion of trial, learned trial Court acquitted all the accused for the offences punishable under Sections 498-A, 304-B and 302 read with Section 34 of the Indian Penal Code. Hence, the present appeal by the appellant/State.

4.Shri S.M. Ghodeswar, learned APP appearing on behalf of the appellant/State has submitted that the learned trial Court has not appreciated the evidence of prosecution witnesses in its proper perspective and acquitted the accused persons. Hence, prayed to allow the appeal.

5.Perused the evidence on record. The evidence of Rekhabai (PW-1) in respect of incident is not reliable. PW Nos.1 to 6 have stated vague

allegations in respect of demand of dowry. They have not stated any specific incident of cruelty by the accused/respondents. PW-7 Prakash not

supported the prosecution case. PW-8 Dr. Udeshkumar Bang, Medical Officer has stated that he has conducted postmortem on the dead body of

Sheetal. On external examination, he found burn injuries on all over body of Sheetal. He found one lacerated wound on occipital region. In his opinion,

the death of Sheetal was due to 95 per cent burn injuries. She died due to hypovolaemic shock with cardiorespiratory arrest. Accordingly, he issued

postmortem report (Exh.82).

6.PW-1 has admitted in her cross-examination that the accused No.1 - Gokul, since his childhood, was residing with grandmother (accused No.3).

Accused No.2 - Vijay was residing separately. The parents of accused No.1-Gokul were residing at Sagar (MP). Accused No.5-Rukmanibai was

residing at Jhasi (UP). This admission shows that all the accused were not residing jointly together, even though report was lodged against all the

accused irrespective of they had no role to play. PW-1 has admitted that accused persons were knowing their financial condition. Therefore, the

evidence that accused were demanding motorcycle is not reliable. Spot panchnama (Exh.77) shows that a stove was found on the spot of incident. It

is the defence of the accused persons that while cooking on stove, the deceased

Sheetal sustained burn injuries, appears to be probable. PW Nos.1 to 6 are interested witnesses. Nothing is brought on record to show that soon before the death of Sheetal, she was subjected to cruelty based on dowry demand. Material ingredients of Section 498-A sub clause (b) not proved by the prosecution. "Cruelty has to be of such gravity as is likely to drive woman to commit suicide or to cause grave danger or injury to life, limb or health. Mere harassment is not cruelty within the meaning of clause (b) of the Explanation of Section 498-A. It must be established that the beating or harassment was with a view to force wife to commit suicide or to fulfill illegal demands of husband or in-laws." In the present case, prosecution has not adduced any evidence to show what type of cruelty or ill treatment was meted out as alleged by the witnesses. They only suspected the accused persons and lodged a report. The "suspicion, however strong is no substitute for proof; and in criminal law the prosecution has to prove the guilt beyond reasonable doubt. The offence alleged in the present case being murder, which visits the perpetrator of the crime with the minimum sentence of imprisonment for life, a Court of law would be justified in demanding full satisfaction before the lethality of Section 302 can be used against anyone.

7. In the present case, the bare allegation in respect of demand of motorcycle, there is no other evidence to show that the deceased was treated with cruelty which was of such a nature to commit suicide. There is no dispute that Sheetal died within seven years from the time of marriage. Her death was also unnatural, but, that itself is not sufficient to convict the accused for the offence punishable under Section 304-B of the Indian Penal Code.

There is no evidence to show that accused persons committed murder of deceased Sheetal. The learned trial Court rightly recorded its finding. There is no illegality in the impugned judgment. The impugned judgment is well reasoned. Hence, we proceed to pass the following order.

The appeal is dismissed.

R and P be sent back to the learned trial Court. The bail bonds of respondents shall stand cancelled.