
(2018) 04 BOM CK 0076

In the Bombay High Court

Case No : CRIMINAL APPEAL (APEAL) NO. 13 of 2009

STATE OF MAH. THRU. PSO WARUD

APPELLANT

Vs

KASHINATH RAJARAM TINKHEDE & ANOR.

RESPONDENT

Date of Decision : 03-04-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 304-B, 306, 498-A

Citation : (2018) 04 BOM CK 0076

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

Bench : Division Bench

Advocate : S.M. Ghodeswar, Chinmay S. Dharmadhikari

Final Decision : Dismissed

Judgement

M.G. Giratkar, J

1. Criminal Appeal No. 698 of 2008 filed by the appellants against their conviction for the offence punishable under Sections 498A, 304B of the

Indian Penal Code for which they are sentenced to suffer RI for one year and to pay a fine of Rs.1,000/ each, in default, further to suffer RI for one

month for the offence punishable under Section 498A; and to suffer RI for eight years and to pay a fine of Rs.1,000/ each, in default, further to suffer

RI for one month for the offence punishable under Section 304B, vide judgment and order dated 24.09.2008 passed by the learned 2nd Additional

Sessions Judge, Amravati in Sessions Case No. 900 of 1997. Criminal Appeal No. 13 of 2009 filed by the State against acquittal of the appellants

for the offence punishable under Sections 302 and 306 read with Section 34 of the Indian Penal Code.

2. The prosecution case against the appellants/accused in short is as under :?

Deceased Ranjana was married to accused Sudhir on 12.07.1997. After the marriage, Ranjana went to cohabit with her husband at Warud. On

15.07.1997, her brother Prabhakar brought Ranjana to Akot for Satyanarayan Pooja. On 22.07.1997, her husband Sudhir came to Akot and taken

her back to matrimonial house. On 05.08.1997, her brother Prabhakar had been to village Benoda for attending the marriage of the girl from

Hirulkar family. After the marriage, he went to the house of accused at Warud for fetching Ranjana to Akot. While they were proceeding in ST

bus, the brother Prabhakar observed that Ranjana was somewhat unhappy. On his enquiry, she disclosed that her sister-in-law Sushma says that

the ornaments given in the marriage, belong to her. Husband and father-in-law say that the plan of the house is ready with them and she should

insist her brother for giving money. Ranjana told him that her husband and father-in-law were demanding cooler from him. She disclosed that

accused persons frequently torture her. At that time, Ranjana had stayed at her parental house for about seven to eight days and returned back to

matrimonial house.

It is further the case of prosecution that after 10-15 days, Ranjana committed suicide. Her brother Prabhakar went to Warud. Dead body of

Ranjana was lying in the hospital at Warud. After the funeral, PW-1 Prabhakar lodged a report in the Police Station. Offence punishable under

Sections 498A, 306 read with Section 34 of the Indian Penal Code came to be registered against the accused persons. PW-7 Manish Diwate,

API investigated the crime. After completing investigation, charge-sheet was filed before the JMFC, who, in turn, committed the case to the Court

of Session, Amravati.

Charge was framed by the trial Court at Exh.7. The same was read over and explained to accused Nos.1 to 4. They pleaded not guilty and

claimed to be tried. The prosecution has examined in all seven witnesses. At the conclusion of the trial, the learned trial Court acquitted accused

Nos.2 and 4 and convicted accused Nos.1 and 3 for the offence punishable under Sections 498A, 304B read with Section 34 of the Indian Penal

Code and sentenced them as aforesaid.

3. Heard Shri C.S. Dharmadhikari, learned Counsel appearing on behalf of the appellants in Criminal Appeal No. 698 of 2008 and for the respondents

in Criminal Appeal No. 13 of 2009 and Shri S.M. Ghodeswar, learned Additional Public Prosecutor appearing on behalf of the State in both the appeals.

4. From the evidence of PW Nos.1 and 4, it is clear that the death of deceased was within two months from the time of marriage. There is no dispute that the deceased died due to burn injuries. Postmortem Report (Exh.62) is proved by Medical Officer Dr. Ambadas Sadapure (PW2). As per his opinion, cause of death was due to 100 per cent burn injuries.

5. Prabhakar Talekar (PW1), brother of deceased has stated in his evidence that when he was returning along with Ranjana from the house of accused in the ST bus, he observed Ranjana was somewhat unhappy. On his enquiry, she disclosed that her sister-in-law Sushma was saying that the ornaments given in the marriage, belong to her. The husband and father-in-law were saying that she should insist her brother to give money for the construction of house. He stated that they were also demanding cooler from him.

6. Parwati Talekar (PW4), mother of deceased has stated in her evidence that after marriage, her daughter visited at the time of Raksha Bandhan. At that time, she disclosed that the behaviour of her husband was not proper. She also disclosed that her husband Sudhir was having some extra marital relations with another lady and he was not sleeping with her. She disclosed that her mother-in-law gave threats to her. She further disclosed that when no one was present in the house, her father-in-law used to sit on her bed with ulterior motive. Ranjana told her that her sister-in-law Sushma told her that the ornaments possessed by Ranjana owned by her and also demanded cooler, cooker etc.

7. The evidence of these material witnesses is contradictory. What PW4 mother has stated, not stated by PW1. PW1 not stated about the payment of Rs.31,000/ at the time of marriage; whereas PW4 has stated that Rs.31,000/ were given at the time of marriage. PW4 has stated about the extra marital relationship of the husband of deceased; whereas PW1 not stated so. PW4 has stated about the disclosure by the deceased that her father-in-law had ill eye on her. PW1 not stated so.

8. There is no dispute that Ranjana died within two months from the time of marriage. To attract Sections 498A and 304B, the prosecution had

to prove cruelty as defined under Section 498A and the demand of dowry. It is pertinent to note that PW1 was the Karta of family. He has

not stated anything about the demand of dowry by accused persons. He has not stated about the payment of Rs.31,000/ at the time of marriage;

whereas PW4 has stated that at the time of marriage, Rs.31,000/ were given.

9. In respect of disclosures made to PW Nos.1 and 4 are contradictory. There is no specific evidence to show that accused persons demanded any

dowry and on that count they treated the deceased with cruelty.

10. The reasons for committing suicide by the deceased appear to be different. Admission of PW4 in her cross-examination shows the real

cause of death of the deceased. PW4 has admitted in her cross-examination as under :

It is correct to say that I have not lodged any report that my daughter was set on fire. It is correct to say that my daughter disclosed me that

we were cheated and she does not want to reside at the house of accused. It is correct to say that even though by force, I sent my daughter. ... It

is correct to say that though my daughter disclosed me at that time I have not lodged report.

11. From the cross-examination of PW4, it is clear that deceased was not willing to cohabit with her husband at matrimonial house. She told her

mother that they cheated her and she did not want to reside in the house of accused. Out of frustration, deceased might have committed suicide.

There is no dispute that the deceased committed suicide by closing the door from inside.

12. PW3 has stated in his cross-examination that people broke open the door and carried said lady to the hospital. This itself shows that

deceased closed the door from inner side and burnt herself. There is no evidence on record to show that there was specific demand of dowry by

the accused persons. Evidence of PW Nos.1 and 4 is contradictory. Material admission of PW4 shows that the deceased was not willing to

cohabit with her husband. Possibility cannot be ruled out that the deceased committed suicide due to frustration. Learned trial Court not taken into

consideration this material evidence and wrongly convicted the appellants. Hence, we proceed to pass the following order :

â??Criminal Appeal No. 13 of 2009 is dismissed and CriminalÂ Appeal No. 698 of 2008 is allowed.

The order of conviction and sentence as recorded by the Second Additional Sessions Judge, Amravati in Sessions Trial No. 900 of 1997 dated

24.09.2008 is quashed and set aside.Â The appellants viz. Kashinath Rajaram Tinkhede and Sudhir Kashinath Tinkhede are acquitted of the offences

punishable under Sections 498ÂA and 304(B) read with Section 34 of the Indian Penal Code.Â They are on bail.Â Their bail bonds stand

discharged.â??