

(2020) 02 BOM CK 0027
In the Bombay High Court
Case No : Criminal Appeal No. 86 Of 2000

State Of Maharashtra

APPELLANT

Vs

Basveshwar Kallapa Patne And Ors

RESPONDENT

Date of Decision : 03-02-2020

Acts Referred:

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

Citation : (2020) 02 BOM CK 0027

Hon'ble Judges : S.S. Shinde, J;V.G. Bisht, J

Bench : Division Bench

Advocate : S.V. Sonavane, I.M. Khairdi

Final Decision : Dismissed

Judgement

S.S. Shinde, J

1. This Criminal Appeal is directed against the judgment and order dated 30th September, 1999 passed by the III Additional Sessions Judge, Solapur in

Sessions Case No. 142 of 1997 acquitting all the Respondents / Orig. Accused of the offence punishable under Sections 498-A, 304B, 302 read with

34 of the Indian Penal Code (for short "IPC").

2. The prosecution case, in brief, is as follows:-

The informant Guranna Shivappa Menasgi is resident of Nandgaon, Taluka Tuljapur, District Osmanabad. He has four sons and had three daughters.

All his sons are married and residing separately. His elder two daughters are also married. His last daughter Ambavva (deceased) was married to

Accused No. 2 on 15.01.1996. Accused no. 1 is the father of accused no. 2 and accused no. 3 is the brother of accused no. 1. The accused no. 4 is

the mother of accused no. 2 and rest of the accused persons are sisters and

sister in law of Accused no. 1. At the time of settlement of the marriage the informant Guranna i.e. father of Ambavva had agreed to give an amount of Rs. 10,000/-and one tola gold to accused no. 2. Thereafter, Ambavva had come to co-habit with accused no. 2 Sadanand at the house of accused at Patil Wasti, Vaijapur Naka, Solapur. As per custom, the informant Guranna had gone to the house of the accused persons to take back Ambavva for Halad Kadhali ceremony, at that time accused no. 1 had stated to Guranna that, proper treatment was not given to them at the time of the marriage. Accused no. 1 further stated that, he would not send Ambavva with Guranna for the ceremony. When Guranna contacted his daughter Ambavva, Ambavva stated him that as her in laws were not ready to send her, she would not come with him. Accused no. 2 did not speak anything at that time. As the complainant did not receive any message from Ambavva after about 12 days he had again gone to the house of the accused in order to meet his daughter. At that time the accused persons did not allow the informant Guranna to meet his daughter Ambavva and did not send her with him.

2. It is the prosecution case that thereafter in Adhik month while the informant had gone with wife to bring Ambavva and son in law, the accused no. 1 had stated that informant should take his daughter and son-in-law to his house. However, the informant should send proper Aher (gifts) for the rest of the accused persons, as per custom. The informant agreed to it and had taken his daughter and son-in-law to his house. When the informant questioned his daughter Ambavva, Ambavva narrated him that the accused persons, subjected her to mental cruelty and gave insulting treatment to her. However, at that time Ambavva did not speak anything against accused. After the stay of Ambavva and son in law for two days at his house, the informant send them back. About a month prior to 16.01.1997 while the informant had gone to the house of accused persons, accused no. 1, 2 and 4 had stated the informant that they were intending to open a shop at Laxmi Market, Solapur and for that purpose the informant should give an amount of Rs. 10,000/- to them. The informant had expressed his inability to give the money. When the informant met his daughter Ambavva, Ambavva stated him that she was being troubled by the accused persons. On 10.01.1997, while the informant, his wife Laxmibai, daughter Kasturbai etc, had gone to village Naldurg, there was dispute between the accused Basveshwar and

themselves and at that time accused No. 1 Basveshwar Patne had threatened the informant that he would see Ambavva after reaching Solapur. The aforesaid fact was narrated to the informant by his wife Laxmibai.

3. On 15.01.1997 while daughter of the informant by name, Manikbai resident of Solapur had come to the house of informant, she informed the informant that the accused Sadanand had come to her in the earlier night and had informed her that Ambavva had left the house of accused persons without informing anybody. The informant was frightened. On 16. 01.1997, the informant along with his wife, daughters and Police Patil of Nandgaon and other relatives had gone to Vijapur Naka Police Station. At that time police from Vijapur Naka Police Station informed them that, Ambavva died and accordingly a report was submitted by accused no. 1 to Vijapur Naka Police Station. Thereafter, the informant and his relative had gone to the house of accused persons but could not meet anybody. While informant and his relatives had gone to the well situated in the adjoining agricultural land of the accused persons, they saw the dead body of Ambavva @ Suman was floating on the well water. The informant suspected that accused no. 1 must have killed Ambavva.

4. Earlier one missing report about Ambavva was lodged by accused no. 1 to Police Station, Vijapur Naka on 15.01.1997. Thereafter, on 16.01.1997 accused no. 1 had lodged report to the police station that dead body of Ambavva was seen floating on the well water by him. Police from Vijapur Naka Police; Station had registered an Accidental Death in the matter. The dead body of Ambavva was sent for post mortem examination. Post-mortem examination of the dead body was done at Civil Hospital, Solapur. The informant lodged a report against the accused persons regarding the death of Ambavva. On the basis of the report lodged by complainant offences punishable under Sections 498-A, 306 of the Indian Penal Code were registered at Police Station.

5. P.S.I. Rupnar recorded the statements of witnesses on 17,01.1997, 18. 01.1997 and 19.01.1997. The clothes found on the dead body of Ambavva and other articles were seized. The accused persons were arrested. At the time of performing the post-mortem doctor sent viscera of Ambavva to C.A. for analysis. The other articles were also seized after receipt of the viscera report. The doctor opined that cause of death of deceased Ambavva

was drowning.

6. Charge-sheet was filed in the Court of Chief Judicial Magistrate, Solapur. As the offences were exclusively triable by the Court of Sessions, the

Chief Judicial Magistrate by his order dated 10.07.1997 committed the case to the Court of Sessions, Solapur. The learned Sessions Judge, Solapur

framed the charges under Sections 498-A, 304B, 302 read with 34 of the IPC. Accused pleaded not guilty and claimed to be tried.

7. After full fledged trial and recording the evidence, the Trial Court by judgment and order dated 30th September, 1999 acquitted the Respondents /

Accused persons from all the charges. Hence, this Appeal against acquittal filed by the State.

8. Heard learned APP appearing for the Appellant â?" State and Learned counsel appearing for the Respondents â?" Orig. Accused. With their able

assistance perused the judgment and order passed by the Court below, notes of evidence and original record and proceedings.

9. It is argued by the learned APP that, the prosecution has brought on record sufficient and cogent evidence of Laxmibai (PW 3), Amrut Kamshetti

(PW 4), Irayya Swami (PW 5), Mahadevi (PW 8) and Kasturbai Manajgi (PW 10) which would clearly show an involvement of the Respondents i.e.

accused in the commission of crimes in as much as all the aforesaid witnesses have stated that accused ill-treated and harassed the deceased soon

before her death. It is submitted that there is other evidence on record which would suggest the involvement of the accused. It is submitted that death

of Ambavva (deceased) occurred within 7 years from the date of marriage. Therefore, learned APP submits that Appeal may be allowed.

10. Learned counsel appearing for the Respondents â?" Orig. Accused relying upon the reasons recorded by the Trial Court urged that the Trial Court

has recorded the findings in consonance with the evidence on record and there is no perversity as such. Therefore, learned counsel appearing for the

Respondents â?" Orig. Accused submits that Appeal is devoid of any merits and same may be dismissed.

11. It appears that the Trial Court framed the charge for the offences punishable under Sections 304B, 498A read with 34 of the IPC against

Respondents â?" Orig. Accused.

12. The prosecution has examined Dr. Vasudeo Madgundi (PW 6).

He opined that the cause of death of Ambavva was due to drowning. He further stated that no external injury was noticed on the dead body. Relying

upon the medical evidence the Trial Court opined that in case of homicidal death, there would have been some injuries on the persons of Ambavva.

13. In order to find out whether there was cruelty and harassment to Ambavva (deceased) soon before her death at the hands of accused, the

prosecution did examine Laxmibai (PW 3), Amrut Kamshetti (PW 4), Mahadevi (PW 8) and Kasturbai Manajgi (PW 10) who are the relatives of the

father of Ambavva (deceased). So far Irayya Swami (PW 5) is concerned, the prosecution claims that he is an independent witness and fully

supported the prosecution case. We would like to discuss the evidence of aforesaid witnesses hereinafter.

14. Laxmibai (PW 3) is mother of Ambavva (deceased). As per her version marriage of accused Sadanand with Ambavva (deceased) was

solemnized three years prior to the date of incident. It is stated by this witnesses that, at the time of settlement of marriage of Ambavva (deceased)

with accused Sadanand an amount of Rs. 10,000/- was agreed to be paid as dowry by them to accused Sadanand. In addition to said amount 1½

Tola of gold was also agreed to be given. Laxmibai (PW 3) has also stated names of the persons who had attended the meeting for settlement of

marriage. It is alleged by her that, after marriage Ambavva (deceased) was not properly treated by the respondents "accused. However, it is

relevant to mention that after marriage Ambavva (deceased) with her husband Sadanand visited the place of parents of Ambavva (deceased). They

voluntarily offered to accused Sadanand clothes (Aher) and also gold ring weighting 5 gms. It clearly appears from the evidence of Laxmibai (PW 3)

that, it was voluntary act of parents of Ambavva (deceased) to offer such clothes and gold ring to Sadanand.

It is further stated by Laxmibai (PW 3) that, Accused demanded Rs. 10,000/- to purchase the shop. Therefore, alleged demand of Rs. 10,000/-(Ten

Thousand only) by the accused for the purpose of purchasing the shop appears to be subsequent demand / development after marriage. As per the

version of Laxmibai (PW 3) the accused Sadanand asked for the said money for purchasing the shop. It is also tried to be suggested by this witnesses

that accused Sadanand used to quarrel with Ambavva (deceased). However, no specific instances of such quarrel have been mentioned in her

evidence. It also appears from her examination in chief that, on the date when Ambavva (deceased) was missing on 15.01.1997 Laxmibai (PW 3)

was informed by Manikbai Zende that Ambavva (deceased) was missing, and thereafter Laxmibai (PW 3) along with her husband and other relatives

went in search of Ambavva (deceased). She further stated that her husband died due to illness on 05.06.1999. However, at the relevant time her

husband lodged the FIR against the accused.

During her cross-examination, she stated that, her husband was suffering from heart disease since 20 years of his age. Often they were required to

refer him to hospital. Their source of livelihood was dependent on the sell of vegetables. She stated that, their financial condition was poor. She further

stated that, family of the accused had landed property at Gholasgaon. The accused persons own other agricultural land at Kiniwadi. The accused also

owned agricultural land at Solapur. Specific suggestion was given to her that, whether accused No. 1 had sold certain land by converting the same to

non-agricultural use, however, she stated that she is not aware about such sell of land by the accused. She admitted that accused Sadanand was in

service. She stated that, she had told to the police at the time of recording her statement before police that M.G. Guruji, Amrut Kamashetti and other

relatives and son in law of accused no. 1 were present at the time of settlement of marriage. However, she cannot assign any reason as to why the

aforesaid fact is not recorded by the police in her police statement though stated by her.

If an alleged amount i.e. Rs. 10,000/- towards dowry was already paid at the time of marriage, the question of alleged demand of Rs. 10,000/-by the

accused would not arise.

She had stated to the police that, while they had gone to he house of brother of accused no. 1, accused no 1 had come there and threatened them.

There was exchange of words and that accused no. 1 had attempted to beat them, and that the son in law of accused no. 1 had intervened and

separated them. She cannot assign any reason as to why the aforesaid facts are not recorded by the police in her statement.

She further stated that, on 15.01.1997 Manikbai informed her about missing of Ambavva (deceased) and halted in her house. She did not suspect any

foul played in respect of Ambavva (deceased) on the date when Manikbai had

asked her as to whether Ambavva (deceased) had come to her. If the evidence of Laxmibai (PW 3) who is star witness of the prosecution case, is considered in its entirety, there are vague and general allegations of ill-treatment and harassment to Ambavva (deceased), by the accused.

15. The prosecution examined Amrut Kamshetti (PW 4) who in his evidence also stated that, when the marriage of Ambavva (deceased) was settled that time it was agreed that Guranna i.e. father of Ambavva (deceased) should pay an amount of Rs. 10,000/- to accused no. 2 as dowry. It was further agreed that in addition to Rs. 10,000/- Guranna should also give 1 tola of gold ring to accused no. 2. However, in his cross-examination he stated that, he is related to Guranna. Therefore, he appears to be an interested witness.

16. Through the evidence of Irayya Swami (PW 5) it has been tried to suggest that, there was ill-treatment and harassment to Ambavva (deceased) after her marriage during her stay in the matrimonial house by the accused, however, in his evidence also no any specific date, time or specific incident has been mentioned. So also in the evidence of Mahadevi (PW 8) and Kasturbai Manajgi (PW 10) there are no specific instances of cruelty and ill-treatment are stated. Mahadevi (PW 8) turned hostile and did not support the prosecution case, even in her cross-examination by the public prosecutor nothing useful to the prosecution was brought on record.

17. If the evidence of all the aforesaid witnesses is considered in its entirety, it suffers from non-disclosure of specific details of alleged cruelty and harassment to Ambavva (deceased) at the hands of the accused. Therefore, their evidence is of no use to the prosecution. Mere allegations of harassment and cruelty, in absence of mentioning specific time, date and specific overtact qua accused would not attract an ingredients of Section 304B of IPC. The prosecution ought to have led evidence to suggest that within the proximate time and date of the alleged incident, there were positive acts on the part of the accused of giving an ill-treatment and harassment to the victim, which ultimately resulted into death of victim. The prosecution has failed to establish that there was cruelty and harassment to Ambavva (deceased) by the accused soon before her death.

18. Even to attract the ingredient of Section 498A of the IPC, the prosecution must show specific acts of the accused suggesting cruelty and

harassment. There are general allegations made by the witnesses, and on the basis of such vague and general allegations, it is not possible to base the conviction of the accused thereby reversing the well reasoned order of acquittal passed by the Trial Court.

19. For the reasons stated in the forgoing paragraphs, we are of the considered view that, the findings recorded by the Trial Court are in consonance with the evidence on record and there is no perversity as such and Criminal Appeal is liable to be dismissed. Hence, Criminal Appeal stand dismissed.

Bail bonds of the Respondents â?" Orig. Accused, if any, shall stand cancelled.