

(2002) 11 BOM CK 0010
In the Bombay High Court
Case No : Criminal Appeal No. 256 of 1990

State of Maharashtra

APPELLANT

Vs

Smt. Satyabhama Pandurang Raipure

RESPONDENT

Date of Decision : 30-11-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 304, 498A

Citation : (2003) 2 ALD(Cri) 72 : (2003) BomCR(Cri) 1698 : (2003) CriLJ 1496

Hon'ble Judges : S.T. Kharche, J;D.D. Sinha, J

Bench : Division Bench

Advocate : Dhote, app, for the Appellant;

Final Decision : Dismissed

Judgement

D.D. Sinha, J.—Heard Mr. Dhote, the learned Additional Public Prosecutor for the Appellant-State.

2. The Criminal Appeal is filed by the State against the judgment and Order of acquittal, dated 9-2-1990, passed by the Sessions Judge, Buldana, in Sessions Trial No. 104 of 1988, whereby the present respondent is acquitted of the offences punishable under Sections 302, 304-B and 498-A of the Indian Penal Code. Mr. Dhote, the learned APP for the appellant, contended that in the instant case the prosecution has examined in all fourteen witnesses in order to prove the offences charged against the respondent. It is contended that out of these witnesses, evidence of Samadhan (PW. 5), father of deceased Shashikala, Digambar (PW. 8), Bhagwat (PW. 9) and Kasturabai (PW. 10) is relevant to unfold the material particulars of the prosecution case in respect of the offence of murder as well as dowry death and cruelty committed on the deceased by the respondent-accused. Mr. Dhote states that the evidence of these witnesses is corroborated by the evidence of Dr. Vinodkumar Ukarde (PW. 1), who has conducted post mortem examination on the dead body of the deceased and found 73 per cent burn injuries on the person of the deceased and opined that the probable cause of death is Septicaemia due to 73 per cent of burns. It is

contended that the deceased Shashikala was the daughter of Samadhan (PW. 5) and was ill-treated by the respondent-accused immediately after her marriage. Deceased Shashikala was married to Digambar, who is the son of respondent-accused about five months prior to the incident. It is contended that the case of the prosecution is that on 20-8-1988, the mother-in-law of deceased Shashikala, i.e., the present respondent, asked her to prepare tea and, therefore, Shashikala ignited a stove and kept a pot on the said stove. In the meanwhile, respondent Satyabhama came from behind her, poured kerosene on her person and set her on fire. The deceased Shashikala succumbed to the burn injuries. It is contended that in order to prove these facts, the evidence of the above referred prosecution witnesses is material. It is contended that the trial Court failed to properly appreciate the testimonies of the above referred prosecution witnesses and came to a wrong conclusion that the prosecution failed to establish the case of murder against the respondent-accused.

3. Similarly, the evidence of the above referred prosecution witnesses on a close scrutiny would reveal that this is a case of dowry death, since the death of Shashikala is caused by burns in unnatural circumstances within seven years of marriage and the evidence would further reveal that before her death she was subjected to cruelty and harassment by the respondent, who is the mother of her husband Digambar in connection with the demand of dowry. It is, therefore, contended that the prosecution in the instant case also proved the charge u/s 304-B of the Indian Penal Code.

4. Mr. Dhote, learned APP, further contended that the offence, u/s 498-A of the Indian Penal Code has also been proved by the prosecution in the instant case against the respondent-accused, since the deceased was subjected to cruelty by the respondent, who is the mother of Digambar, the husband of deceased. It is contended that the totality of the prosecution evidence, if considered properly, proves the case against the respondent for the offences charged.

5. We have considered the contentions canvassed by the learned APP and perused the evidence adduced by the prosecution. The material particulars of the prosecution case, in nutshell, are as follows :--

Shashikala (deceased) was the daughter of Samadhan Shankar Dhoran (PW. 5), a resident of Khamgaon, and was married to the son of respondent Satyabhama on 2-3-1988. The respondent resided along with her son Digambar Raipure at Malkapur. Digambar is a tailor by profession*. Kasturabai (PW. 10) is the sister of Samadhan and at the relevant time was residing in his house at village Januna. After marriage, deceased Shashikala visited the houses of her father Samadhan at Khamgaon as well as village Januna on three occasions and it is the prosecution case that she apprised him of the happenings at her house. Shashikala used to complain that her mother-in-law, the present respondent, used to torture, ill-treat and beat her, since her demand in respect of a television, and utensils could not be fulfilled. It is further alleged by the prosecution that Shashikala sent letters to her father Samadhan regarding ill-

treatment meted out to her by the respondent Satyabhama. It is alleged by the prosecution that on 20-8-1988, the respondent Satyabhama asked the deceased Shashikala to prepare tea. Shashikala was preparing tea. In the meanwhile, the respondent came from behind, poured kerosene on her person and set her on fire. Deceased Shashikala succumbed to the injuries in the hospital where she was admitted and had sustained 73 per cent burn injuries.

6. During the course of investigation, Dying Declaration of Shashikala was recorded by the Executive Magistrate. It is the case of the prosecution that Samadhan Shankar, father of the deceased Shashikala, met her at General Hospital, Buldana, where she made a disclosure that accused Satyabhama had poured kerosene on her person and set her on fire in her house on 20-8-1988. It is also alleged by the prosecution that deceased Shashikala was always tortured by Satyabhama on account of inadequate dowry given by her father in the marriage and even subsequent to the marriage, accused Satyabhama continued to make illegal demand of a television and other articles from Shashikala and insisted that she should bring these articles from her parents. It is the case of the prosecution that Shashikala made a complaint of ill-treatment by the accused to Kasturabai.

7. After completion of investigation, the Investigating Officer Vijay Rathod (PW. 11) filed a charge-sheet. A charge was framed against the respondent for the offences punishable under Sections 302, 304-R and 493-A of the Indian Penal Code. The accused-respondent pleaded not guilty to the charge and claimed to be tried.

8. In the instant case, though the prosecution has examined fourteen prosecution witnesses, however, the case of the prosecution mainly rests on the evidence of Samadhan (PW. 5), Digambar (PW. 8), Bhagwat (PW. 9) and Samadhan (PW. 5), Digambar (PW. 8), Bhagwat (PW. 9) and evidence in the form of a Dying Declaration (Exh. 55) recorded by the Executive Magistrate on 20-8-1988 at about 11-00 a.m. This Dying Declaration is recorded by the Executive Magistrate without lapse of time. Dr. Prannath (PW. 6) is examined by the prosecution to show that he had examined deceased before and after recording her Dying Declaration and certified that she was in a fit condition to give Dying Declaration and was conscious even after the Dying Declaration was recorded. His evidence has, more or less, gone unchallenged. In the instant case, before we consider the evidence of the other prosecution witnesses, it will be appropriate to consider the evidence of Dying Declaration available on record. Dr. Ramchandra Rane (PW. 7) has stated in his deposition that he was working as a Medical Officer in the Cottage Hospital, Malkapur. On 20-6-1988, he had examined Smt. Shashikala Digambar Raipure (deceased) at about 11-00 a.m. who was brought to the hospital by her relatives, and found following injuries :--

a. Burnt face complete.

b. Neck complete.

c. Upper limbs, right and left -- complete.

d. Thorax -- anteriorly, posteriorly -- left thigh anterior -- posteriorly.

He further deposed that deceased had sustained 72 to 75 per cent burns. This witness has proved Injury Certificate (Exh. 35). Dr. Prannath (PW. 6) in his deposition has stated that on 20-8-1988 he was attached to the Cottage Hospital, Malkapur, as a Medical Officer and at about 11-00 a.m., Executive Magistrate came to the hospital for recording the Dying Declaration of deceased Shashikala. Dr. Parannath examined Shashikala in the presence of the Executive Magistrate and found that she was in a fit mental state to give the statement. Accordingly, he made an endorsement on Exh. 33, which bears his signature. This witness has further deposed that the Executive Magistrate thereafter recorded the Dying Declaration of the deceased in his presence and after completion of recording of the Dying Declaration, this witness has again examined Shashikala and found that she was conscious and made necessary endorsement on Exh. 33. This witness has specifically stated that Shashikala was conscious before and after the Dying Declaration. The cross-examination of this witness is very cryptic. Virtually the evidence has gone unchallenged.

9. The Dying Declaration was recorded by the Executive Magistrate in a question and answer form and the same is reproduced as follows :--

" 1. Can you hear and understand what I say?

:-- Yes.

2. With what, when and where this happened with you?

:-- At about 8 O'clock in the morning I sustained burn injury at my house situated in Ramwadi due to stove (The kerosene in the) stove burst as a result of which I sustained burns. I started shouting.

3. Who brought you in the hospital and when brought?

:-- My husband brought me to the hospital. My husband was not present at the house. He brought me to the hospital prior to 15 minute.

4. For what reason you set on fire?

:-- I was igniting stove and the kerosene in it burst and my person caught fire. I could not understand. I raised shouts. My husband had gone to market and my mother-in-law was ill.

5. Do you think that this is an attempt to set you on fire?

:--No.

6. Do you have any suspicion for anybody?

:--No.

7. Do you wish to say anything more?

:-- Give telegram to my father.

8. Do you think that the said act has been committed knowingly?

:-- I do not think so."

10. The contents of the Dying Declaration totally falsify the story of the prosecution that the respondent poured kerosene on the person of the deceased at the time when deceased Shashikala was preparing tea and set her on fire. It is pertinent to note that this Dying Declaration is recorded by the Executive Magistrate at 11-00 a.m., in the Cottage Hospital i.e., almost immediately after the incident in question had taken place on 20-8-1988. There is no evidence to show that either the husband of the deceased or any other relatives of the husband of the deceased has exercised any pressure on the deceased to give such a Dying Declaration. The document of Dying Declaration (Exh. 55) was produced by the prosecution and is admitted by the defence and, therefore, in view of Section 294 of the Criminal Procedure Code, where the genuineness of such document is not disputed, such document can be read in evidence without proof of the signature of the person to whom it purports to be signed. In view of this fact, the Dying Declaration (Exh. 55) can be admitted in the evidence. It is pertinent to note that the deceased was in a fit condition to give Dying Declaration which can be seen from the evidence of Dr. Prannath (PW. 6). The deceased in the Dying Declaration has not even remotely implicated the respondent in the incident. On the other hand, the recitals in the Dying Declaration would show that it is a sheer accident and the deceased caught fire because of bursting of the stove, and completely ruled out the possibility of any nexus between the Act of burning and the respondent. On the other hand, it is specifically stated by the deceased in the Dying Declaration that at the relevant time the respondent was ill. In view of these recitals in the Dying Declaration, by no stretch of imagination, it can even be presumed that the respondent was, in any way, responsible for causing burn injuries to the deceased.

11. On the backdrop of these facts, it would be appropriate to consider the evidence of other prosecution witnesses in order to find out whether other evidence adduced by the prosecution is sufficient to prove beyond all reasonable doubt the offences charged against the accused.

12. Samadhan (PW. 5) is the father of deceased Shashikala, and has deposed that Shashikala died five months after her marriage. Shashikala visited this witness on some occasions after her marriage and complained that the respondent Satyabhama used to torture, ill-treat and beat her and also used to ask her to bring a television and utensils from the house of her father. This witness has further deposed that deceased Shashikala had written a letter (Exh. 28), which was received by him. Similarly, he had also received another letter (Exh. 29) written by deceased Shashikala's husband Digambar and another letter (Exh. 30) sent by Digambar Raipure. This witness has further deposed in

his examination-in-chief that on 20-8-1988, Shri Gopal Raipure and Gram Sevak Chaudhary met him and told him that his daughter Shashikala had poured kerosene on her person and set herself on fire and was admitted in the hospital at Buldana. This witness went to Buldana with Dr. Dhoran at about 6.00 p.m. He met deceased Shashikala in the General Hospital. Shashikala requested him to bring her mother and his sister to the hospital. It has come in the evidence of this witness that he asked Shashikala as to how the incident has occurred. Deceased told him that her husband was not at all responsible. However, her mother-in-law the respondent Satyabhanja asked her to prepare tea and while she was preparing tea, the respondent came from behind her and poured kerosene on her person and set her on fire.

13. It is pertinent to note that the statement of this witness was recorded on 22-8-1988. However, in the said statement, this witness did not mention anything-in-respect of these facts that he was told by his daughter deceased Shashikala that the respondent Satyabhama asked the deceased to prepare tea and while she was preparing tea, the respondent poured kerosene on her person and set her on fire. This is apparently a material omission which goes to the root of the prosecution case and destroys the basic fibre of the material particulars of the prosecution case in respect of the offence punishable u/s 302. It is no doubt, true that in the supplementary statement of this witness recorded by the police at a later point of time, he has mentioned these facts. However, it is difficult to place reliance on this version of Samadhan (PW. 5) because if his daughter deceased Shashikala would have told him the cause of death, this witness, in all eventuality, ought not to have forgotten to mention this fact in his first statement itself which is recorded by the police. This aspect also needs to be considered on the backdrop of the recitals in the Dying Declaration given by deceased Shashikala. Hence in view of the evidence on record, it is apparent that this witness has made improvements in his version, which, in our view, are difficult to rely.

14. Similarly, the evidence of this witness reveals that the marriage ceremony of the daughter of this witness Shashikala was successfully performed on the due date without any grievance from the side of Digambar. Nobody had any grievance in respect of the negotiations pertaining to giving of articles etc. and, therefore, the marriage of his daughter was performed without any problem. This witness has also stated in his deposition that the family members of Digambar were happy and Digambar (husband of deceased Shashikala) was a person of good character and he used to behave very well with this witness initially after the marriage. In the cross-examination of this witness, it has come that deceased Shashikala visited his house twice or thrice after marriage. However, he did not notice any feeling of revenge or animosity, as far as Shashikala is concerned, either against her husband or mother-in-law. However, she was, by and large, unhappy with them. This witness has further deposed in the cross-examination that because of this he did not feel it necessary to lodge a report against the respondent for the ill-treatment meted out to Shashikala. On the

other hand, this witness has advised his daughter to continue cohabitation with her husband Digambar and over a period of time, their attitude may change. The evidence of this witness, in our view does not disclose a specific ill-treatment or torture given by respondent to deceased Shashikala on account of non-fulfilment or demand of dowry though there is a generalized statement made by this witness in his deposition, in this regard. As far as letters at Exhs. 28, 29 and 30 received by this witness are concerned, except the letter (Exh. 30) written by Digambar, the other two letters are, more or less, silent on the aspect of demand of dowry in the form of a television or utensils etc., by the respondent. It is noteworthy that the letters (Exhs. 28 and 29) are written to this witness by deceased Shashikala just prior to the incident in question, i.e. on 15-7-1988 and 17-8-1988. The contents of these letters do not demonstrate that the respondent has, at any point of time, either tortured or ill-treated the deceased on account of non-fulfilment of demand made by her in respect of a television, utensils etc. Except in the letter (Exh. 28), deceased Shashikala had made a reference in respect of a radib. This solitary statement, in our view, is totally inadequate to hold that the deceased was subjected to any torture or ill-treatment by the respondent. It is, therefore, clear that deceased Shashikala has not made any grievance about ill-treatment or torture in her letters (Exhs. 28 and 29) and, therefore, the totality of the evidence of this witness, in our view, does not throw any light on the aspect of offence under Sections 304-B as well as Section 498-A of the Indian Penal Code and as far as the offence of murder is concerned, it is unsafe to rely on the testimony of this witness for the reasons stated hereinabove. Digambar Onkar Dhoran (PW. 8) in his examination-in-chief has stated that deceased Shashikala was married on 2-3-1988 with Digambar Raipure and after her marriage she visited his house for about four times along with her husband Digambar at Khamgaon. Shashikala did not speak anything to him about ill-treatment. However, he came to know about ill-treatment only through Samadhan (PW. 5), the father of the deceased. This witness on 20-8-1988 came to know from Samadhan that Shashikala received burn injuries and was hospitalized and, therefore, he went to General Hospital at Buldana along with Samadhan (PW. 5). This witness has deposed that when he went to the hospital, deceased Shashikala requested him to bring her mother and father's sister to the hospital. Therefore, he went to Khamgaon and informed the mother of the deceased. This witness further deposed in his examination-in-chief that when he asked Shashikala as to how she had caught fire, she told him that the respondent Satyabhama asked her to prepare tea and while she was preparing tea, the respondent Satyabhama poured kerosene and set her on fire. In the cross-examination of this witness, this witness has admitted that deceased Shashikala used to speak with him freely and was very friendly with him. This witness has further stated in the cross-examination that Shashikala was in a fit condition to speak when he met on 20-8-1988, i.e. the day of incident. She did not speak a word about the incident on 20-8-1988. There is a positive suggestion given by the defence to this witness in the cross-examination, to which this witness has replied that he did not know whether there was a discussion about

occurrence after Samadhan met Shashikala. The ocular testimony of this witness would show that Shashikala, at no point of time, either informed him or disclosed him anything in respect of any torture or ill-treatment on account of demand of dowry though she was very friendly and close to this witness. This witness came to know about the fact of torture and ill-treatment only through her father Samadhan. Since we have already expressed our opinion in respect of testimony of Samadhan being untrustworthy in this regard, it will be highly unsafe to place any reliance on the testimony of this witness. Similarly, the admission given by this witness in the cross-examination to the effect that when he met Shashikala in the hospital on 28-8-1988 and though she was in a fit condition to speak, she did not speak a word about the incident on that day clearly falsifies the version given by this witness in his examination-in-chief in respect of pouring of kerosene and setting Shashikala on fire by the respondent. If Shashikala was in a fit condition to speak, then in all probabilities, she ought to have informed the incident of pouring of kerosene and setting her on fire by the respondent. However, her silence speaks volumes in this regards and, therefore, in our view, it will be unsafe to rely on the testimony of this witness.

15. So far as Bhagwat Samadhan Dhoran (PW. 9) is concerned, he is the brother of deceased Shashikala and he stated in his examination-in-chief that Shashikala told his parents that, the respondent made a demand of television, tape recorder and used to beat her. When this witness came to know that Shashikala received burn injuries and was in the General Hospital at Buldana, he went to see her. Bhagwat (PW. 9) further deposed that he asked Shashikala how she had caught fire. Thereupon Shashikala disclosed him that her mother-in-law (respondent) poured kerosene on her person and set her on fire. He has also identified the hand writing of Shashikala and her husband, visa-vis Exhs. 28, 29 and 30, and claimed to have seen deceased Shashikala's husband beating her in his presence. In the cross-examination of this witness, it has come that he failed to mention in his police statement that Shashikala's husband had beaten her in his presence when he had gone to bring her back. This omission is material and destroys the testimony of this witness in respect of ill-treatment meted out to Shashikala by her husband. It is pertinent to note that the examination-in-chief of this witness reveals that though Shashikala visited her parents' house on two or three occasions after marriage, she did not tell to this witness about ill-treatment or demand of dowry made by the respondent. It is difficult to visualize that this witness being a brother of deceased Shashikala and met Shashikala on a couple of occasions. Shashikala would fail to inform this witness about ill-treatment or torture meted out to her by the respondent. Though it has come in the evidence of this witness that Shashikala disclosed him about pouring of kerosene and setting her on fire by the respondent, this aspect needs to be evaluated on the backdrop of the aspect of dying declaration, evidence of Samadhar (PW. 5) as well as Digambar (PW. 8). In the Dying Declaration, Shashikala completely excluded the respondent in respect of the crime in question. Similarly, Samadhan failed to mention these facts in his first statement

recorded by the police and though Digambar (PW. 8) met deceased Shashikala on 20-8-88, she did not tell anything to him in respect of the incident. Taking into consideration the ocular testimonies of these witnesses, it is difficult for us to see any truth in respect of the testimony of Bhagwat (PW. 9)

16. Kasturabai (PW. 10) deposed in her examination-in-chief that she went and met Shashikala in the hospital and asked her how she had caught fire. Shashikala replied to her that her mother-in-law Satyabhama asked her to prepare tea and while preparing tea, she poured kerosene on her person and set her on fire. Though this witness in her examination-in-chief has stated that whenever deceased Shashikala used to visit her house, she used to complain to her that her mother-in-law Satyabhama used to torture her because of non-fulfilment of demand in respect of a television and a tape recorder .There are material omissions in the evidence of this witness in respect of demand of dowry and ill-treatment on account of non-fulfilment of demand of a television and a tape recorder .This witness has not stated anything in this regard in her police statement and for the first time, disclosed this fact in her ocular testimony before the Court and, therefore, there is a serious doubt about the authenticity of the ocular testimony of this witness in this regard and it will be highly unsafe to rely on the testimony of this witness. Similarly, so far as the aspect of pouring of kerosene and setting her on fire by the respondent is concerned, that will have to be evaluated in a similar manner as we have done in the case of Bhagwat (PW. 9) and on the backdrop of such facts, the evidence of this witness cannot be relied on for the similar reasons .

17. It is, no doubt, true that evidence of the witnesses cannot be brushed aside merely because they are closely related to the deceased. However, at the same time, we cannot turn the Nelson's eye to the fact that because of the relationship with the deceased, they do have some amount of interest in the prosecution of the accused and, therefore, evidence of such witnesses needs to be scrutinized with care and caution. The evidence of Samadhan (PW. 5), Digambar (PW. 8), Bhagwat (PW. 9) and Kasturabai (PW. 10), for the reasons stated hereinabove, in our considered view, is inadequate to prove beyond all reasonable doubt the offences of murder, dowry death or cruelty.

18. It is, no doubt, true that Dr. Vinodkumar (PW. 1) conducted post mortem examination on the dead body of deceased Shashikala and noticed 73 per cent burns and opined that the probable cause of death is Septicaemia due to 73 % burn injuries. However, this being the corroborative piece of evidence, that by itself is insufficient to establish the identity of the author of the crime. When the ocular testimonies of the above referred witnesses, in our view, are inadequate to prove the offences beyond all reasonable doubt against the respondent, the medical evidence in the instant case, in our considered view, is of a little help to the prosecution in this regard.

19. Another aspect, which needs to be considered, is that this is an appeal against acquittal and it is well settled that unless the finding of acquittal recorded

by the trial Court is either perverse or totally inconsistent with the evidence on record and is unsustainable in law, this Court should be slow in interfering with such a finding. Similarly, while appreciating the evidence on record, when two views are possible, even then the benefit of doubt needs to be given to the accused. Keeping in view these parameters as well as the evidence adduced by the prosecution, no case is made out for interference. Appeal of the State is, therefore, dismissed.