

(2018) 06 BOM CK 0042
In the Bombay High Court
Case No : CRIMINAL APPEAL NO. 465 OF 2003

STATE OF MAHARASHTRA

APPELLANT

Vs

UDAYSINGH KISAN PATIL & OTHER

RESPONDENT

Date of Decision : 07-06-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 304B, 306, 498A
Dowry Prohibition Act, 1961 — Section 3, 4
Code of Criminal Procedure, 1973 — Section 313

Citation : (2018) 06 BOM CK 0042

Hon'ble Judges : T.V. NALAWADE, J; K.L. WADANE, J

Bench : Division Bench

Advocate : P. G. Borade, V. C. Patil, Vijay Sharma

Final Decision : Dismissed

Judgement

K. L. Wadane, J

1. The appeal is presented by the appellant/State against the judgment and order passed by the Ad Hoc Additional Sessions Judge, Jalgaon in

Sessions Case No. 208/2000 dated 18th February 2003 by which all the accused Nos. 1 to 5/Respondents have been acquitted from the charges

punishable under Section 498 A, 304 B, 306, read with Section 34 of the Indian Penal Code under Section 3 and 4 of the Dowry Prohibition Act.

2. The brief facts of the case may be stated as follows:

i) That the deceased Ujwala was the daughter of PW 3 Madansingh Rajput. She married with accused No. 3 Sunil on 15th April 2000. It

is alleged that in the marriage dowry was settled to the tune of Rs.60, 000/ out of which an amount of Rs.50, 000/ was paid in the meeting for

the settlement of marriage and remaining dowry of Rs.10, 000/ was to be paid

to the accused persons in the marriage.Â Golden ornaments and other articles were given to the accused No. 3 husband and the other accused persons.Â After the marriage all the accused persons were residing jointly along with deceased Ujwala. After about 8 days PW â?" 3 Madansing went to the house of accused persons to bring the Ujwala to her parentsâ?? house.Â However she was not sent by her in laws.Â After about 8 to 10 days thereafter accused No. 4 brother in law of the deceased namely Arvind brought Ujwala to the house of her parents.Â At that time accused No. 4 instructed the parents of Ujwala to arrange a remaining dowry of Rs.10, 000/Â otherwise they have to pay interest on the said amount.Â When Ujwala was at her matrimonial house, at that time she disclosed to her parents and aunt Pramila Bai that her brother in law accused No. 4 Â Arvind pressed her breast and committed forcibly intercourse with her.Â Ujwala informed this fact to her mother in law accused No. 2 on which she told her that Ujwala had to bear this since the accused No. 4 is her brother in law.Â Ujwala also complaint to the father in law accused No. 1 but in vain.

ii)Â It is further alleged that the accused No. 4 committed forcibly sexual intercourse with Ujwala in their house and the accused No. 4 threatened her not to disclose this fact to anybody.Â After 15 days the accused No. 3 husband Sunil went to the parental house of the Ujwala to bring her, stayed there for two days and during that period he also demanded the remaining amount of dowry.Â On 18.07.2000 the parents of Ujwala received message that Ujwala consumed the poisonous substance and was admitted in the hospital at Dharangaon.Â They went to the hospital and found that dead body was lying in the hospital.Â The clothes from her person were scattered and nobody was present from the matrimonial house.Â After the postmortem the dead body was takenÂ Â to her maternal home for funeral and last ceremonies were performed.Â

iii)Â The incident took place on 08.07.2000.Â PW Â 1 lodged first information report on 14.07.2000. After registration of the crime, the inquest panchanama was prepared (Exh. 22).Â The investigating officer visited the spot and prepared a spot panchnamaÂ and one tin containing Endosulfan was seized.Â It was sent to the chemical analyzer.Â Its CA report was received. During the investigation, the investigating officer had recorded the

statement of PW 1 Pramilabai mother of the deceased, PW3 Madansingh father, PW 4 Pramilabai Aunt. The investigating officer also

recorded the statement of PW5 Madansing Patil and after doing the as usual investigation, the investigating officer submitted the charge sheet in

the Criminal Court at Jalgaon. Case was committed to the Court of Sessions. iv) The learned AdHoc Sessions Judge framed the charge against

the accused persons for the offences punishable under Section 498 A, 304 B, 306 read with Section 34 of the IPC and under Section 3 and 4 of

Dowry Prohibition Act. The Contains of the same were explained to the accused persons to which they have denied and claimed to be tried.

v) In order to established the charges against the accused PW1 Pramilabai examined at Exh. 42, PW 2 Panch witness Subhas Dhangar at Exh.

47 , PW3 Madansingh father of the deceased at Exh. 50 , PW4 Pramilabai (aunt) at Exh. 51, PW 5 Madansingh Patil a witness on the

meeting of the settlement of marriage at Exh. 52. PW 6 Dr. Nilesh Chordiya at Exh. 54 who conducted the PM report, Investigating Officer

Mr. S. M. Rajput at Exh. 58. Besides the oral evidence of the aforesaid witnesses the prosecution had relied upon the Spot Panchanam Exh. 48,

Postmortem Report Exh. 55, CA report Exh. 56.

vi) As against this the accused persons have examined defense witness i.e. DW1 Vikram Patil at Exh. 66, DW2 Gokul Dhangar at Exh. 67.

On perusal of the statements of the all the accused persons under Section 3(13) of Cr. P. C., it appears that the defence of the accused persons is

that the deceased was spreading insecticide on the cotton crop and due to inhaling of the insecticide the deceased Ujwala got poisoned.

3. We have gone through the entire evidence on record with the help of the learned counsel for the parties. On perusal of the same it appears

that Ujwala died due to the poison of Endosulfan within a period of three months from date of her marriage. According to the prosecution, all the

accused persons illtreated her due to which she committed suicide. To establish the offence punishable under Section 306 of the Indian Penal

Code, it is for the prosecution to establish beyond reasonable doubt that the accused persons have illtreated to Ujwala with intent to lead her to

commit suicide. It was also for the prosecution to establish that the illtreatment was to such an extent, due to which Ujwala compelled herself to

commit suicide and there was no alternate before her but to commit suicide. To prove this fact the Pramilabai PW 1 deposed as follows:

The PW 1 Pramilabai the mother of the deceased deposed that her daughter Ujwala was residing jointly along with accused persons and she resided

there for 8 to 10 days, thereafter, this witness sent her husband to bring her daughter, however, she was not sent along with Madansingh. After 8 to

10 days the accused No.1 Arvind came to the house of this witness along with Ujwala on motor cycle. He demanded remaining amount of dowry

of Rs.10, 000. He also said that otherwise interest will have to be paid. Thereupon Ujwala disclosed that her brother in law accused No. 4 ill-

treated her. He committed forcible sexual intercourse with her. He also disclosed that she informed this fact to her father in law, mother in law,

however, nothing was done. It is also came on record that subsequently Ujwala went to her matrimonial house. At that time she was happy.

4. The evidence of PW 3 Madansing Rajput as well as oral evidence of PW 4 Pramilabai Jamsing Rajput are in the same line as has been

deposed by PW 1 Pramilabai Madansingh Rajput. So looking to the entire oral evidence on record, it cannot be inferred that the accused persons

were ill-treating the deceased on account of remaining amount of dowry. There is no clear evidence on that aspect. The other incriminating

circumstances remains that the accused No. 4 has committed forcible sexual intercourse with Ujwala and inspite of disclosure of this fact to father in

law and mother in law i.e. accused No. 1 and 2 there was inaction on their part. It is also came on record that when Ujwala was at her

parents' house she disclosed this fact to her parents still either mother or father have not made complaint about the misconduct/rape committed by

the accused No. 4 either to the accused No. 1 or 2, i.e. the father and mother of the accused No. 4. This circumstance appears to be improbable

because in spite of the disclosure of such serious things nobody particularly parents will keep mum.

5. Next material aspect in the present case is that after the death of Ujwala, if at all the parents were suspecting that the deceased was died due to

the ill-treatment given by the accused persons, Pramilabai or her other family members could have filed complaint immediately against the accused

persons. However, the complaint was lodged after about 7 days. Inaction on the part on the Pramilabai and her family members for about 7 days

speaks otherwise.Â

6 Next important aspect is that it is came in the evidence of PWÂ1 Pramilabai that prior to 14.07.2000, the date on which the first information report

was lodged, the statement of Pramilabai and her husband were recorded by the police.Â The relevant admission given by PWÂ1 Pramilabai reads as

follows:

â??It is true that after the death of my daughter PSI and Head constable used to visit our place. Once upon a time my statement as well as statement

of my husband were recorded on 14.07.2000 I had gone to the police station along with my husband and some persons from our village.â??Â

From the aforesaid admission it is crystal clear that after the death of Ujwala the police officers visited the place of the complainant and they have

recorded the statement of PWâ?"1 and PWâ?"3 Pramilabai and Madansing.Â These statements must be in reference to the death of Ujwala.Â

However, those statements are not included in the case papers probably because those statements may be contrary to the contents of the first

information report and the case of prosecution. Otherwise there was no reason for the investigating officer to hide such statement if at all they were

supporting the case of prosecution.Â Suppression of the early statement of the parents of Ujwala is very fatal to the case of prosecution.Â

7.Â On perusal of the admission given by the investigating officer in his crossÂexamination, it appears that he has admitted that before lodging the

first information report he had been to the place of complainant.Â Relevant admission reads as follows:

Once upon a time before lodging of the FIR I had been to the place of the complainant.Â I have not taken entry in the station diary of my visit to the

matrimonial home of the deceased.Â

8.Â So the aforesaid admission is exactly supports the fact that the police officers have visited the place of the complainant before registration of the

crime and they have in fact recorded the statements of the parents.Â Further evidence of this investigating officer appears to be false as he deposed

that the parents were in sorry state of affair they did not lodged FIR.Â Thereafter, on 17.7.2000 Pramilabai mother of the deceased lodged the

FIR.Â Â So this oral evidence of this investigating officer is contrary to the admission given by Pramilabai.

9. The aforesaid circumstances impliedly supports that the statement of parents of Ujwala were recorded before 14.07.2000. Both of them must

not have complained against the accused persons therefore, no first information report was registered prior to 14.07.2000. So registration of the first

information report on 14.07.2000 appears to be after thought. This aspect goes to the root of the matter and therefore the entire oral evidence of the

prosecution witnesses become unreliable.

10. We have gone through the reasons recorded by the learned Additional Sessions Judge and found that he has rightly appreciated the evidence

and on reappreciation of the same, no other view is possible than taken by the Additional Sessions Judge. Hence there is no substance in the appeal,

therefore, it is dismissed.

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