
(2014) 11 SC CK 0020

In the Supreme Court Of India

Case No : Criminal Appeal No. 2071 of 2012

Yogesh Sahebrao Borse and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 302, 307, 34, 498A

Citation : (2015) ALLMR(Cri) 1265 : (2015) 1 RCR(Criminal) 182

Hon'ble Judges : T.S. Thakur, J;R. Banumathi, J;A.K. Goel, J

Bench : Full Bench

Advocate : T.N. Singh and Vikas K. Singh, Advocates for the Appellant; Atul B. Dakh, Nitin Lonkar, Prasahnt Dahat, A.P. Mayee and Asha Gopalan Nair, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal arises out of an order dated 9th April, 2009 passed by the Aurangabad Bench of the High Court of Judicature at Bombay, whereby Criminal Appeal No. 156 of 2007 filed by the Appellants against their conviction and sentence for offences punishable Under Sections 302, 498-A read with Section 34 of the Indian Penal Code and Section 3 and 4 of the Dowry Prohibition Act has been dismissed. Deceased Varsha Y. Borse got married to Appellant No. 1-Yogesh Sahebrao Borse on 4th March, 2001. The prosecution version is that even when the parents of the deceased-Varsha had given her dowry at the time of her marriage, according to their economic capacity, she was being harassed in her matrimonial house by the Appellants for bringing with her less than what they expected. Apart from other articles, the Appellants were, according to the prosecution, demanding an amount of Rs. 50,000/- in cash which the deceased-Varsha and her parents were unable to arrange. This resulted in her torture and harassment which forced her to leave the matrimonial house to take shelter in her parents' house. Almost two years after Varsha's departure from her matrimonial house Appellant No. 4-Sahebrao Shankar Borse, father-in-law of

the deceased, approached the parents of the deceased with a request to send Varsha back to her matrimonial house. Varsha was accordingly persuaded to go back to her matrimonial house but her harassment for dowry is alleged to have continued even after she resumed co-habitation with her husband.

2. On 8th March, 2004, Dhulle Police Station is said to have received information from P.S.O. Sonwane about an incident involving burn injuries to Varsha and asking for appropriate action in the matter including recording of the statement of the injured lady, admitted in the Civil Hospital at Dhulle. P.W. 5-Ramesh Fulpagare accordingly proceeded to the civil hospital and contacted the medical officer, P.W. 8-Dr. Prasad Bhandari, to ascertain the condition of the injured Varsha. The medical officer certified that the injured was in a fit condition to give her statement. P.W. 5-Ramesh Fulpagare accordingly recorded the statement of Varsha, marked Exhibit 84, and registered a case for offences punishable Under Section 307, 498-A read with Section 34 of the Indian Penal Code in Police Station Sindkheda. Further investigation in the case was it appears transferred to P.W. 9-P.I. Nathu Rane, attached to the said police station, who completed the usual formalities at the place of occurrence like collecting evidence like burnt clothes of the deceased and arresting the accused persons. Apart from the statement recorded by P.W. 5-Ramesh Fulpagare, P.W. 6-Kishor Bhoge, the Executive Magistrate, under instruction of the Tehsildar, proceeded to the civil hospital, Dhulle, and recorded the dying declaration of the deceased, Exh. 90. With the demise of injured-Varsha on 9th March, 2004, offence Under Section 302 of the Indian Penal Code was also added to the case and statements of witnesses recorded in the course of the on-going investigation. Post-mortem examination conducted by P.W. 3-Dr. Sandeep Patil revealed that the deceased had died on account of 98% burn injuries suffered by her which were ante-mortem in nature and sufficient, in the ordinary course of nature, to cause death. The burn injuries could be caused by pouring kerosene and setting the Varsrsha ablaze said in the medical report. A challan was eventually filed against the Appellants who pleaded not guilty and were tried in Sessions Case No. 34/2004.

3. In support of its version the prosecution examined as many as 9 witnesses while the defence examined 3 witnesses in support of the version given by Appellants. Appellant No. 1-husband of the deceased-Varsha and Appellant No. 4-father-in-law of the deceased claimed that they were not present at the place of incident and at the time the incident is alleged to be taken place. The trial court appreciated the evidence adduced before it and came to the conclusion that the charge of murder framed against the Appellants had been proved by the prosecution. The evidence relied upon, included the dying declarations recorded by the officers concerned. The Appellants were accordingly convicted for the offence of murder punishable Under Section 302 read with Section 34 Indian Penal Code and sentenced to undergo imprisonment for life besides a fine of Rs. 5000/- each. Rigorous imprisonment for a period of two years was awarded to the Appellants for offences punishable Under Sections 3 & 4 of Dowry Prohibition Act besides a fine of Rs. 1000/- on each count. They were also awarded rigorous

imprisonment for a period of three years Under Section 498-A read with Section 34 of the Indian Penal Code besides a fine of Rs. 2000/- each.

4. Aggrieved by their conviction and sentence, the Appellants filed Criminal Appeal No. 156 of 2007 before the High Court of Judicature at Bombay, Bench at Aurangabad, which appeal, as already noticed above, has been dismissed by the High Court upholding the conviction and sentence awarded to the Appellants by the courts below.

5. We have heard learned Counsel for the parties at considerable length who have taken us through the judgments and orders passed by the courts below and the evidence on record. The High Court has, while affirming the conviction of the Appellants, come to the conclusion that the dying declaration recorded by P.W. 5-Ramesh Fulpagare was not admissible. That finding has not been assailed before us by any one of the two parties. The High Court has even so found the dying declaration recorded by P.W. 6-Kishor Bhoge, the Executive Magistrate, to be reliable and accordingly rested the conviction for the offence of murder on that basis. Appearing for the Appellants, Mr. T.N. Singh, submitted that while the conviction of Appellants for offences punishable Under Sections 498-A of the Indian Penal Code and Sections 3 & 4 of the Dowry Prohibition Act could not be faulted in view of the over-whelming evidence on record, the High Court and so also the trial court were in error in convicting Appellants No. 1 and 4 for the offence of murder. It was contended that the courts below fell in a palpable error in ignoring the first version given by the deceased about the genesis of the incident when she was brought to civil hospital, Dhulle. This version was proved by P.W. 8-Dr. Prasad Bhandari and was marked Exh. 96 at the trial. It was submitted that Dr. Prasad Bhandari had recorded her version and obtained her signature at Exh. 96. This version, it was contended, did not implicate either Appellant No. 1-husband of the deceased or Appellant No. 4-father-in-law of the deceased. As a matter of fact according to the version recorded by the doctor, Appellant No. 1 had gone out of the village a day before the incident. Similarly the version recorded by the doctor did not attribute any role to Appellant No. 4, the father-in-law of the deceased. The version is crisp and inspires confidence inasmuch as it not only names Appellant No. 3-mother-in-law and Appellant No. 2-brother-in-law of the deceased but accuses them of having poured kerosene upon the deceased and set her on fire. The version does not suggest the presence of Appellant No. 4-father-in-law of the deceased at the time of the incident. It was argued by Mr. Singh that the High Court was totally wrong in ignoring the earlier version about the incident which could not be brushed aside lightly just because the deceased had while disclosing the sequence of events to the doctor also stated that she was threatened by her in-laws not to disclose or implicate anyone in the incident. It was submitted that apart from the version given to the doctor by the deceased, there was also further evidence in the form of statement of D.W. 3, the branch manager of the bank where Appellant No. 4 was working as a guard. This witness had, according to learned Counsel, clearly stated that on the fateful day Appellant No. 4 had reached the bank around 9.30

am in the morning and that around 11.20 am a call received from his village informed him that the deceased had sustained burn injuries. Appellant No. 4 had thereupon not only taken leave by making an application to the manager but also withdrawn some money to take the injured to the hospital. It was submitted that the deposition of D.W. 3 remained unassailed in cross-examination. There was therefore no reason why the courts below should have ignored the same.

6. On behalf of the Respondents, it was contended that the distance between the village and the bank was just about 30 minutes drive. The incident in-question having occurred at 7.30 am in the morning, the fact that Appellant No. 4 was found in the bank at 9.30 am, did not show that he was not at the place of incident when the occurrence took place. It was also submitted that the subsequent dying declarations, one made to the police officer and the other to the executive magistrate, clearly suggested that Appellant No. 1-husband and Appellant No. 4-father-in-law of the deceased were also responsible for causing the burn injuries to the deceased. It was contended that those dying declarations especially the one recorded by the executive magistrate inspired confidence and had been rightly relied upon by the courts below while recording a conviction against the Appellants.

7. The High Court has placed total reliance upon the dying declaration recorded by the Executive Magistrate in which the deceased named all the four Appellants as being responsible for causing the burn injuries that eventually led to her death. That however is not the only circumstance found on the record. What is also significant is that even earlier to the dying declaration recorded by the executive magistrate at around 9 pm Dr. Prasad Bhandari-P.W. 8 had the advantage of enquiring from the deceased when she was first brought to the hospital at around 4.45 pm as to the cause of her injuries. In the statement to the doctor, the deceased had made a clean breast of what happened and clearly accused Appellant No. 3-mother-in-law and her son-Appellant No. 2 as the persons responsible for pouring kerosene over her body and putting her on fire. Not only that, the doctor carefully recorded the said version and proved it at the trial. What is important is that the deceased had even suggested that she was under some kind of pressure from the family of her in-laws not to disclose the incident to anyone. And yet the deceased had mustered courage to disclose the incident to the doctor. It is noteworthy that once the deceased had spilled the beans and disclosed the incident as it happened she accused only her mother-in-law and brother-in-law, Appellants No. 3 and 2 in this appeal. There is no reason why she would not name Appellants No. 1 and 4 also if they were actually involved in the incident. Far from doing so, the statement made by the deceased to the doctor marked Exh. 96 clearly says that Appellant No. 1-husband of the deceased had gone out of village a day before the incident. This implies that Appellant No. 1 was in no way involved in the incident, no matter he may have caused harassment to the deceased for dowry for which the courts below have, in our opinion, rightly convicted the husband-Appellant No. 1 Under Section 498-A and Sections 3 & 4 of the Dowry Prohibition Act. It is in evidence that while in

the civil hospital at Dhulle, Appellant No. 4-father-in-law was beaten up by the relatives of the deceased. Dr. Prasad Bhandari-P.W. 8 has made a specific statement to that effect. This implies that the family of the deceased had gathered at the hospital in large number and enraged by the incident, had assaulted the father-in-law of the deceased. The possibility of the family members in such a surcharged atmosphere also getting the names of Appellant No. 1-husband and Appellant No. 4-father-in-law included in the dying declaration made four hours after the first version recorded by the doctor, cannot be wholly excluded. At any rate there is, in our opinion, a serious doubt as to the involvement of Appellant No. 1-husband and Appellant No. 4-father-in-law of the deceased in the incident that led to the unfortunate demise of the deceased at a young age. To that extent, the conviction of the said two Appellants for the offence of murder punishable Under Section 302 of the Indian Penal Code cannot be sustained and shall have to be set aside.

8. As regards the conviction of the Appellants including Appellants No. 1 and 4 for the offences of dowry harassment punishable Under Section 498-A of the Indian Penal Code and Sections 3 & 4 of the Dowry Prohibition Act, we see no real reason to interfere with the view taken by the courts below. We accordingly uphold the conviction of the Appellants No. 1 and 4 for those offences.

9. In the result this appeal succeeds in part and to the extent that the conviction and sentence of life imprisonment awarded to Appellants No. 1 and 4 Under Section 302 of the Indian Penal Code shall stand set aside. The appeal filed on behalf of Appellants No. 2 and 3 shall however stand dismissed in toto. Appellants No. 1-Yogesh Sahebrao Borse and No. 4-Sahebrao Shankar Borse have already undergone imprisonment awarded to them for the offences punishable Under Section 498-A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. Appellant No. 1 who is in custody shall therefore be set free, unless required in connection with any other case. Appellant No. 4 was enlarged on bail by this Court. His bail bonds shall stand discharged. Sentence of fine imposed upon Appellants No. 1 and 4 shall remain unaltered.