

(2024) 02 BOM CK 0010**Bombay High Court (Aurangabad Bench)****Case No:** Criminal Appeal No. 123 Of 2003

State Of Maharashtra

APPELLANT

Vs

Sarjerao Appaji Gujar And Others

RESPONDENT

Date of Decision: Feb. 7, 2024**Acts Referred:**

- Indian Penal Code, 1860 - Section 34, 304, 304B, 306, 498A, 504

Hon'ble Judges: Abhay S. Waghwase, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Abhay S. Waghwase, J

1. Dissatisfied by the judgment and order of acquittal passed by learned 4th Adhoc Assistant Sessions Judge, Beed in Sessions Case No. 40 of 1998 on 11.09.2002 acquitting the respondents from offences punishable under Sections 498-A, 306, 304-B, 504 r/w 34 of the Indian Penal Code [IPC], the State has preferred instant appeal.

2. Respondents were chargesheeted on accusation that deceased Mandabai was married to accused no.3 husband and was cohabiting with him as well as in-laws. Father-in-law as well as husband started ill-treating deceased over remaining amount of dowry to the tune of Rs.1,000/-. They also asked her to bring Rs.20,000/- from her parents for purchasing land. Father-in-law, mother-in-law and brother-in-law always abused deceased and further instigated husband to assault her. Deceased promptly informed this to her parents. Getting fed up by such ill-treatment, deceased immolated herself. Therefore, complaint was lodged for above offences.

3. At trial, prosecution adduced evidence of in all nine witnesses and on appreciating the oral and documentary evidence and on hearing both sides, learned trial Judge

reached to a finding that prosecution failed to make out any of the offences and by judgment dated 11.09.2002, acquitted the accused persons.

4. Said judgment is now questioned by the State on the grounds that firstly, there is improper appreciation of available evidence; secondly, learned trial Judge has not appreciated the evidence of complainant and other witnesses; thirdly, from the evidence of prosecution, necessary ingredients for attracting charges were available because deceased had reported the ill-treatment meted out to her on account of failure of meeting demand of remaining dowry as well as meeting demand of Rs.20,000/- for purchase of land. That, there was continuous harassment, abuses and on instigation at the hands of in-laws, husband used to continuously beat her. That, there was no other reason for deceased to commit suicide. That, unnatural death had taken place in the house and accused persons are solely responsible for the same. Death being within seven years and there being dowry demand, offence under Section 304 of IPC was also made out. However, learned trial court has not considered and appreciated the evidence as well as the settled law on this count. That, even there was dying declaration but it has not been correctly appreciated. Hence, he prays to interfere and set aside the judgment under challenge.

Learned APP, to buttress his contention, placed reliance on the following rulings:

1. Dattatraya Laxman Bagdi v. State of Maharashtra [Criminal Appeal No. 576 of 2001 decided by this Court at Principal Seat on 28.08.2017]

2. Vikas s/o. Baburao Marathe v. The State of Maharashtra [Criminal Appeal No. 387 of 2000 with Criminal Application No. 502 of 2015 decided by this Court on 05.03.2015]

3. Appasaheb Narayan Jadhav v. The State of Maharashtra [Criminal Appeal No. 1261 of 2004 in Special Case No. 11 of 2002 decided by this Court at Principal Seat on 23.08.2013]

5. Per contra, learned counsel for the accused would submit that prosecution miserably failed to establish any of the charges. He pointed out that evidence of mother and sister did not inspire confidence. There were material omissions and contradictions in their evidence. That, deceased had committed suicide for the best reasons known to her. Prosecution could not show accused to be present there or responsible for the same. He further pointed out that considering the degree of burns calculated by the autopsy doctor, it was impossible for the deceased to give any dying declaration. He further pointed out that when her upper extremities were completely affected, it is doubtful whether she could give thumb impression. Thus, he tried to submit that dying declaration is a fabricated document merely to frame accused persons. Lastly, he submitted that there is no conclusive evidence regarding demand, ill-treatment or any dowry demand. He further pointed out that previously also, husband was prosecuted for the offence under Section 498-A of IPC but he was acquitted upon trial on RC No. 231 of 1995. Thus, it is his submission that

for the same offence, accused ought not to have been tried and convicted as it amounted to double jeopardy.

6. In the light of above submissions, this being the first appellate court and last fact finding court, re-appreciation and re-analysis of the entire evidence is required to be done.

7. Prosecution, in support of their case, has examined following witnesses and the sum and substance of their evidence is as under:

PW1 Anjanabai, mother of deceased, deposed that after marriage, her daughter went to reside with her husband and in-laws jointly. She was properly treated for one to one and half years, but thereafter accused persons subjected her to cruelty. They demanded remaining amount of dowry to the tune of Rs.1,000/- and even put up a demand of Rs.20,000/- for purchase of new field. Whenever deceased came for festivals, she narrated the ill-treatment. She claims that after incident, when she came to see deceased who was in Civil Hospital, that time deceased also again told about ill-treatment and that she could not tolerate and hence poured kerosene.

PW2 Abdul Rashid is the Special Judicial Magistrate who has recorded dying declaration and it is his evidence that deceased told that three months prior to the said incident, they had been to Shirpur Ltd. Pandurang Sahakari Karkhana for cutting sugarcane crop. Her husband and in-laws were also residing with them in a hut. She narrated that on the day of incident, she woke up at 5.00 a.m. That time, her father-in-law asked her to bring Rs.20,000/- from her parents and abused her and he went away. Therefore, in anger, she narrated that, she took kerosene, poured it on her person and set herself on fire. This witness identified the dying declaration at Exhibit 45.

PW3 Bhagwat, pancha to spot panchanama deposed about panchanama being drawn in his presence and about collection of burnt sari. He identified spot panchanama Exhibit 47.

PW4 Uttam Bhave, Police Head Constable registered crime and handed over investigation to PW9.

PW5 Laxman More is the police head constable. He also recorded dying declaration of deceased which he identified to be at Exhibit 45/A. According to him, deceased narrated that father-in-law, mother-in-law, brother-in-law and husband were ill-treating her for Rs.1,000/- which were remaining towards dowry and Rs.20,000/- for purchase of land. That, when they had been to sugarcane cutting, husband was assaulting her in the backdrop of above demand and on 16.01.1998, father-in-law again put up demand of Rs.20,000/- and therefore, in anger she poured kerosene and set herself on fire.

PW6 Dr. Ramchandra Deshpande, who conducted postmortem and opined deceased to have suffered 71% burns and cause of death to be 'shock due to burns'.

PW7 Dr. A. N. Deshpande who gave certificate about fitness to give statement.

PW8 Nandabai is the sister of deceased. She also deposed that her deceased sister Mandabai was treated well for one to one and half years after marriage and thereafter they started ill-treating her and demanded remaining amount of dowry to the tune of Rs.1,000/- and additional amount of Rs.20,000/- for purchase of land. According to this witness, deceased used to inform about the said demands during her visits to parental house.

PW9 A.P.I. Laxman Borade is the Investigating Officer.

ANALYSIS

8. The sum and substance of accusation is that after marriage, deceased Mandabai was treated well by husband and in-laws but thereafter there was demand of Rs.1,000/- towards remaining dowry and Rs.20,000/- for purchase of field and on said count, she was allegedly maltreated.

9. Mother PW1 has narrated in her examination-in-chief about demand, ill-treatment and about hearing news and in hospital, deceased informing that because of ill-treatment and demand, she poured kerosene. From her cross it is emerging that accused are already related to this witness and deceased. In cross she answered that dowry of Rs.4,000/- was decided to be given at the time of marriage and at that time Rs.3,000/- were paid to the accused and only Rs.1,000/- had remained unpaid. However, except testimony of mother, there is no independent witness to corroborate her such testimony. Her evidence further shows that initially RCC No. 231 of 1996 was registered against husband on complaint of deceased for commission of offence under Section 498-A of IPC, but the matter was compromised and as such, accused was acquitted and deceased had come back to cohabit.

10. Sister PW8 also in her examination-in-chief deposed about proper treatment meted out to deceased for one to one and half years but thereafter demand being put up for remaining dowry and additional amount of Rs.20,000/- for purchase of land. Even PW8 has admitted about previous proceedings instituted by deceased under Section 498-A of IPC.

11. It is pertinent to note that, on close scrutiny of the evidence of mother and sister of deceased, specific details of when and where such demand was made is not getting clear. Learned counsel for the respondents would point out that alleged incident had taken place when accused and deceased were outside the house for sugarcane cutting and they were staying by erecting a hut. Therefore, there is no question of accused father-in-law putting up demand at such distant place. There is force in the above submission. Testimony of PW1 mother and PW8 sister, as stated above, is omnibus in nature. Details as to where accused had intended to purchase land are not coming in the testimony of any of the prosecution witnesses. Mere vague allegation seems to be raised.

12. Second piece of evidence which is caught hold of prosecution is the said two dying declarations at Exhibits 45 and 45/A. However, apparently in the said dying declarations deceased had reiterated that she set herself ablaze in anger. There are no allegations about any ill-treatment except alleged demand made by accused father-in-law, who immediately thereafter allegedly left for work. Therefore, taking such contents of the dying declaration into consideration, it is apparent that it is a case of self immolation. In the rage of anger deceased seems to have set her ablaze. However what exactly happened that day has not come in the testimony of PW1 and PW8. They both are claiming to have received oral dying declaration, however no complaint has been filed independently by them.

13. Consequently, on re-appreciation of evidence of PW1, PW8 and the police witnesses and perusing the dying declarations, it is evident that suicide was committed in anger. There is weak or fragile evidence about cruelty. Specific details of nature of ill-treatment/harassment are not finding place in the evidence of mother and sister of deceased. There is no independent evidence as regards to demand of dowry being raised. Therefore, with such quality of evidence, no other conclusion than that is reached by learned trial Judge could be arrived at. It is the possible view which is emerging even on re-appreciation. No case being made out and no perversity being pointed out in the appreciation, appeal is required to be dismissed. Hence, I proceed to pass the following order:

ORDER

The appeal is hereby dismissed.