

Bench: G Mathur, R Raveendran

CASE NO.:

Appeal (crl.) 1613 of 2005

PETITIONER:

APPASAHAB AND ANR.

RESPONDENT:

STATE OF MAHARASHTRA

DATE OF JUDGMENT: 05/01/2007

BENCH:

G.P. MATHUR & R.V. RAVEENDRAN

JUDGMENT:

JUDGMENT

G.P. MATHUR, J. :

1. This appeal, by special leave, has been preferred against the judgment and order dated 23.2.2005 of Bombay High Court (Aurangabad Bench), by which the appeal preferred by the appellants was dismissed and their conviction under Section 304-B read with Section 34 IPC and sentence of 7 years RI imposed thereunder by the learned Sessions Judge, Aurangabad, was affirmed.

2. The deceased Bhimabai was daughter of PW.1 Tukaram Eknath Tambe resident of village Sanjkheda and she was married to appellant no. 1 Appasaheb son of Sheshrao Palaskar about two and half years prior to the date of incident which took place on 15.9.1991. The appellant no. 2, Kadubai is the mother of the appellant no. 1 and both the appellants were residing in the same house in village Palshi. According to the case of prosecution, a sum of Rs. 5000 and some gold ornaments had been given at the time of marriage of Bhimabai. For about six months Bhimabai was treated well but thereafter the accused started asking her to bring Rs. 1,000-1,200 from her parents to meet the household expenses and also for purchasing manure. Whenever Bhimabai went to her parental home, she used to tell her parents that her husband and mother-in-law (accused appellants) were harassing her and used to occasionally beat her. Her father PW.1 Tukaram along with some of his relatives went to the house of the accused and tried to persuade them not to ill-treat Bhimabai. Thereafter, the accused treated Bhimabai properly but after about four months they again started harassing her. A few days before Nag Panchami festival Bhimabai came to her parental home and complained that the accused were not giving her proper food, clothings and even footwear. She also told her parents that her husband had asked her to bring an amount of Rs.1,000-1,200 for the purpose of household expenses and manure. The case of the prosecution further is that in the evening of 15.9.1991 a person came from village Palshi on a motorcycle and informed PW.1 Tukaram that Bhimabai was unwell. PW.1 then immediately went to the house of the accused along with some of his relatives. There he saw that Bhimabai was lying dead and froth was coming out of her mouth which indicated that she had consumed some poisonous substance. The Police Patil of the village PW.3 Sandu Mohanrao Patil lodged an accidental death report at 9.00 p.m. on 15.9.1991 at the police station. On the basis of the said accidental death report, PW.6 Sandeepan Kamble, Police Sub-Inspector, visited the house of the accused, held inquest on the dead body of Bhimabai, and

thereafter sent the same for post-mortem examination. PW.1 Tukaram lodged the FIR of the incident at 7.00 p.m. on 16.9.1991 at P.S. Chikalthana, on the basis of which Case Crime No. 144 of 1991 was registered against the appellants under Sections 498-A, 306 and 304-B IPC.

3. After completion of investigation, charge sheet was submitted against the appellants and in due course, the case was committed to the Court of Sessions. The learned Sessions Judge framed charges under Sections 498-A, 304-B read with Section 34 IPC and Section 306 read with Section 34 IPC against both the appellants. The appellants pleaded not guilty and claimed to be tried. The prosecution in order to establish its case examined six witnesses and filed some documentary evidence. The learned Sessions Judge after consideration of the material on record acquitted the appellants of the charges under Sections 498-A and 306 read with Section 34 IPC but convicted them under Section 304-B IPC and imposed a sentence of 7 years RI thereunder. The appeal preferred by the appellants was dismissed by the High Court by the judgment and order dated 23.2.2005.

4. We have heard learned counsel for the appellants, learned counsel for the State of Maharashtra and have perused the records.

5. The post-mortem examination on the body of deceased Bhimabai was conducted by a team of two doctors of Department of Forensic Medicine and Toxicology, Medical College, Aurangabad, namely, Dr. S.M. Jawale and Dr. H.V. Godbole on 16.9.1991. The doctors did not find any sign of external or internal injury on the body of the deceased and in their opinion, the cause of death was insecticide poisoning. The viscera was preserved for chemical analysis. The report of the post-mortem examination was admitted by the defence.

6. The specific case of the prosecution is that Bhimabai ended her life by consuming poison because of harassment caused to her by the appellants for or in connection with demand of dowry. It is, therefore, necessary to briefly examine the evidence of the prosecution witnesses. PW. 1 Tukaram, father of the deceased, has given details of the prosecution version of the incident in his statement in Court. He has deposed that in the marriage he had given Rs. 20,000 as dowry. Initially, Bhimabai was treated well for about six months, but thereafter the appellants started ill-treating her. Whenever Bhimabai came to her parental home, she used to complain that for some domestic reasons she was being harassed. When she had visited her parental home on the last occasion, she had said that her husband Appasaheb had asked her to bring Rs. 1,000-1,200 for domestic expenses and for purchasing manure as he had no sufficient money. Bhimabai had complained to him that she was not being given proper food, clothings and even footwear and occasionally the appellant no. 1 used to beat her. The last time she visited her parental home was during the festival of Nag Panchami and at that time she looked depressed. The witness has further deposed that on the date of incident, a man came from village Palshi on motorcycle and informed that he should immediately go there as Bhimabai was not well. He then went to village Palshi along with other persons of his family where he reached after sun set. He saw that Bhimabai was lying dead and froth was coming out of her mouth which was smelling of Thimet (insecticide). In his cross- examination he has admitted that his statement that he had given Rs.20,000 in dowry at the time of marriage was incorrect and in fact he had given Rs. 5,000 as dowry and the total expenses incurred in the marriage was about Rs. 20,000. He has also deposed that it was after about 1-1/2 years of marriage that Bhimabai first complained to him about the harassment being caused to her. There used to be some bickering in the marital life of Bhimabai and her husband on trifling matters. He has admitted that it was appellant no. 1 who had sent a person on motorcycle who had given information regarding Bhimabai being unwell and that both the appellants were present at the time of her funeral. PW.2 Babaji is real brother of father-in-law of PW.1 Tukaram. He has deposed that on an earlier occasion he had gone along with PW.1 and some others to the house of appellant no.1 to persuade him not to harass Bhimabai and to treat her well. In his cross- examination he has admitted that when he had gone to village Palshi to talk with the appellants regarding the ill-treatment being meted out to Bhimabai, there was no talk regarding monetary giving and taking. He also admitted that he had not gone to attend that funeral of Bhimabai. PW.5 Sumanbai is the mother of the deceased Bhimabai. She has stated in her examination-in-chief that Bhimabai was being ill-treated by the appellants and the reason for ill-treatment was that they were demanding money to be

brought from her parental home. The last time Bhimabai visited her parental home was on the occasion of the festival of Nag Panchami and she had complained that she was being ill-treated and was sometimes given beating for bringing money from her parents. She has specifically stated that for a period of six months after the marriage, Bhimabai was treated well and thereafter she had started complaining about the harassment being caused to her. In her cross-examination, PW.5 Sumanbai has stated that after news about the condition of Bhimabai was given by a man from village Palshi, she along with her husband and some other relations went there and noticed that Bhimabai was lying dead in the house and froth was coming out of her mouth. She has further stated that she did not make any enquiry as to how Bhimabai had died. In her statement under Section 161 Cr.P.C. which was recorded very next day of the incident i.e. on 16.9.1991 she did not state that cause of ill-treatment was "a demand for money and a consequent beating". When confronted with her aforesaid statement under Section 161 Cr.P.C., she replied that she did not know why there was no mention in the said statement that the cause for ill-treatment was "a demand for money and a consequent beating". She further stated that it will be correct to say that her daughter was receiving ill-treatment as a result of "domestic cause". The learned trial Judge then sought clarification from the witnesses by putting the following question. :-

"Que:- What do you mean by "domestic cause"?"

Ans.:- What I meant was that there was demand for money for defraying expenses of manure etc. and that was the cause."

In the very next paragraph she stated as under :-

"It is not true to suggest that in my statement before the police I never said that ill-treatment was as a result of demand for money from us and its fulfillment. I cannot assign any reason why police did not write about it in my statement."

7. PW. 3 Sandu, Police Patil of village Palshi has deposed that at about 4.20 p.m. on 15.9.1991, Narayan who is uncle of appellant no.1, Appasaheb, informed him that the wife of Appasaheb had expired. He then went to the house of the appellant and saw Bhimabai lying with froth coming out of her mouth. Thereafter, he gave a report about the incident in writing at the police station. In his cross-examination, he admitted that he did not make detailed enquiries as to what was the cause of death and where the incident had taken place. He has further deposed that Bhimabai had come to his house about six months earlier and had said all was not well between her and her husband, but she had not given any specific details.

8. The main witnesses regarding the alleged demand of money and also harassment and beating to Bhimabai are her father and mother, viz., PW.1 Tukaram and PW.5 Sumanbai. In his examination-in-chief PW.1 has said that whenever his daughter came to her parental home, she used to complain that she was being subjected to harassment by the appellants on account of some "domestic reasons" and further that her husband (appellant no.1) had told her that while coming back from her parental home she should bring Rs. 1,000-1,200 for expenses and for manure as he had no sufficient money. PW.5 Sumanbai has deposed that Bhimabai was receiving ill-treatment as a result of "domestic cause" and to a specific question put by the Court as to what she meant by "domestic cause" she gave a reply that there was a demand for money for defraying expenses of manure etc. It is important to note that in her statement under Section 161 Cr.P.C. which was recorded on the very next day of the death of Bhimabai, this witness did not state that the cause for ill-treatment was "a demand for money and a consequent beating". The evidence on record does not indicate that the police had any reason to favour the accused and deliberately omitted to mention about the alleged demand of money while recording the statement of PW.5 Sumanbai under Section 161 Cr. P.C. The evidence shows that the accused come from very humble background and they could not have exerted any kind of influence, financial or otherwise, upon the police so as to manage a statement favourable to them when in the course of investigation the statements of witnesses were being recorded under Section 161 Cr.P.C. Accepting the statements of father and mother on their face value that utmost which can be held is that the appellant no.1

had asked his wife Bhimabai to bring money for meeting domestic expenses and for purchasing manure.

9. Two essential ingredient of Section 304-B IPC, apart from others, are (i) death of women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, and (ii) women is subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for "dowry". The explanation appended to sub-section (1) of Section 304-B IPC says that "dowry" shall have the same meaning as in Section 2 of Dowry Prohibition Act, 1961.

Section 2 of Dowry Prohibition Act reads as under :-

"2. Definition of "dowry" - In this Act "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dowry or mahr in the case of persons to whom the Muslim Personal Law (shariat) applies.

In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India v. Garware Nylons Ltd., AIR (1996) SC 3509 and Chemicals and Fibres of India v. Union of India, AIR (1997) SC 558). A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained.

10. Learned counsel for the appellants has also submitted that there is absolutely no evidence either direct or circumstantial to show that Bhimabai committed suicide. He has submitted that the insecticide Thimet is extensively used by the farmers for preservation of crop and is kept stored in their houses and it could be a case where Thimet accidentally got mixed with some food item and was consumed by Bhaimabai. It has thus been submitted that no offence under Section 306 IPC is made out against the appellants. We do not consider it necessary to examine this question. As already stated, the appellants were also charged under Sections 498-A and 306 read with Section 34 IPC but were acquitted of the said charges by the learned Sessions Judge, which order has attained finality for the reason that the State did not prefer appeal against the same. The appeal before the High Court and also in this Court has been preferred by the appellants challenging their conviction under section 304-B read with section 34 IPC. It has been held in State of Andhra Pradesh v. Thadi Narayan, AIR (1962) SC 240 that Section 423(1)(b)(i) of Code of Criminal Procedure, 1898 (which corresponds to Section 386(b)(i) of Code of Criminal Procedure, 1973) is clearly confined to cases of appeals preferred against orders of conviction and sentence, the powers conferred by this clause cannot be exercised for the purpose of reversing an order of acquittal passed in favour of a party in respect of an offence charged, in

dealing with an appeal preferred by him against the order of conviction in respect of another offence charged and found proved. Therefore, we have refrained from expressing any opinion as to whether the appellants could be held guilty of having committed the offence under Section 498-A or 306 IPC on the basis of evidence available on record as their acquittal under the aforesaid charges has attained finality and cannot be reversed in the appeal filed by the appellants challenging their conviction under Section 304-B IPC.

11. In view of the discussion made above, the appeal is allowed. The judgment and order dated 23.2.2005 of the High Court and the judgment and order dated 4.1.1993 of the learned Sessions Judge convicting the appellants under Section 304-B IPC are set aside and the appellants are acquitted of the said charge. The appellant no.1 is in custody. He shall be released forthwith unless wanted in some other case. The appellant no. 2 is on bail. The sureties and bail bonds furnished by her are discharged.