

Bench: J H Bhatia

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

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CRIMINAL APPEAL NO. 471 OF 1992

John Vasant Khandagale )

age 28 years, residing at Anandwadi, )

Kalyan (East), Dist. Thane, presently, )

at Thane Central Prison. )... Appellant (Orig. Accused)

Vs.

The State of Maharashtra )

at the instance of Kolsewadi Police )

Station, vide C.R. No.180/87, Sessions )

Case No.178/88. )... Respondent (Orig. complainant)

None for the appellant.

Mrs. G.P.Mulekar, APP, for the respondent - State.

CORAM: J.H.BHATIA,J.

DATE : 1st March, 2011.

JUDGMENT :

1. The appellant filed this appeal challenging the judgment and order passed by VII Addl. sessions Judge, Thane, in Sessions Case No.178/1988 whereby the appellant was convicted for the offence under Section 304-B of IPC and sentenced to undergo R.I. for seven years and was also convicted under Section 498-A of IPC and was sentenced to undergo R.I. for three years and to pay fine of Rs.200/-.

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2. To state in brief, the prosecution case is that deceased Tai @ Urenica, daughter of PW-6 Vinayak and PW-7 Babanbai, was married to the accused- appellant about 5 years before her death. She always used to make complaint before her parents and sister PW-8 Margaret about the demands of money by her husband and quarrels on that count. On 18.12.1987 at about 1.30 a.m. her dead body with number of stab and incised wounds was found near I.O.W. office at Kalyan. Police on patrolling duty found the dead body and after

enquiry, her identity was fixed. Immediately thereafter, inquest panchnama was drawn and FIR was lodged by police and Crime No.81/1987 was registered with Bazarpet Police Station, Kalyan under Section 302 of IPC against unknown person. After that her parents were contacted and it was revealed that the accused used to beat and ill-treat his wife on account of demand of money. Therefore, the accused came to be arrested on 7.1.1988. According to prosecution, on the basis of information given by the accused, a knife which was allegedly used as a weapon of offence and his clothes were seized under a panchnama. The property was sent to C.A. and report also received. After investigation, police filed charge-sheet for the offences under Sections 302, 304-B and 498A of IPC against the accused.

3. The accused pleaded not guilty and he denied all the allegations 3 Cri-A-471-92.sxw

about the demand of money and ill-treatment to his wife.

4. On behalf of prosecution, in all nine witnesses were examined and several documents were also placed on record. The trial Court acquitted the accused for the offence under Section 302 of IPC as there was no reliable evidence to establish that the accused had committed murder of his wife. However, the trial Court convicted the accused for the offences under Sections 304B and 498A of IPC and sentenced him as stated above.

5. At the outset, it may be stated that initially, the accused was in custody from 7.1.1988 to 16.1.1989, when he was granted bail. On 21.7.1992, he was again taken in custody after the judgment and order of conviction and as the case was not likely to be disposed of in a short time, he was released on his personal bond as per the order dated 18.10.1995. Thus, he was in jail for more than 4 years and 3 months when he was released by this Court. When the appeal came up for final hearing, nobody appeared for the accused-appellant. Even the warrant issued to him could not be executed. In these circumstances, the appeal is taken up for final hearing. I have gone through the record and proceedings with the assistance of the learned APP.

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6. PW-6 Vinayak, PW-7 Babanbai and PW-8 Margret are father, mother and elder sister of deceased. According to PW-6 Vinayak, accused had demanded Rs.500/- which he had paid. According to him, he made that demand once or twice. He also deposed that whenever his daughter Urenica would come to parents' place, she used to complain that her husband used to quarrel and beat her. He also deposed that whenever there would be any quarrel, she used to come back to parents' place. According to him, in the month of August, 1986, also she had come and complained that she was beaten by husband and she was not ready to go to his house. At that time, she stayed with parents for about 15 days. Thereafter, she was taken back by her husband. After August 1986, she had been to parents' place twice or thrice and every time she was making complaint against her husband. PW-7 Babanbai deposed that they had given amount of Rs.500/- to him. Besides that, a gold ring, utensils and saree were also given to her, but he was not satisfied and used to make more demands and every time he used to harass Urenica. She admitted in the cross-examination that after marriage, no money was paid to him. It indicates that amount of Rs.500/- was paid at the time of marriage and not thereafter. PW-8 - Margret also spoke about the grievance of her sister, about demand of money and quarrels.

7 PW-2 Subhadra was the landlady, in whose house the accused and 5 Cri-A-471-92.sxw

his wife were living as tenants. She herself was living in the same building. According to her, she had never seen the accused beating his wife. According to her, in her presence, accused had never quarreled with or ill-treated his wife on account of demand of money. She was declared hostile and was confronted with statement before the police. Anyhow, the landlady, in whose house the accused was living with his wife, was an important witness about their relationship, but this witness did not support the prosecution.

8. Evidence of PW-1 Head Constable Suresh Chavan shows that between 17th and 18th December, 1987, he and two other constables were on patrolling duty. During that night, near the I.O.W. Office, near railway line, they saw dead body of a woman. Immediately, information was given to police station and he lodged a report Ex.21. Thereafter, inquest panchnama and spot panchnama were prepared. PW-4 Dr. Vishwanath Jadhav performed post-mortem examination on the dead body of deceased. He found six stab wounds on different parts of the body and, according to him, death has occurred due to hemorrhagic shock due to stab injuries. Accordingly he issued post-mortem report Ex.25. The post-mortem examination was conducted by him on 18.12.1987 at about 9 a.m. According to him, death had occurred within 12 hours. This indicates that Tai @ Urenica was murdered during the night between 17th and 6 Cri-A-471-92.sxw

18th December,1987. By this evidence, it is proved hat she died homicidal death.

9. PW-3 - Babu Shaikh was a shop-keeper at Anandwadi area. According to him, on 17 December, 1987, he had closed his shop at about 9.30 p.m. He deposed that on 17.12.1987, he had seen the accused and his wife going from his shop towards Kalyan side. At 1.30 a.m., police called him and he identified the dead body of the wife of the accused. This witness was examined to show that the deceased was last seen together with the accused. However, it is material to note that in the evidence of Babu Shaikh, he nowhere stated at what time he had seen the accused and his wife on that day. Merely because the accused and his wife were seen together on that day, that may not be the circumstance against the accused. In fact, if there would be evidence that shortly before her murder, she was seen together with the accused and after that her dead body, with so many stab wounds, was found, onus would be on the accused to explain n what circumstances his wife was murdered. However, the evidence of PW-3 Babu Shaikh is not sufficient to draw any inference against the accused.

10. The prosecution relied upon recovery of clothes and weapon on the basis of information given by the accused. The C.A. report shows that blood was found on the weapon and the clothes. Pw-5 Vishnu Mandal was a panch witness 7 Cri-A-471-92.sxw

about the information given by the accused and the discovery based on that information. However, PW-5 Vishnu Mandal did not support the prosecution. According to him, he was called at the police station. At that time, another panch Verma was also present and he was asked to put his signature on the panchnama and he did sign it. According to him, at that time, the accused was not seen by him with police nor any statement was made by the accused nor any discovery was made. Therefore, PW-5 Vishnu was declared hostile. The second panch Varma was not examined as a prosecution case. For the purpose of information and discovery, prosecution relies on the testimony of PW-9 PSI Krishna Mohale. According to him, the accused was arrested on 7.1.1988. While in custody on 9.1.1988 he made a statement before the panchas and himself that he would produce a knife from the place known to him and accordingly a memorandum Ex. 28 was recorded. Thereafter the accused led the police and panchas to a place and produced the knife Article 17 which was seized under the panchnama in continuation of Ex.28. On the same day, the accused made a statement that he would produce the clothes which were on his person on the date of the offence. That information was recorded as the memorandum Ex.29 and thereafter the accused led the police and panchas to his house and produced his clothes which were seized under a panchnama in continuation of the memorandum Ex.29. These articles were referred to C.A. with a covering letter Ex.38 and the C.A. report Ex. 8 Cri-A-471-92.sxw

39 was received. The C.A. report reveals that on the clothes of the deceased, human blood of Group "A" was found. On the knife and the clothes of the accused also human blood of Group "A" was found.

11. On the basis of the C.A. report, the prosecution wanted to establish that the accused must have committed the offence of murder. However, on careful perusal of memorandum of panchnama Ex.28 pertaining seizure of knife, it is revealed that though PSI Krishna Mohale claims to have seized the knife, the panchnama nowhere shows that the knife was wrapped and sealed at the spot. It indicates that knife was collected in open condition and therefore it was not difficult to be tampered with. Even though the panchnama Ex.29 shows that

the clothes were wrapped and sealed, but PSI Mohale nowhere deposed on oath that the knife or the clothes were actually wrapped and sealed at the time of recording panchnama. As such, there is no reliable evidence that these important muddemal articles were sealed at the spot, ruling out any possibility of tampering with the same. When there is no direct evidence and there is also no other circumstantial evidence mere seizure of clothes and knife and that too without following due procedure cannot be sufficient to hold the accused guilty of murder. The trial Court considered all these aspects and acquitted the accused of the charge under Section 302 of IPC.

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12. As the accused was acquitted for the offence under Sec. 302, IPC, strictly speaking, it was not necessary for this Court to re-appreciate and analyse the evidence again, this Court has only to find out whether the conviction under Sec. 304-B can stand. In view of the evidence led by the prosecution, it is clear that during the night between 17th and 18th December, 1987, Tai @ Urenica was brutally murdered by somebody and her dead body was found near the IOW Office. Prosecution has failed to prove that accused had committed murder. Now the question is whether the accused can be held guilty for the offence under Sec. 304B merely because his wife had died unnatural death and because there are allegations of beating and ill-treatment by him on account of some demands. Sub- section (1) of Section 304-B defines "Dowry death" thus :- "304-B. Dowry death (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her

marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death."

Sub-section (2) provides for punishment. On perusal of Section 304-B, it appears that the following circumstances or ingredients must be established. (1) death of a 10 Cri-A-471-92.sxw

woman should have been caused by any burns or bodily injury or must have occurred otherwise than under normal circumstances; (2) death must have occurred within seven years of marriage; (3) it must be shown that soon before her death she was subjected to cruelty or harassment by husband or any relative of his her husband and (4) such cruelty or harassment was for or in connection with any demand of money. If such dowry death occurs, the husband or his relative shall be deemed to have caused her death.

13. "Dowry" is defined in Section 2 of the Dowry Prohibition Act, 1961 thus :

"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 parents 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 dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."

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On a careful reading of the definition of dowry, it appears that dowry means any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to other party or by parents of either of them. Such payment or agreement should be at or before or at any time after marriage in

connection with the marriage of the parties. In the present case, the evidence of PW-7 Babanbai mother of the deceased, shows that at the time of marriage, amount of Rs.500/-, a gold ring, some utensils and saree were given to Tai @ Urenica. The property appears to be the traditional gift made by the parents to their daughter at the time of marriage. There is no evidence to show that before, at the time of the marriage or after the marriage there was any demand of money or valuable property in connection with the marriage. PW-6, father of the deceased deposed that accused was demanding Rs.500/- and according to him, once or twice had paid. The evidence of PW-6 Vinayak about payment once or twice is inconsistent with the evidence of his wife, but admits that the payment of Rs. 500/- was made only at the time of marriage. It is possible that accused might have quarreled and beaten his wife, but that does not mean that every quarrel or beating relates only to demand of money or dowry alone. As per the evidence of Vinayak, in the month of August, 1986, she had come to parents' place. After 15 days, she was taken back by the accused and according to him, twice or thrice thereafter she paid visits to parents' place. He has not stated when she had last 12 Cri-A-471-92.sxw

visited her parents' place. Therefore, practically there is no evidence to establish that soon before her death she was subjected to cruelty or harassment for or in connection with demand of dowry.

14. Even though death of Tai @ Urenica was not a natural death, and was homicidal, unless it could be established that death had occurred on account of or in connection with the demand of dowry or her harassment or torture was for demand of dowry. it could not be treated as dowry death. Merely because a woman dies unnatural death within seven years after marriage, it cannot be said to be dowry death unless the death can be related to demand of dowry. To clarify this position, a few illustrations may be given. Assuming that there was some demand and on that count the wife was ill-treated, however, if the death occurs in a motor accident or in an accidental fire in the house or during a dacoity in the house or if the woman is attacked, raped and then murdered by some person unconnected with the family of husband, such death may be unnatural, but such death being not connected with the demand of dowry cannot be treated as dowry death. To establish that it was a dowry death, it must be established that death was connected with ill-treatment or harassment on account of or in connection with demand of money.

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15. In the present case, as stated above, Tai @ Urenica died homicidal death, but the prosecution has failed to establish that accused had committed her murder and there is no material to connect her death with the alleged demand or harassment on that count. Therefore, it must be held that the prosecution has failed to establish that the accused had caused dowry death and therefore conviction of the accused under Section 304-B of IPC cannot be sustained.

16. For the aforesaid reasons, the Appeal is partly allowed. The conviction of the accused under Section 498A of IPC and sentence thereunder is maintained. However, his conviction for the offence under Sec. 304B and sentence thereunder is hereby set aside. As the accused has already undergone sentence more than what was awarded for the offence under Section 498A of IPC he will not be required to be taken in custody again. (J.H.BHATIA,J.)