MAHADEVAPPA

v.

STATE OF KARNATAKA REP. BY PUBLIC PROSECUTOR

(Criminal Appeal No. 1261 of 2008)

JANUARY 07, 2019

[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]

Penal Code, 1860 – s.498A r/w s.302 – Dowry death – Death by burn injuries – Prosecution case was that the appellant-husband poured kerosene on his wife and set her on fire which resulted in her death – Trial court held that prosecution was not able to prove the charge of demand of dowry against the appellant and also that the deceased suffered homicidal death and ordered his acquittal – High Court reversed the order of acquittal and convicted the appellant under ss.498A and 302 – Appeal against conviction – Held: The evidence of the four prosecution witnesses clearly proved that the appellant was addicted to consuming liquor – He used to demand money from the deceased and her parents quite often and also at times used to ill-treat and assault the deceased – There was no reason to discard the evidence of the parents of the deceased who were the most natural and material witnesses to speak on such issues – In such circumstances, the daughter - a newly married girl would always like to first disclose her domestic problems to her mother and father and then to her close relatives because they have access to her and are always helpful in solving her problems – The acts and the behavior of the appellant (husband) towards his wife soon after their marriage which eventually culminated in her death within seven years from the date of their marriage squarely fell within the meaning of s.498-A Explanations (a) and (b) of IPC – Further, it was a case of homicidal death and not a case of accidental death – Appellant was the only person present at the time of incident in the house with the deceased – The explanation by the appellant that the deceased's sari accidentally caught fire when she was boiling the water on the oven was not convincing – In the absence of any plausible explanation given by the appellant and the circumstances, the manner in which the incident occurred and material seized from the room i.e. kerosene oil bottle, it was proved beyond reasonable

doubt that the appellant was responsible for causing death of the deceased – Evidence of four prosecution witnesses fully proved the case of the prosecution – Interference with the order of conviction not called for – Crime against women.

Dismissing the appeal, the Court

HELD: 1. A perusal of the evidence of the four prosecution witnesses clearly proved that firstly the appellant was addicted to consuming liquor, Secondly, he used to demand money from the deceased and her parents quite often; and thirdly, he also at times used to ill-treat and assault the deceased. The incident of ill-treatment and demand of money did not occur once but on many a times and it started soon after the marriage which continued till deceased's death. There is no reason to discard the evidence of the father and mother of the deceased who are the most natural and material witnesses to speak on such issues. Indeed, in such circumstances, the daughter - a newly married girl would always like to first disclose her domestic problems to her mother and father and then to her close relatives because they have access to her and are always helpful in solving her problems. There was no contradiction on any of the material issues in the evidence of these four witnesses despite they being subjected to lengthy cross-examination by the defense. That apart, why should a mother and a father speak lie unless there are justifiable reasons behind it. Not only that, even their relatives supported their version. Therefore, the acts and the behavior of the appellant (husband) towards his wife soon after their marriage which eventually culminated in her death within seven years from the date of their marriage squarely fell within the meaning of Section 498-A Explanations (a) and (b) of IPC. [Paras 30, 31, 32, 33][47-E-H; 48-A-B]

2.1 The victim-deceased died due to pouring of Kerosene oil and setting her body on fire and this act could be done only by the appellant and by no one else. It is proved by the following circumstances. First, the incident in question occurred in the house when only the deceased and the appellant were present. In other words, the appellant was the only person present at the time of incident in the house with the deceased. In these circumstances, it was the appellant who could give some plausible

explanation as to how and in what manner the incident in question occurred. The explanation given by the appellant was that the deceased's sari accidentally caught fire when she was boiling the water on the oven. This story of the appellant cannot be believed. Second, the evidence of I.O., Post-Mortem Report, FSL report and the evidence of doctor (PW-6) has proved that kerosene oil was found on the body of deceased and second, one bottle of kerosene oil was also lying in the room. The presence of kerosene oil on the body of deceased would indicate that the kerosene oil was poured on her body. Since the appellant was the only person present in the room (kitchen), it was he who could do it. Third, the presence of broken bangles found in the room suggest that the deceased must have struggled with the appellant to save herself which resulted in breaking of her bangles. Fourth, had it been a case of catching of simple fire from the oven, then in such event, the smell of kerosene oil from the body of the deceased would not have been found on her body. Fifth, it is nobody's case that the deceased tried to commit suicide by pouring kerosene oil on her and then put herself on fire. Sixth, the relations between the appellant and deceased were not cordial. The appellant always used to demand money from the deceased which she was not in a position to give to the appellant. Seventh, had this been a case of accident as suggested by the defense then burn injuries sustained by the deceased would have been more on the lower part of her body rather on the upper part of the body because according to defense, the deceased was near to oven when her sari caught fire. The post-mortem report, however, showed that the burn injuries were more on her upper part and her blouse was found burnt. [Paras 38-46][48-F-H; 49-A-G]

2.2 In the absence of any plausible explanation given by the appellant and the one which was suggested but not having been proved and further keeping in view the circumstances, the manner in which the incident occurred and material seized from the room i.e. kerosene oil bottle, it is proved beyond reasonable doubt that the appellant was responsible for causing death of the deceased. In other words, her death was homicidal and not accidental. The evidence of four prosecution witnesses fully proved the case of the prosecution. In this view of the matter,

A **even if, some witnesses might have turned hostile, yet it would be of no significance and nor it would adversely affect the case of the prosecution. [Paras 47, 49][49-G-H; 50-A, B-C]**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal no. 1261 of 2008.

B From the Judgment and Order dated 03.01.2007 of the High Court of Karnataka at Bangalore in Criminal Appeal No. 1040 of 2000.

Mallikarjun S. Mylar, Manjunath, Ms.Umme Salma, Ms. E. R. Sumathy Advs. for the Appellant.

C Joseph Aristotle S., Mrs.Priya Aristotle, Shiva P., Ms. Aruna Hannah Dutta, Ms. Anitha Shenoy, Advs. for the Respondent.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is filed against the final judgment and order dated 03.01.2007 passed by the High Court D of Karnataka at Bangalore in Criminal Appeal No.1040 of 2000 whereby the High Court allowed the appeal filed by the respondent/State herein.

2. It is necessary to set out the facts hereinbelow in detail to appreciate the issues arising in this appeal.

E 3. The appellant (accused) was married to Rukmini Bai (deceased) on 04.06.1994. On the same day, the younger sister of Rukmani Bai, namely, Sonabai was also married to the appellant's younger brother-Bhimanand. Both the marriages were performed in Lokeshwar Temple at a place called Lokapur.

F 4. After marriage, the appellant, who was serving as a Constable in the Police Station, Kaladagi in the District Bagalkot went to Kaladagi with Rukmini Bai. So far as the appellant's younger brother was concerned, he was working as a Constable in CRPF at Nagaland. He also proceeded to Nagaland with his wife.

G 5. On 02.10.1995, father of Rukmini Bai - Eknath (PW-1) received a wireless message that Rukmini Bai was admitted to Government Hospital at Bagalkot for burn injuries. On receipt of the message, Eknath and some elder persons of the village immediately left for Bagalkot. On reaching the hospital, Eknath found the condition of Rukmini Bai- her daughter to be very critical.

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6. When Eknath asked from Rukmini Bai the cause of sustaining injuries by her, she first started crying on seeing him and then said that her husband (appellant) had poured kerosene oil on her body and set her on fire. Later eventually around 6.15 p.m. on the same day, Rukmini Bai succumbed to her injuries while in the hospital.

7. Eknath (PW-1) - then lodged the FIR in PS Kaladagi on the same day against the appellant (FIR No.99/95) for commission of offences under Sections 498(A) read with Section 302 of the Indian Penal Code, 1860 (for short "the IPC"). The Investigating Officer registered the FIR and started investigation. He recorded the statements of several persons, got the post mortem of the dead body, obtained F.S.L. Report and after completion of the investigation and collecting necessary evidence, filed the charge-sheet against the appellant. The case was then committed to the Sessions Court for trial.

8. The Sessions Judge by judgment/order dated 31.05.2000 acquitted the appellant of all the charges. It was held that the prosecution was not able to prove the charge of demand of dowry against the appellant. It was also held that the prosecution was also not able to prove that Rukmini Bai suffered homicidal death. In other words, the Sessions Judge held that the evidence adduced by the prosecution was not sufficient to hold the appellant guilty of the offence punishable under Section 498-A IPC and the murder punishable under Section 302 IPC.

9. The State felt aggrieved by the appellant's acquittal and filed appeal in the High Court of Karnataka seeking leave to appeal questioning the legality and correctness of the order of the acquittal passed by the Sessions Judge.

10. By impugned order, the High Court granted leave to file appeal and later allowed the State's appeal. The High Court by impugned order reversed the order of the acquittal passed by the Sessions Judge and convicted the appellant for commission of offences punishable under Sections 498-A and 302 IPC. The High Court held that the evidence adduced by the prosecution, in clear terms, proved both the charges, namely, the demand of dowry and murder beyond reasonable doubt against the appellant and, therefore, the appellant was liable to be convicted under Section 302 read with Section 498-A of IPC. The High Court, accordingly, sentenced the appellant to undergo life imprisonment. It is against this judgment/order of the High Court, the appellant (accused) has filed this appeal by way of special leave before this Court.

A 11. Heard Mr. Mallikarjun S. Mylar, learned counsel for the appellant and Mr. Joseph Aristotle S., learned counsel for the respondent.

12. Mr. Mallikarjun S. Mylar, learned counsel for the appellant (accused), while assailing the legality and correctness of the impugned order, contended that no case was made out by the State before the B High Court for reversing the judgment of the Sessions Judge. It was his submission that the High Court should have upheld the order of the Sessions Judge, which rightly acquitted the appellant holding that the charges leveled against the appellant were not proved.

13. Learned counsel further contended that this being a case of C reversal, this Court is entitled to re-appreciate the entire evidence for coming to its own conclusion with a view to find out as to whether the evidence adduced by the prosecution is sufficient to hold the appellant guilty for commission of offences punishable under Sections 498-A and 302 IPC.

D 14. Learned counsel then took us to the entire ocular evidence and made sincere attempt by pointing out the circumstances occurring prior to the date of incidence and the manner in which those incidents occurred with a view to show that on such evidence adduced by the prosecution, no case of demand of dowry could be made out against the appellant within the meaning of Section 498-A IPC nor a charge of E commission of murder of Rukmini Bai punishable under Section 302 IPC was made out.

15. In other words, his submission was that the view taken by the Sessions Judge acquitting the appellant from both the charges deserves to be restored as against the view taken by the High Court, which wrongly F held the appellant guilty for commission of the offences.

16. In reply, learned counsel for the respondent (State) supported the impugned order and argued that the appeal deserves to be dismissed. It was his submission that the Sessions Judge failed to properly appreciate the evidence adduced by the prosecution as a result of which wrong G conclusion of acquittal was arrived at by the Sessions Judge whereas, according to learned counsel, the High Court was right in its approach in appreciating the evidence and coming to a conclusion that both the charges, i.e., demand of dowry and murder were made out against the appellant.

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17. Having heard the learned counsel for the parties and on appreciating the entire evidence, we are inclined to agree with the reasoning and the conclusion of the High Court.

18. In our view, the High Court was right in holding that a case of the appellant's conviction under Section 498-A and Section 302 IPC was made out by the prosecution beyond the reasonable doubt and, therefore, the appellant has to be convicted and accordingly sentenced for commission of twin offences punishable under Sections 498-A and 302 IPC.

19. On appreciating the evidence and on perusal of the record of the case, we find that it is not in dispute that Rukmini Bai died within 17 months of her marriage with the appellant (date of marriage is 4.6.1994 and the date of her death is 2.10.1995). It is also not in dispute that Rukmini Bai was not suffering from any kind of ailment and was a healthy woman. It is also not in dispute that the death occurred due to severe burn injuries suffered by her on 02.10.1995.

20. The question which, therefore, arises for consideration is, first whether the appellant at any point of time made any demand of dowry to Rukmini Bai or/and to her parents; and secondly, whether Rukmini Bai's death was "homicidal" or "accidental" in nature.

21. In other words, the question arises for consideration is whether Rukmini Bai's death can be regarded as "dowry death" attracting Section 498-A IPC or/ and secondly, whether her death was "homicidal" attracting Section 302 IPC or it was "accidental death".

22. PW-1 is the father of the deceased- Rukmini Bai. He deposed in his evidence that the appellant was working as a Constable in the State Police Department. He was addicted to consuming alcohol daily. He often visited to the house of PW-1 in fully drunken condition. He deposed that Rukmini Bai had told him and his wife (mother of Rukmini Bai) that under the influence of alcohol, the appellant used to insist Rukmini Bai that she should also consume liquor and dance before him undressed. He also deposed that Rukmini Bai had told him many a times that the appellant used to harass and ill-treat her off and on in the house. He also deposed that Rukmini Bai also used to tell him that the appellant also used to beat her while he was under the influence of liquor and used to insist her to go to her parental house to bring Rs.4000/- to Rs.5000/- from her parents for him. He further deposed that on two occasions, he

A managed to send Rs.2000/- for the appellant through Rukmini Bai but third time, he declined due to his poor financial capacity to send more money. He deposed that Rukmini Bai once told him that she apprehends danger to her life when she is alone with the appellant and, therefore, she would like to come back and stay with her parents in their house. He deposed that with the intervention of elder members of the village, Rukmini Bai was persuaded to go back and stay with the appellant for which she agreed.

23. He deposed that Rukmini Bai on returning to her matrimonial house found that the appellant was not mending his ways, and continued with his bad habits. She had therefore sent a letter to her father mentioning the incidents of ill-treatment meted out to her by the appellant. He also deposed that on receipt of the letter from Rukmini Bai, his wife- Savitribai and his elder brother's wife-Droupadi had gone to the appellant's house but the appellant abused both the ladies and did not permit them to meet Rukmini Bai. He deposed that the appellant on that day went to the extent of beating the two ladies with his shoes. The two ladies then went to the Police Station and requested the in-charge of the police station to advise the appellant to behave properly with his wife. On return back to home, both the ladies told the incident to their elder brother who then contacted Rukmini Bai when she told him to send Rs.3000/- for the appellant failing which allow her to come back to her father's house.

24. PW-1 further deposed that after eight days, a message came to him at his residence that Rukmini Bai has suffered extensive burns on her body and is admitted in the hospital for treatment. He, therefore, immediately left for the hospital along with his relatives and friends. On reaching there, he met Rukmini Bai when she told him that it was the appellant who poured kerosene oil on her body, due to which she suffered injuries.

25. PW-4 (Savitribai) is the mother of deceased. On perusal of her deposition, we find that she has corroborated the evidence of PW-1 which we have detailed above on all material issues. In other words, PW-4 also has given the same version of the appellant which PW-1 has given in his deposition including about the behavior of the appellant and the way he had ill-treated Rukmini Bai all along till her death.

26. We, therefore, need not repeat in verbatim the deposition of PW-4 except to state that her deposition is also on the same lines on

which PW-1 has given his statement and it fully corroborates with the version of PW-1 on all material issues about the appellant without any contradiction between the two versions.

27. Now, we come to the evidence of PW-5. He is another son-in-law of PW-1. His name is Bhimappa. He is brother of the appellant. He was married to PW-1's another daughter-Sonabai. His marriage was also performed on the same day on which the appellant was got married to Rukmini Bai.

28. He also deposed that the appellant used to ill-treat Rukmini Bai and at times beat her also. He deposed that one of his relatives-Krishnappa when he visited Rukmini Bai's house, she complained to him about the bad behavior of the appellant towards her. This was told to him by Krishnappa.

29. Now, we come to the evidence of PW-17 (Kristappa). He is a close relative of Eknath (PW-1) - father of the deceased. He deposed that once he went to Rukmini Bai's residence and when he was on his way to a Temple at Tulasigeri, Rukmini Bai met him and complained against the appellant and told him to convey to her father (PW-1) to send money for the appellant.

30. On a perusal of the evidence of the aforementioned four prosecution witnesses, it proves in clear terms that firstly the appellant was addicted to consuming liquor, Secondly, he used to demand money from the deceased and her parents quite often; and thirdly, he also at times used to ill-treat and assault the deceased. The incident of ill-treatment and demand of money did not occur once but on many a times and it started soon after the marriage which continued till Rukmini Bai's death.

31. In our opinion, there is no reason to discard the evidence of the father and mother of the deceased who are the most natural and material witnesses to speak on such issues. Indeed, in such circumstances, the daughter - a newly married girl would always like to first disclose her domestic problems to her mother and father and then to her close relatives because they have access to her and are always helpful in solving her problems.

32. We have not been able to notice any kind of contradiction on any of the material issues in the evidence of these four witnesses despite

A they being subjected to lengthy cross-examination by the defense. That apart, why should a mother and a father speak lie unless there are justifiable reasons behind it. We do not find any such reason in this case. Not only that, even their relatives, i.e., Bhimappa and Kristappa supported their version.

B 33. We are, therefore, of the opinion that the acts and the behavior of the appellant (husband) towards his wife-Rukmini Bai soon after their marriage which eventually culminated in Rukmini Bai's death within seven years from the date of their marriage squarely fell within the meaning of Section 498-A Explanations (a) and (b) of IPC.

C 34. This takes us to examine the other question as to whether the death of Rukmini Bai was homicidal or accidental.

35. The evidence on record has proved that the incident in question occurred in the morning around 8 a.m. in the house of the deceased. It has also come in evidence that at that time, there were only two persons D in the house, i.e., the deceased and the appellant.

36. The case of the prosecution was that it was the appellant, who poured kerosene oil on his wife- Rukmini Bai when she was in kitchen and set her on fire, whereas the case of the appellant was that it was a case of an accidental death. It was suggested that when Rukmini E Bai was boiling the water on the oven in the kitchen, her nylon sari accidentally came in contact with the fire, which resulted in her death.

37. In order to examine this question, the manner in which the incident occured and the surroundings prevailing in the room at the time of incident are important. The nature of burn injuries sustained by the F deceased is also equally important.

38. Having perused the evidence, we are of the considered opinion that Rukmini Bai died due to pouring of Kerosene oil and setting her body on fire and this act could be done only by the appellant and by no one else. In other words, it was a case of homicidal death and not a G case of accidental death. It is proved by the following circumstances.

39. First, it is not in dispute that the incident in question occurred in the house when only the deceased and the appellant were present. In other words, the appellant was the only person present at the time of incident in the house with the deceased.

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40. In these circumstances, it was the appellant who could give some plausible explanation as to how and in what manner the incident in question occurred. As mentioned above, the explanation given by the appellant was that Rukmini Bai's sari accidentally caught fire when she was boiling the water on the oven. In our opinion, this story of the appellant cannot be believed.

41. Second, the evidence of I.O., Post-Mortem Report, FSL report and the evidence of doctor (PW-6) has proved that kerosene oil was found on the body of deceased and second, one bottle of kerosene oil was also lying in the room. The presence of kerosene oil on the body of deceased would indicate that the kerosene oil was poured on her body. Since the appellant was the only person present in the room (kitchen), it was he who could do it.

42. Third, the presence of broken bangles found in the room suggest that the deceased must have struggled with the appellant to save herself which resulted in breaking of her bangles.

43. Fourth, had it been a case of catching of simple fire from the oven, then in such event, the smell of kerosene oil from the body of the deceased would not have been found on her body.

44. Fifth, it is nobody's case that the deceased tried to commit suicide by pouring kerosene oil on her and then put herself on fire.

45. Sixth, the relations between the appellant and deceased were not cordial. The appellant always used to demand money from the deceased which she was not in a position to give to the appellant.

46. Seventh, had this been a case of accident as suggested by the defense then burn injuries sustained by the deceased would have been more on the lower part of her body rather on the upper part of the body because according to defense, the deceased was near to oven when her sari caught fire. The post-mortem report, however, showed that the burn injuries were more on her upper part and her blouse was found burnt.

47. In the absence of any plausible explanation given by the appellant and the one which was suggested but not having been proved and further keeping in view the circumstances, the manner in which the incident occurred and material seized from the room i.e. kerosene oil bottle, it is proved beyond reasonable doubt that the appellant was

A responsible for causing death of Rukmini Bai. In other words, Rukmini Bai's death was homicidal and not accidental.

48. Learned counsel for the appellant argued that some of the witnesses of the prosecution did not support their case, and turned hostile. It is for this reason, learned counsel submitted that the prosecution case B should be discarded.

49. We do not agree to this submission of the learned counsel for the appellant. The evidence of four prosecution witnesses which we have detailed above fully proves the case of the prosecution. In this view of the matter, even if, some witnesses might have turned hostile, C yet it would be of no significance and nor it would adversely affect the case of the prosecution. It is more so when the witnesses which we have referred above did not turn hostile and were, therefore, rightly believed by the High Court.

50. In view of the foregoing discussion, we agree with the reasons D and the conclusion of the High Court. As a result, the appeal fails and is accordingly dismissed.

Devika Gujral Appeal dismissed.