SUPREME COURT OF INDIA

Sahebrao and Another

Vs

State of Maharashtra

Appeal (Crl.) 1507 of 2005

(S. B. Sinha and P. P. Naolekar, JJ)

03.05.2006

JUDGMENT

P. P. NAOLEKAR, J.

The accused appellants Sahebrao (A-1) and Bhausaheb (A-2) were tried along with their mother Shanti Bai (A-3) for committing offences under Sections 304-B and 498-A of the Indian Penal Code (IPC). The judgment dated 06-06-1992 by the Additional Sessions Judge, Aurangabad found A-1 and A-2 guilty under Sections 306 and 498-A, IPC and sentenced them to undergo rigorous imprisonment for three years and fine of Rs. 500/- each, in default, rigorous imprisonment for three months under Section 306 IPC. No separate sentence was passed under Section 498-A, IPC. A-3 was acquitted. Being aggrieved by the judgment of the trial Court, the accused appellants filed an appeal before Aurangabad Bench of the Bombay High Court. The High Court by its order dated 31-01- 2005 dismissed the appeal and confirmed the sentence passed by the trial Court. That is how the appellants are before us in this appeal. The relevant facts deduced from the evidence are that the marriage of accused-appellant A-2, resident of Village Babulkheda, and deceased-Sangita, daughter of the complainant-Ramrao Laxman Darekar (PW-1), took place on 13-05-1990 at Village Pathri. The distance between Village Pathri and Babulkheda was 15 Kms. Just after the marriage, A-2 insisted for a tape recorder. PW-1 persuaded that the tape recorder would be given to him in due course of time. Three days after the marriage, the elder son of PW-1, Sudam (PW-3) along with his maternal uncle, Karbhari Vithal Jadavh (PW-4) went to village Babulkheda to take the deceased back to Village Pathri. On return, PW-3 told his father PW-1 that elder brother of A-2, accused appellant Sahebrao (A-1) was demanding additional dowry amount of Rs. 10, 000/- as the dowry

paid at the time of marriage was not as per their status and A-2 was insisting for a tape recorder. The deceased stayed with her father for 5-6 days and thereafter, Ambadas-brother of A-2, took her to Village Babulkheda. Ambadas on return told PW-1 that A-1 was demanding Rs.10, 000/- and A-2 was insisting for a tape recorder. About 2-3 days later, PW-1 went to his daughter's matrimonial home. She told him that A-1 and A-2 were troubling her for an amount of Rs. 10, 000/- and a tape recorder. PW-1 though expressed his inability to pay the amount, sent PW-3 to Aurangabad for purchasing the tape recorder. After 5-6 days, PW-3 and PW-4 went to the matrimonial home of Sangita, gave the tape recorder to the accused persons and took her to her parent's place at Village Pathari. After a week, Mansub- younger brother of A-2, came to the house of PW-1 to take her back to Village Babulkheda and informed him that A-1 had demanded an amount of Rs. 10, 000/- and the deceased would not accompany him unless the amount is given. He also informed PW-1 that A-1 would get angry if the amount was not paid. PW-1 somehow managed to send the deceased to her matrimonial home along with Mansub. In the month of 'Jaistha', when PW-1 went to see his daughter, accused persons started questioning him as to why he had not paid the amount and asked him to take his daughter back. The deceased was taken back by PW-1 and she stayed at her maiden home for a month. Mansub, once again, came to take her back to the matrimonial home. This time also, Mansub, demanded the additional dowry of Rs. 10, 000/-. In September 1990 the deceased came back to her father's place and on reaching there she started weeping loudly and told PW-1 and her mother that she was beaten by the accused persons and pointed out the marks of beating on her back and requested PW-1 not to send her back to Village Babulkheda. However, in the hope that situation would improve, PW-1 left his reluctant daughter to the matrimonial home on 06-09-1990. That time also A-2 told him that since the amount was not given PW-1 should take back his daughter. While returning back to his village on 07-09-1990, the deceased daughter met him on the way and told him that it would be very difficult for her to stay and also that he might not see her again.

On 08-09-1990, the cousin brother of A-2 informed PW-1 that his daughter was ill. PW-1 along with others, went to the house of the accused persons at about 1.00 P.M. There he saw his daughter dead and no one from the family of her in-laws was present in the house. On receipt of the information of the incident, the police registered a case of accidental death. The police made inquiry from PW-1 but he told them that his mental condition is not good and that he would lodge the complaint afterwards. PW-1 lodged the complaint against the accused-appellants on 09-09-1990 at 7.30 P.M., giving the detailed narration of facts .

Dr. Milind Kulkarni, who conducted post-mortem over the dead body of the deceased, opined that the cause of death was "cardio respiratory failure due to Endosalphan poisoning". Learned counsel for the appellants has urged that the delay in filing the First Information Report (FIR) is fatal to the case of prosecution. PW-1 came to know about the death at about 1.00 P.M. on 08-09-1990, yet the complaint was made on 09-09-1990 at 7.30 P.M. It indicates false implication of the accused-appellants. The settled principle of law of this Court is that delay in filing FIR by itself cannot be a ground to doubt the prosecution case and discard it. The delay in lodging the FIR would put the Court on its guard to search if any plausible explanation has been offered and if offered whether it is satisfactory.

At this juncture, we would like to quote the following passage from State of Himachal Pradesh v. Gian Chand, 2001 (6) SCC 7, wherein this Court observed:

"Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any plausible explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case."

In Ravinder Kumar and Another v. State of Punjab, 40, this Court observed:

"When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack to adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquillity of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident."

We are not providing an exhausting catalogue of instances which could cause delay in lodging the FIR. Our effort is to try to point out that the stale demand made in the criminal courts to treat the FIR vitiated merely on the ground of delay in its lodgment cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the court is to look at the cause for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR. [Vide Zahoor v. State of U.P. ; Tara Singh v. State of Punjab Jamna v. State of U.P. 6. In Tara Singh, the Court made the following observations: (SCC p.541, para 4)

"4. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report. "

In Amar Singh v. Balwinder Singh & Ors., this Court held that:

"There is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether

there has been any such delay in lodging the FIR which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station, etc. have to be taken into consideration. There is no mathematical formula by which an inference may be drawn either way merely on account of delay in lodging of the FIR."

It has come in evidence that when the father reached Village Babulkheda at about 1.00 P.M. on 08-09-1990 he found his daughter dead and nobody was present in the house. When the police came and made inquiries he said that he was shocked and was not mentally fit to lodge the complaint and would do so later on. After finding her newly wedded daughter's dead body in her matrimonial home where he had left her just before a day of incident, it was very natural for a father to lose his tranquility of mind. Hence if such grief-stricken father had told the police that he would give the complaint afterwards, it was not unnatural or unusual. PW-6, who was posted at Shivoor Police Station, had also deposed about the fact that when the father was asked about the incident he had stated that he would lodge the complaint later on as he was disturbed. Two courts below have found the explanation given by the prosecution to be satisfactory and sufficient for a delay in complaint.

There does not appear to be any reason to falsely implicate the accused-appellants into the commission of crime. There is no allegation made in the complaint that her daughter was done to death by the appellants. The complaint contains the narration of facts and harassment during the period of marriage which took place on 13-05-1990 and death of his daughter which took place on 08-09-1990, from which an inference can be drawn for the commission of the offence by the accused-appellants who were allegedly consistently pestering for bringing money. In the circumstances, we do not find that simply because the FIR was lodged with some delay, the allegations in the FIR are unworthy of credence or that PW-1 has falsely implicated the accused appellants in the commission of crime. It is then submitted by Shri Sudhanshu Choudhary, learned counsel for the appellants that the prosecution witnesses have only made general allegations against the accused and there are no specification as to what kind of ill-treatment or trouble was meted out to the deceased which led her to commit suicide. It would also be submitted that there can be no question of cruelty towards the deceased in the period of four months of her married life as she was in her in-laws place hardly for about two months only, and further, conviction cannot be based solely on the basis of the evidence of the interested witnesses.

In Pawan Kumar and Others v. State of Haryana, 7, this Court observed:

"cruelty or harassment need not be physical. Even mental torture in a given case would be a case of cruelty and harassment within the meaning of Sections 304-B and 498-A IPC. Explanation (a) to Section 498-A itself refers to both mental and physical cruelty. Again wilful conduct means, conduct wilfully done; this may be inferred by direct or indirect evidence which could be construed to be such. A girl dreams of great days ahead with hope and aspiration when entering into a marriage, and if from the very next day the husband starts taunting her for not bringing dowry and calling her ugly, there cannot be greater mental torture, harassment or cruelty for bride. "

In Gananath Pattnaik v. State of Orissa, this Court specifically mentioned:

"The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. "Cruelty" for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behavior may amount to cruelty and harassment in a given case."

In Mohd. Hoshan and Another v. State of A.P., 8, it was pointed out that:

" The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. "

The complainant (PW-1) has deposed that soon after the performance of marriage, A-2 demanded a tape recorder. This statement is corroborated by PW-3 and PW-4. PW-3 has deposed that when PW-4 along with him went to Village Babulkheda 2-3 days after marriage of his sister, A-1 demanded an additional amount of Rs.10, 000/- and A-2 demanded a tape-recorder. This found support from the statements of PW-1 and PW-4 without any variation. Further PW-1 in his evidence has specifically said that deceased had told him that the accused persons on account of the non- fulfillment of their demands, troubled her. There is evidence on record of PW-1 that when his daughter came back to his place she started weeping and told the complainant about the harassment inflicted upon her on account of non-payment of Rs.10, 000/-. This found support in the statements of PW-3 and PW-4. The evidence shows that even the demand was made through the younger brother Mansub when he went to the place of the complainant. PW-1 has further mentioned that in the end of jaishth month, he went to village Babulkheda to see his daughter and was insulted by the accused persons for not fulfilling their demand and they asked him to take her back to village Pathri. It is said by PW-1 that just 8 days before the incident when the deceased last visited her maiden home she told him that she was beaten and also showed marks of beating on her body. She was weeping and requested him not to send her back to village Babulkheda without satisfying the demand of the accused persons. The evidence clearly establishes that the accused persons were consistent in their demand regarding additional amount of Rs.10, 000/- even after their initial demand of tape recorder was fulfilled. The evidence clearly establishes that the deceased was harassed at her matrimonial home and her staying there had become miserable. The deceased on several occasions, within a short span of four months of her marriage, informed her father that she was being troubled by her husband and his elder brother. They also insulted and taunted her father in her presence and asked PW-1 to take her back to his home for his inability to fulfill their unlawful demand. The reluctance shown by the deceased to go to her matrimonial home within a short period of her marriage is indicative of the fact of the treatment given to her. At her matrimonial home, she was harassed and constantly nagged for non-payment of additional amount by her father. The facts clearly establish that husband and his elder brother subjected the deceased to cruelty and their conviction under Section 498-A, IPC is based on cogent reliable evidence.

The appellants were also convicted under Section 306 IPC with the aid of the presumption as to the abetment of suicide by a married woman under Section 113-A of the Indian Evidence Act, 1872. It is proved by the prosecution that Sangita committed suicide within a period of seven years from the

date of her marriage and that her husband and his elder brother subjected her to cruelty. On the basis of the evidence, it can be said that the cruel treatment meted out to the deceased was of such a nature that it has driven the lady to commit suicide.

In Ramesh Kumar v. State of Chhattisgarh, (para 22), this Court held as under:

"Sections 498-A and 306 IPC are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498-A and may also, if a course of conduct amounting to cruelty is established

Similarly, in Hans Raj v. State of Haryana, (in para 13), this Court opined that :

Under Section 113-A of the Indian Evidence Act, the prosecution has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband (in this case) had subjected her to cruelty. Even if these facts are established the court is not bound to presume that the suicide had been abetted by her husband. Section 113-A gives discretion to the court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is of cruelty it must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word "cruelty" in Section 498-A IPC. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband. The court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman."

Neither any evidence was led by the defence nor from the evidence placed on record by the prosecution, we can draw a plausible, reasonable and trustworthy explanation to rebut the presumption under Section 113-A of the Evidence Act. The prosecution has sufficiently proved by cogent evidence that the accused-appellants by series of acts and conduct created such a difficult and hostile environment for the deceased that she was compelled to commit suicide. In the light of the discussion in regard to the cruelty committed by the accused persons to the deceased under Section 498-A, IPC, there is a direct and reasonable nexus with the commission of suicide by the deceased with the act of cruelty to which the deceased was subjected to by the accused-appellants. For the aforesaid reasons, we are of the view that the High Court has rightly upheld the conviction of the accused-appellants under Section 306 and Section 498-A, IPC and we do not find any good or sufficient reason to take a different view of the matter. The appeal is, therefore, dismissed.