

A

VIJAY

81 of 8

v.

STATE OF MAHARASHTRA

(Criminal Appeal No. 242 of 2008)

DECEMBER 1, 2008

B

[DR. ARIJIT PASAYAT AND DR. MUKUNDKAM
SHARMA, JJ.]

PENAL CODE, 1860:

C

ss. 498-A, 306, and 304-B – Prosecution of husband, in-laws and brother-in-laws of bride on the allegations of her death due to cruelty and harassment for dowry – Conviction of mother-in-law by trial court – In State's appeal High Court also convicting the husband – HELD: The letter, whereon courts below relied, indicates nothing against husband – High Court was not justified in upsetting the judgment of trial court.

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In a trial arising out of the death of the daughter of PW-1, the trial court, on interpretation of a letter (Ext.19) stated to have been written by the deceased indicating the demand of a gold ring, convicted the mother-in-law (A-3) of the deceased while acquitted her husband (A-1), father-in-law and two brothers-in-law. The trial court recorded a finding that the demand of gold ring and cruelty to deceased on account of non-satisfaction of the demand was proved only against A-3. It was found that the deceased had committed suicide. A-3 filed appeal challenging her conviction and State filed appeal against order of acquittal of other accused. The High Court on interpretation of Ext.19 held that the demand also related to Rs.10,000/- by the husband, and while dismissing the appeal of A-3, allowed State's appeal as regards A-1. Meanwhile A-3 died.

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In the appeal filed by A-1, it was contended that the trial court had rightly held that there was nothing in Ext. 19 to implicate him and the High Court erred in directing his conviction.

Allowing the appeal, the Court

HELD: 1. The letter, on which, both the trial court and the High Court have relied to conclude one way or the other refers to the demand by mother-in-law of a gold ring. There is no reference to the appellant in the letter nor is there a reference to any demand of money by him. That being so, the High Court was not justified in upsetting the judgment of the trial court. The judgment of the High Court is set aside and that of the trial court is restored. [Para 5 and 7] [894-B-E-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 242 of 2008.

From the Judgment and final Order dated 28.6.2007 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Appeal No. 428 of 1993.

Gagan Sanghi and Rameshwar Prasad Goyal for the Appellants.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J.1. In this appeal challenge is to the order passed by a Division Bench of the Bombay High Court, Nagpur Bench, allowing the appeal filed by the State. By the common judgment two appeals were disposed of. One was by Suman (hereinafter to be described as 'A-3') while the other was by the State. Five accused persons faced trial for alleged commission of offences punishable under Sections 498A, 306 and 304B of the Indian Penal Code, 1860 (in short the 'IPC'). Learned 2nd Additional Sessions Judge, Khamgaon directed acquittal of accused 1, 2, 4 and 5. The present

- A appellant was A-1. The trial Court directed conviction of accused Suman who in the meantime died. The appeal filed by the State was admitted only against the acquittal of present appellant. High Court allowed the appeal and convicted appellant for offences punishable under Section 498A, 304-B and 306 IPC.
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2. Prosecution version in a nutshell is as follows:

- Shrirang (PW-1) S/o Yashwant Raut and Sou. Vimal W/o Shrirang Raut resident of Bhusawal had two daughters and a son. Nirmla (PW-3) w/o. Subhash Marine is their elder daughter and Anita (hereinafter referred to as 'deceased') was their younger daughter. Anita was married to accused No.1 Vijay S/o Pralhad Ghodke on 14.2.1990. After their marriage, Anita went to stay with her husband at Khamgaon. Accused No.3 Suman is the mother-in-law, accused No.4 Pralhad S/o Rangnath Ghodke is the father-in-law and accused no.2 Raju S/o Pralhad Ghodke and accused no.5 Pappu S/o Pralhad Ghodke are the brothers-in-law of Anita. All of them were residing jointly.
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- E During Diwali of 1990, Anita went to her parental house at Bhusawal and stayed there for about 4-5 days, During her stay Anita told her parents that her husband (accused No.1-Vijay) was demanding Rs.10,000/- and her mother-in-law (accused No.3 Suman) was demanding gold ring. The parents of Anita expressed their inability to satisfy the demand.
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- On 7.2.1991 Shrirang (PW-1) received a letter (Exh. 19) of Anita reiterating the demand of gold ring and money. After receiving the letter, PW-1 Shrirang (PW-1) went to the matrimonial house of Anita and asked her husband and mother-in-law to send Anita with him. However, they did not send her. So he went back. On 10.4.1991 the parents of Anita received message that Anita died due to burning. Hence they rushed to Khamgaon where they had to attend the funeral of Anita. Then Shrirang (PW-1) lodged report with Police Station, Khamgaon.
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Since no action was taken, he moved Superintendent of Police, Buldana (Vide Exh. 20). On the direction of Superintendent of Police, Buldana Crime No, 118/1991 under Sections 498-A and 304-B read with section 34 of the Indian Penal Code was registered at Police Station, Khamgaon on 14.4.1991 against the accused persons. After investigation the accused persons were charge sheeted. The defence of the accused persons was of denial.

In order to establish the accusations the prosecution examined six witnesses including Shrirang (PW-1) the father of the deceased, Vimal (PW-2) the mother of the deceased and Smt. Nirmala (PW-3) the elder sister of the deceased. The trial Court found that the demand of gold ring by A-3 and cruelty to deceased on account of non satisfaction of the demand was proved only against A-3. It was found that Anita had committed suicide. Accordingly, A-3 was convicted as afore-noted and rest of the accused persons were acquitted. As noted above, Suman challenged the conviction whereas the State challenged the acquittal of rest of the accused persons.

The High Court found that the case of prosecution depended upon the interpretation of Exh.19 i.e. the letter written by the deceased to PW-1. The trial Court found that the letter only referred to the demand of gold ring by A-3 and there was nothing to implicate the present appellant. The High Court, however, felt that on reading of Exh.19 it is crystal clear that the same also related to the demand of Rs.10,000/- by the present appellant. Accordingly, as noted above, while dismissing the appeal filed by A-3 the State's appeal in respect of present appellant was allowed.

3. Learned counsel for the appellant submitted that the trial Court had rightly held that in Exh.19 there was nothing to implicate the present appellant. Therefore, his acquittal was correct, but the High Court on erroneous reading of the document has directed conviction.

A 4. Learned counsel for the State on the other hand supported the order.

B 5. In the letter on which both the trial Court and the High Court have relied upon to conclude one way or the other, reference is made to several earlier letters. It specifically refers to the demand by mother-in-law of a gold ring. There is no reference to the present appellant in the letter.

C 6. The evidence of PWs 1, 2 and 3 is also relevant. PW-1 has stated that except Exh.19 he had not received any letter and the statement in the letter to the effect that the deceased had earlier sent 2/3 letters is correct. If on one hand he says that he had not received any letter, the question of not replying to them does not arise. Similarly, PW-2 has stated that she cannot say whether there was any demand of Rs.10,000/- in D Exh.19. PW-3 has accepted that deceased had written to her father that mother-in-law Suman was demanding gold ring in the letter (Ext.19).

E 7. Learned counsel for the State submitted that there is some reference to money in the letter. The sentence is being read out of context. The deceased had written in the letter that she may have to get a gold ring but wherefrom will she get the money for buying it. Therefore, there is no reference to any demand of money by the present appellant. That being so, the F High Court was not justified in upsetting the judgment of the trial Court. The impugned judgment of the High Court is set aside and that of the trial Court is restored.

8. The appeal is allowed.

G R.P.

Appeal allowed