



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO. 01 OF 2022

APPELLANTS

- : 1. Pravin Babanrao Yawle, Aged about 32 Years, Occupation : Construction Work.
2. Babanrao Govindrao Yawle, Aged about 70 Years, Occupation Retired, Both R/o. Vyankatesh Nagar, Deomali, Taluka : Achalpur, Dist. Amravati.

//VERSUS//

RESPONDENT

: State of Maharashtra, through PSO of PS Paratwada, District : Amravati.

Mr. Parvez W. Mirza, Advocate for the Appellants.
Mrs. H. S. Dhande, APP for the Respondent/State.

CORAM : G. A. SANAP, J.
DATED : 21st AUGUST, 2024.

ORAL JUDGMENT

. In this appeal, challenge is to the judgment and order dated 29.11.2021, passed by the learned Additional Sessions Judge, Court No.2, Achalpur, whereby the learned Judge convicted the accused of the offences punishable under Sections 498-A and

304-B read with Section 34 of the Indian Penal Code, 1860 (for short, “IPC”) and sentenced them to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/- each and in default to suffer rigorous imprisonment for one month for the offence punishable under Section 498-A read with Section 34 of the IPC and rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/- each and in default to suffer rigorous imprisonment for three months for the offence punishable under Section 304-B read with Section 34 of the IPC.

02] BACKGROUND FACTS:

PW-2 Rekha Yuvraj Khade is the informant. The crime was registered on her report dated 1st August, 2013 with Paratwada Police Station. The prosecution case, which can be gathered from the report and the material placed on record, is that deceased Pooja was her daughter. The marriage between Pooja and accused No.1 was solemnized on 10th February, 2011. Deceased Pooja, after marriage, went to her matrimonial house at Deomali, Taluka Achalpur, District Amravati. It is further case of prosecution that, for the initial 4-5 months, she was treated properly; however, later on, her husband and brother-in-law made a demand of

Rs.50,000/- from the mother of the deceased as a dowry. The mother and her maternal grandfather could not pay the amount, and therefore she was subjected to mental and physical cruelty. Accused No.1 used to beat her. In the year 2013, after the birth of the daughter, when deceased Pooja went to the house of the accused, she was again ill-treated on account of the failure of her mother and maternal grandfather to pay the amount. The meeting was held amongst the relatives at the house of the accused. The efforts were made to save the marriage. The accused demanded Rs.50,000/- and told the mother that the deceased would be taken back only after the payment of Rs.50,000/-. The informant, her brother, and her father became ready to pay the amount to save the marriage. They told the accused that, after the sale of their soybean crop at the time of Diwali, they would pay the amount. However, there was no change in the attitude of the accused. They continued to ill-treat Pooja.

03] On 1st August, 2013 at about 10:00 a.m., the brother of the informant received a phone call from one Iqbal. Iqbal had made a phone call from a Government Hospital. He informed him that a dead girl from their family, with burn injuries, was brought to the hospital. The brother of the informant, the informant, and

other family members went to the Rural Sub District Hospital, Achalpur, at about 11:30 a.m. They saw the dead body of Pooja. She had sustained burn injuries. The accused persons were not present in the hospital. The informant, therefore, went to the police station and lodged the report. On the basis of the report, a Crime bearing No.194/2013 was registered against the accused. The investigation in the crime was carried out by PW-8. He arrested the accused. He drew the spot panchanama. He collected the samples. He obtained the postmortem report. On completion of the investigation, he filed the charge-sheet against four accused persons.

04] Learned Additional Sessions Judge framed the charge against the accused. The accused pleaded not guilty. It is their defence that due to the death of their daughter on account of the burn injuries sustained by her, they have been falsely implicated. The prosecution, in order to bring home the guilt of the accused, examined 11 witnesses. Learned Additional Sessions Judge, on consideration of the evidence, held accused Nos.1 and 2 (appellants) guilty and sentenced them as above. Learned Additional Sessions Judge acquitted accused Nos.3 and 4, namely the brother-in-law of the deceased and the mother-in-law of the

deceased. Accused Nos.1 and 2 have challenged the order of their conviction and sentence in this appeal.

05] I have heard Mr. Parvez W. Mirza, learned advocate for the appellants/accused and Mrs. H. S. Dhande, learned APP for the respondent/State. Perused the record and proceedings.

06] Learned advocate for the appellants took me through the evidence of the material witnesses and submitted that there are major discrepancies and inconsistencies in their evidence as to the demand of dowry and the ill-treatment and cruelty meted out to the deceased. Learned advocate further submitted that, on the basis of the same evidence, two accused have been acquitted. In the submission of the learned advocate, the learned Judge has failed to record a concrete reason for acquitting accused Nos.3 and 4 and convicting accused Nos.1 and 2 on the basis of the same evidence. Learned advocate further submitted that the allegations made in the report against all the accused are omnibus and vague. Neither the informant nor the witnesses have attributed any specific role to any accused in the commission of the crime. Learned advocate submitted that, on material point, there are improvements in the evidence of the witnesses.

07] Learned advocate submitted that, on the point of the so-called settlement meeting, the evidence is inconsistent. Learned advocate submitted that even if it is assumed for the sake of argument that the meeting had taken place in March-April, 2013, then there is no evidence to show that from March-April, 2013 till the date of the incident, any demand of dowry was made and she was subjected to cruelty. Learned advocate pointed out that it is not the case of the informant, her brother, and her father that, at the time of the marriage, any dowry was demanded or paid to accused No.1. Learned advocate took me through the evidence and pointed out that PW-6 has categorically stated that the marriage expenses had been shared by the accused as well as by them depending upon their financial position. Learned advocate submitted that the evidence adduced by the prosecution does not inspire confidence. Learned advocate submitted that the conduct of the accused would show that the appellants tried to extinguish the fire when the victim was burning. Learned advocate took me through the spot panchanama and pointed out that, on the flooring of the house, there was water, which would indicate that they tried to extinguish the fire. Learned advocate submitted that there is no evidence to establish the nexus between the death of Pooja and the harassment or cruelty inflicted on her. Learned advocate submitted that the

material on record creates doubt about the incident itself and therefore, the accused are entitled to the benefit of doubt.

08] Learned APP submitted that the accused did not go to the hospital when the deceased was carried to the hospital. Learned APP submitted that the accused also did not inform the parents of the deceased about the incident. Accused Nos.1 and 2 had sustained burn injuries to their hands, but they have failed to explain these injuries. Learned APP submitted that initially the charge under Section 302 was framed against the accused, but for want of evidence, they have been acquitted. Learned APP submitted that the evidence of the mother of the deceased, her maternal uncle, her maternal grandfather, and the independent witness PW-4 is consistent, cogent, and reliable. It is submitted that, on the basis of this evidence, the charge framed against the accused has been proved. Learned APP submitted that there are no material inconsistencies and discrepancies in the evidence of the witnesses. Learned APP submitted that, on the basis of the available evidence, the complicity of appellant Nos.1 and 2 has been established, and therefore they have been held guilty and sentenced. In short, learned APP submitted that, in the absence of any evidence against accused Nos.3 and 4, they have been

acquitted. Learned APP submitted that, in this case, the presumption under Section 113B of the Indian Evidence Act, 1872 would get attracted against the accused. The accused have not brought any material or evidence on record to rebut this presumption.

09] I have minutely perused the oral and documentary evidence. I have also perused the record and judgment and order passed by the learned Additional Sessions Judge. At the outset, it is necessary to make a mention of some of the undisputed facts. Accused Nos.2 and 3 have been acquitted. In the report as well as in the evidence, the general allegations of ill-treatment and cruelty to the deceased on account of their failure to pay the dowry has been made. On the date of death of Pooja, her daughter was 6-7 months old. The daughter is with the accused. The financial condition of the informant is not sound. She is doing labour work. The financial position of the maternal uncle and the maternal grandfather of the deceased is also not sound. The husband of the informant had abandoned them. The deceased was brought up by her maternal uncle. They had spent for her marriage. The dowry was neither demanded nor paid to the accused in the marriage. The marriage was consummated. Appellant No.2 (accused No.2) is a

retired government servant. Appellant No.1 is doing the construction work. Accused No.3, the brother-in-law of the deceased, is doing private service. Compared to the informant, the accused are financially well-off. The sketch of the house would show that the family is well to do family. The Investigating Officer has admitted that he had recorded the statements of the neighbours of the accused, but those statements have not been placed on record. Admittedly, appellant Nos.1 and 2 had sustained injuries to their hands. The injuries sustained by accused Nos.1 and 2 suggest that they had tried to extinguish the fire. A partly burned bedsheet was recovered from the spot. It shows that the attempt was made to extinguish the fire by covering the deceased with the bedsheet. The deceased was carried to the Government Hospital at Achalpur by the accused persons. It has come on record that 100 people from the side of the informant and the maternal uncle of the deceased had gathered at the house. The accused at the time were not present in the hospital. The cause of death, as per the postmortem, is a shock due to burn injuries.

10] In my view, all these facts are required to be borne in mind while appreciating the evidence. It is seen on perusal of the report that omnibus and vague allegations have been made in the

report. The allegations against accused Nos.1 to 4 of ill-treatment and demand of dowry are omnibus. No specific role has been attributed to any of the accused. The allegation of demand of dowry is against all the accused. Perusal of the evidence of the material witnesses, namely PW-1, PW-2, PW-4, and PW-6, would show that there are inconsistencies and discrepancies in their evidence on the material part of the incident. As far as the settlement meeting is concerned, the evidence is inconsistent about the presence of the witnesses in the meeting as well as the actual month of the meeting. PW-1, the maternal uncle of the deceased, has stated that when the deceased was subjected to cruelty on account of demand of dowry, they went to the house of the accused at Paratwada with the mediators and tried to convince the accused. He has stated that, in the said meeting, they had assured the accused that after selling the soybean crop, they would fulfill the demand. PW-1 has not categorically stated that PW-4, the neighbour of the accused, and his father, PW-6, attended the said meeting. PW-1 is silent about the presence of PW-4 and PW-6 in the said meeting. PW-2, the mother of the deceased, has not whispered about any such meeting at the house of the accused to settle the dispute.

11] PW-4 is the independent witness. He is the neighbour of the accused. His evidence about the timing of the meeting is inconsistent with PW-1 and PW-6. He has stated that, in the year 2013, 15-20 days prior to the incident, he himself, Narayan Kalmegh, and one teacher, who has expired, had been to the matrimonial house of the deceased for settlement of the dispute. He is silent about the presence of PW-1 and PW-6 in the said meeting. He has stated that the said meeting took place 15-20 days prior to the date of the incident. He has stated that, in the said meeting, it was agreed that the maternal grandfather of Pooja would pay the amount of dowry in two installments. The first installment was agreed to be paid of Rs.25,000/- after Diwali. He has stated that thereafter they took Pooja to the house and they returned back. PW-1 and PW-6 have not stated that they had agreed to pay the amount in two installments. This is major inconsistency in their evidence.

12] PW-6 has stated that in April, 2013, they had gone to the house of the accused at Paratwada along with deceased Pooja for compromise. He has stated that he told the accused that he had no money, but he would get the money after selling soybean crop at Diwali. He has not stated that he promised them that he would pay

the amount after Diwali. His evidence shows that this meeting took place in April, 2013. PW-4, who is an independent witness, has stated that the meeting took place 15-20 days prior to the incident. In my view, this inconsistency is material. The witnesses are contradicting each other on this vital aspect. As per the evidence of PW-6, they dropped the deceased at the house of the accused in April, 2013. PW-6 has not stated on oath before the Court that thereafter the accused continued to ill-treat and torture the deceased. Similarly, PW-1 has also not stated that, after the settlement of the dispute, there was any complaint of ill-treatment or torture by the accused to Pooja. In the report, lodged by the informant at Exh.30, it is stated that in March 2013, the settlement meeting had taken place. In the report, it is also not stated that after this settlement, any ill-treatment or cruelty was meted out to the deceased by the accused. In my view, this is a very vital and important aspect to consider the basic ingredients of Section 304-B of the IPC.

13] Learned advocate for the appellants, relying upon the decisions in the cases of *Satvir Singh & Ors. Vs. State of Punjab & Anr. [AIR 2001 SC 2828]* and *Hira Lal & Ors. Vs. State (Govt. of NCT), Delhi [(2003) 8 SCC 80]*, submitted that, in this case, there

is no existence of proximate and live link between the effect of cruelty based on dowry demand and the death concerned. It is submitted that, the prosecution is required to establish the nexus between the death and the harassment or cruelty inflicted on the deceased. In the case of *Satvir Singh & Ors.* (supra), the Hon'ble Apex Court has held that the infliction or cruelty or harassment soon before death is the sine qua non. There should be a perceptible nexus between the death and the harassment or cruelty inflicted on the deceased. It is held that the accused cannot be convicted if the evidence is insufficient to show that the wife was subjected to cruelty soon before the attempt to commit suicide. In the case of *Hira Lal & Ors.* (supra), it is held that the existence of proximate and live link between the effect of cruelty based on dowry demand and the death concerned is essential. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned would be of no consequence.

14] In my view, in the case on hand, there is hardly any evidence of ill-treatment and cruelty to the deceased after March-April, 2013. She died on 1st August, 2013. Even if the evidence of the witnesses is accepted at its face value, it would show that the

settlement had arrived at in March-April, 2013 and they had promised to pay the money to the accused at the time of Diwali. It is not their case that, despite this assurance on their part, the accused continued to ill-treat the deceased. It is to be noted that, at the time of the incident, the daughter of the deceased was 6-7 months old. PW-2, the mother of the deceased, has admitted that she had come to her house for delivery. This fact would show that somewhere in December-January, the daughter was born. It is common knowledge that, at the time of the first delivery, traditionally the daughter goes to the house of the parents. It is common knowledge that, for the purpose of delivery, the daughter stays at the house of the parents for 2 to 3 months. In my view, this fact is also required to be borne in mind. If the so-called meeting of March-April, 2013 has to be connected in any manner with this incident, then it would show that from January till the meeting of March-April, 2013, the deceased was at the house of her parents. During this period, there was no question of any ill-treatment or cruelty. In my view, the evidence would, therefore, show that from January, 2013 onwards, there was no question of any ill-treatment or torture to the deceased. The witnesses have not stated that, after the meeting of March-April, 2013, there was any ill-treatment or demand of dowry. In the facts and circumstances, I conclude that

the evidence on record is not sufficient to establish a live link or a nexus between the death and the alleged ill-treatment or cruelty to the deceased by the accused. The decisions, relied upon by the learned advocate, would, therefore, be applicable to the case on hand.

15] I have minutely perused the evidence of PW-1, PW-2, PW-4, and PW-6. Perusal of their evidence would show that no specific role has been attributed to any accused in the demand of dowry as well as ill-treatment and cruelty to the deceased. The statement on this count made by all the witnesses is omnibus and vague. It is stated that the husband and in-laws of the deceased used to beat and abuse the deceased. The demand of dowry was made. They were not in a position to pay the amount. However, they had promised to pay it after Diwali. It is, therefore, apparent that this is omnibus and general allegation. On the basis of this omnibus allegation, all the witnesses in one breath have implicated four accused. The same set of evidence has been part of the record as regards the demand of dowry and harassment to the deceased. It is seen that the trial Court has recorded a finding that the said evidence was not sufficient against accused Nos.3 and 4 to prove the demand of dowry and ill-treatment and cruelty to the deceased

by them. The same evidence was found sufficient by the learned Judge to convict accused Nos.1 and 2.

16] Perusal of the judgment and order would show that there is no discussion by the learned Judge as to how the said evidence was found sufficient to prove the guilt of accused Nos.1 and 2 and was not sufficient to prove the guilt of accused Nos.3 and 4. It needs to be stated at this stage that the State has not challenged the acquittal of accused Nos.3 and 4. In the case of ***Balak Singh and Ors. Vs. The State of Punjab [AIR 1975 SC 1962]***, the Hon'ble Apex Court has observed that when all the witnesses had in one breath implicated 4 accused, who were found to be innocent, then one could not vouchsafe for the fact that the evidence of the said witnesses was sufficient to convict the other accused. In my view, this observation of the Hon'ble Apex Court would apply to the facts of this case with equal force. The learned Judge of the trial Court has failed to consider this vital aspect. It is further pertinent to note that the learned Judge has failed to consider the material inconsistencies and discrepancies in the evidence of the witnesses. The evidence, in my view, is not cogent, concrete and reliable. The financial position of the accused, compared to the financial position of the informant, is better. Accused No.2 is a retired

government servant. Accused No.1, the husband of the deceased, is doing construction work. Accused No.3, the brother-in-law of the deceased, is doing private service. The family of the accused is a well to do family. Admittedly, they did not demand the dowry at the time of the marriage. Similarly, the dowry was not paid at the time of marriage. In my view, the case of the informant and other witnesses that the accused made a demand of Rs.50,000/- as a dowry, is completely unbelievable.

17] It is to be noted that there could be variety of reasons for the deceased to end her life. The accused cannot be convicted simply because of the suicide committed by the deceased. In this context, the conduct of accused Nos.1 and 2 is also required to be borne in mind. They tried to extinguish the fire. In the process, they sustained the injuries. The learned Judge has recorded a finding that the evidence on record is insufficient to prove the charge of murder. The Investigating Officer had recorded the statements of the neighbours. The statements of the neighbours are not part of the record. There is no independent witness as such to place before the Court the actual incident. The spot panchanama would show that, on the flooring of the house, there was water. Similarly, one partly burned bedsheet was found. It is, therefore,

apparent that the accused tried to save the deceased by covering her with the bedsheet.

18] PW-1, PW-2, and PW-6 have stated that when they went to the hospital, they found that Pooja had sustained burn injuries. She was dead. They have stated that the accused were not present in the hospital, and therefore, they were annoyed. PW-1 has stated that when they did not find the accused in the hospital, they became angry. He has stated that, therefore, the discussion took place in the hospital, and they decided to lodge the report. PW-2 has also admitted that nobody from the side of the accused was present near the dead body of Pooja, and therefore, they were annoyed. She has stated that about 100 people from their side were present in the hospital. Thereafter, they decided to lodge the report. The same is the evidence of PW-6, the maternal grandfather of the deceased. In the evidence of PW-6, the marital omission as to the demand of Rs.50,000/- towards the dowry has been brought on record. He has also admitted that the informant is his daughter, and she was working as a maid servant at Amravati. He has stated that as and when Pooja used to come to his house, her mother would stay at Amravati, and therefore, the talk took place between him and deceased Pooja was not known to the informant. In my

view, perusal of the evidence would show that it does not inspire confidence. On the basis of this evidence, the demand of dowry has not been proved. The demand of dowry, as stated in the report and by the witnesses, appears to be unbelievable in the backdrop of the facts and circumstances noted above by me. No report was lodged at any time against the accused. Apart from the burn injuries noticed by the Medical Officer, there were no other antimortem injuries on the body of the deceased.

19] In the facts and circumstances, I conclude that, on the same set of evidence, accused Nos.3 and 4 have been given a clean chit by the learned Additional Sessions Judge. In my view, the learned Judge was required to record the concrete reasons for acquitting accused Nos.3 and 4 and convicting accused Nos.1 and 2 on the same set of evidence. The evidence adduced on record is not sufficient to establish the nexus between the death and the cruelty or ill-treatment meted out to the deceased. In this view of the matter, I conclude that the material on record is sufficient to create doubt about the case of prosecution. The accused are entitled to get the benefit of doubt. As such, the appeal deserves to be allowed. Hence, the following order:

ORDER

- i] The Criminal Appeal is **allowed**.
- ii] The judgment and order of conviction and sentence of the appellants dated 29.11.2021, passed by the learned Additional Sessions Judge, Achalpur, in Sessions Trial No.127/2013 for the offences punishable under Sections 498-A and 304-B read with Section 34 of the Indian Penal Code, 1860, is set aside.
- iii] The appellant/accused No.1 – Pravin Babanrao Yawle and the appellant/accused No.2 – Babanrao Govindrao Yawle are acquitted of the offences punishable under Sections 498-A and 304-B read with Section 34 of the IPC.
- iv] The appellant/accused No.1 – Pravin Babanrao Yawle is in jail. He be released forthwith, if not required in any other case.
- v] Bail bond of appellant/accused No.2-Babanrao Govindrao Yawle stands cancelled.
- vii] The appeal stands disposed of in the aforesaid terms.

(G. A. SANAP, J.)