

Death of married woman by burns

Introduction - It was disturbing to decide cases in which young women died, and in spite of so many presumptions, it was difficult to find out who was responsible for the death. It is also disturbing to write about the case of the bride burning. I must have decided about 500 bride burning cases, unfortunately with a very poor rate of conviction, maybe because many cases of bride burning are beyond the ambit of the definition of offences under which the persons accused of such an incident are tried. Bride burning incidents are socio-economic crimes. In our traditional society, there is discrimination between the upbringing of male and female children. A girl child is neither prepared to tackle the untoward situations at the house of her in-laws nor, after marriage, is she supported by her parents until she succeeds in making her own home. The boy on the other side is allowed to become rough and tough to tackle any unexpected situation and is supported financially and in all other aspects until he settles down or flourishes in his business. Supportless married women in their 20s and 30s, unable to get support from their parents, are either harassed or are unable to accommodate themselves in the new family and succumb to death, leaving behind the question of whether the death is an accident, suicide, or homicide. In the present case, the husband of the deceased woman is not charged with making an unlawful demand for money or subjecting his wife to cruelty. Why it was so? If he allowed his wife to be subjected to demand of dowry or harassment by his parents, is he not guilty? Why the parents of Lady have not taken the issue to their son-in-law and compelled him to stop the parents from harassing their daughter. Are the parents and relatives of the deceased not responsible for her death for not supporting her in her time of need?

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Duration Ys. 0 Ms. 2 Ds. 13

In the Court of sessions at -----

(Presided over by: Ajay Nathani, Additional Sessions Judge, -----.)

Sessions Case No. _____.

The State of Maharashtra

(Through Police Station Officer, Police Station,).

Complainant.

Versus.

- 1) Rambhau, age 65 years,
- 2) Vithal , age 33 years, R/o. as above.
- 3) Mandodari , age 55 years, R/o. as above.
- 4) Mandakini, age 27 years, R/o. as above.

Accused.

ADVOCATES:

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Shri, [A.P.P.](#) for State.
Shri, for accused Nos.1 to 4.

J U D G M E N T

(Delivered on this day of 1st January, 2008)

1. The accused stand to trial of the offence punishable under Sec.498-A, 304-B, 306 r/w. 34 of the Indian Penal Code.

2. Facts constituting the prosecution case are as under:

Anita, daughter of informant Mahadeo, was married to Satish, son of accused No.1 before about three years. After marriage Anita was happy with the conduct of her husband. She was, however, complaining that the accused, who are parents, brother and brother's wife of her husband, are subjecting her to cruelty for getting amount of Rs.10,000/- for purchasing a colour TV. She also complained that the accused are keeping her without food and are subjecting her to mental and physical torture. On 18.5.2007, Anita sustained severe burns on her body while she was at the house of accused. She was admitted to hospital. She succumbed to her injuries. Informant Mahadeo on 19.5.2007 lodged a report that Anita died because of cruelty on the part of the accused for getting satisfied their unlawful demand of money. On the basis of this report offence was registered against the accused.

3. P.S.I. Mr. Chavan of Dindrood police station investigated the offence. He visited the house where Anita sustained burns. He inspected the house. He found pieces of burnt clothes in the house consisting of a single room. He found a bottle containing kerosene at the place of incident. He also noticed that tin sheets of the said room were removed to have entry in the house. He seized burn pieces of clothes and bottle of kerosene from the place of incident. He recorded the statements of the witnesses as per their say. He arrested the accused. He procured inquest panchnama prepared by PSO of Police Station, Beed City and post-mortem notes prepared by the Medical Officer, Beed after conduction of post-mortem on the corpse of Anita. After investigation he came to conclusion that death of Anita is unnatural. He also found that the evidence collected by him is sufficient to put the accused on trial of the offence punishable under Sec. 498-A, 304-B and 306 r/w. 34 of the Indian Penal Code. He, therefore, filed charge-sheet before the Judicial Magistrate, First Class, Majalgaon.

4. As the offence under Section 304-B and 306 of the Indian Penal Code is triable by the Court of Session, the Judicial Magistrate committed the case to the Court of Session. The Sessions case was made over to this Court for trial by the Additional Sessions Judge at Majalgaon.

5. Charge of the offence punishable under Sec.498-A, 304-B, 306 r/w. 34 was explained to the accused. Accused pleaded not guilty. Defence of the accused is that Anita was residing with her husband in a separate room. They were residing separate from Satish. The accused contended that they are falsely implicated just to harass them. Accused, therefore, requested to acquit them.

6. Following points arise for my determination. I have recorded my findings against each of them for the reasons to follow:

POINTS

FINDINGS.

- | | | |
|---|--|-----------------|
| 1 | Whether death of Anita is caused by burns or bodily injury or occurred otherwise than in normal circumstances? | In affirmative. |
| 2 | Whether the prosecution prove that death of Anita was suicide? | In negative. |
| 3 | Does the prosecution prove that on and before 18.5.2007 at village Pardi Mategaon, Tq. Majalgaon, accused being relatives of husband of Anita, in furtherance of their | |

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common intention, subjected Anita to harassment in connection with demand of dowry? Not proved.

- 4 Does it further prove that during the said period and place accused being relatives of husband of Anita, in furtherance of their common intention, subjected Anita to cruelty of such a nature as to drive her or harass her so as to coerce her parents to meet their unlawful demand of money? Not proved.

- 5 What order? As per final order.

REASONS.

7. In order to discharge burden of proving ingredients of the offences with which the accused are charged, prosecution rely on the evidence of P.W.1 Mahadeo, father of deceased and P.W.2 Balasaheb, brother of Mahadeo. Apart from this, prosecution examined P.W.3 Vithal, a panch witness, in whose presence place of incident was inspected by investigating officer, P.W.4 P.S.I. Mr. Chavan, who investigated the offence. Besides this, prosecution rely on the First Information Report lodged by Mahadeo exh.25, spot panchnama exh.30, inquest panchnama exh.19, post-mortem notes exh.20 and C.A. Report exh.21.

AS TO POINT NOS. 1 AND 2:

8. As both these points are in respect of nature of the death of Anita, so they are taken together for discussion. Contents of inquest panchnama exh.19 are not disputed. Contents of inquest panchnama reveal that at the time of inspection of corpse, deceased Anita was in a naked condition, there were burns all over her body including head, face, chest, stomach, back and legs. The clothes on the body were gutted in fire. The contents of inquest panchnama thus reveal that Anita sustained burns all over her body.

9. Contents of post-mortem notes reveal that Anita sustained 100 % burns all over her body and she died due to shock because of sustaining 100 % burns. The contents of spot panchnama exh.30 proved by the evidence of P.W.3 Vithal and P.W.4 P.S.I. Mr. Chavan reveal that Anita sustained burns in a house consisting of a single room where Anita was residing with her husband Satish. Clothes and curtains in the house found gutted in fire. One bottle containing kerosene and kerosene lamp was found in the house. P.W.3 Vithal deposed that there was a kitchen in one of the corners of the house. The exact place where Anita sustained burns was not pointed out in the spot panchnama or in the evidence of panch witness or in the evidence of investigating officer. Burnt pieces of Saree found at the place of incident and glass bottle found at the place of incident were seized by P.S.I. Mr. Chavan in presence of panchas. Seized articles were sent to Chemical Analyzer. There is no evidence about proper sealing of these articles. Learned Counsel for the accused argued that in absence of appropriate evidence about wrapping and sealing of seized articles, the prosecution fails to establish that seized articles were preserved in a condition of which they were found in the place of incident. In absence of evidence of wrapping and sealing and authenticity of the C.A. report itself is disputed. The conclusions mentioned in the C.A. report reveal that there were kerosene residues on partially burnt pieces of Saree and glass bottle. In absence of evidence of proper preservation of the articles of seizure it will not be appropriate to make use of the C.A. report as the result of analysis of the articles seized from the place of incident.

10. Counsel for the accused argued that considering the fact that kitchen was there in the same room where the incident occurred, possibility of breaking of accidental fire is not ruled out. The careful perusal of contents of spot panchnama reveal that when the spot panchnama was recorded two tin-sheets from the roof of the room were found to have been removed. The tin-sheets were removed in such a manner that the other tin-sheets of roof also become loose. The

Investigating Officer had not collected any evidence as to what happened at the place of incident when Anita sustained burns, how she was removed from the room and how she was brought to the hospital. The above discussed circumstances prevailing at the place of incident, however, reveal that somebody was required to enter the room where Anita sustained burns by forcibly removing the tin-sheets from the roof. This must have been required because the room of the house might have been bolted from inside. So, the circumstances indicate that room where the incident occurred, was bolted from inside and Anita was ablaze in the said room. Only because the door was bolted from inside, it however, cannot be said that the death of Anita was a suicide as she set herself on fire. In view of the above discussion, I hold that the evidence on record is insufficient to determine the nature of death of Anita.

11. Death of Anita is certainly not a natural death. There is no evidence on record to distinguish her death from accidental death or suicidal death. It is not the case of the prosecution that death of Anita was a homicide. In view of these reasons, I come to conclusion that the prosecution failed to prove that death of Anita was a suicide. The death, however, is required to be termed as a death caused by burns. I, therefore, answer point No.1 in affirmative and point No.2 in negative.

AS TO POINT NOS. 3 AND 4:

12. The evidence adduced by the prosecution in respect of cruelty on the part of accused is collective, I, therefore, take up both these points for discussion collectively. It is not in dispute that Anita died within seven years of her marriage. As discussed in foregoing paras, her death is caused due to burns. Now in order to bring death of Anita within the meaning of dowry death defined under Sec.304-B of the Indian Penal Code, the prosecution has to establish that soon before her death Anita was subjected to cruelty or harassment by the accused, who are relatives of her husband for or in connection with demand of dowry. The evidence adduced by the prosecution is not sufficient to establish that death of Anita is a suicide, so the basic ingredient for proving the offence under Sec.306 of the Indian Penal Code is not established by the prosecution. Presumption under Sec.113-B of the Evidence Act is there to assist the prosecution. In the case of **Biswajit Halder @ Babu Halder and others Vs. State of West Bengal [2007(2) B.Cr.C.134 (SC)]** Honourable Apex Court while considering the provisions under Sec.304-B of the Indian Penal Code and Sec. 113-B of the Evidence Act held that if Section 304-B I.P.C. is read together with Section 113B of the Evidence Act, a comprehensive picture emerges that if a married woman dies in an unnatural circumstances at her matrimonial home within 7 years from her marriage and there are allegations of cruelty or harassment upon such married woman for or in connection with demand of dowry by the husband or relatives of the husband, the case would squarely come under "dowry death" and there shall be a presumption against the husband and the relatives. As per Their Lordships basic ingredients to attract provisions under Sec.304-B of the Indian Penal Code are as under:

- 1] The death of a woman should be caused by burns or fatal injury or otherwise than under normal circumstances.
- 2] Such death should have occurred within seven years of her marriage.
- 3] She must have been subjected to cruelty or harassment by her husband or any relative of her husband; and
- 4] Such cruelty or harassment should be for or in connection with demand of dowry.

13. In this case prosecution established that death of Anita is caused by burns and her death occurred within seven years. Now let us consider the evidence on record to point out whether Anita was subjected to cruelty or harassed by the accused, who are relatives of her husband and whether harassment or cruelty was in connection with demand of dowry. The prosecution came up with a case that accused being relatives of husband Satish, subjected Anita to cruelty by raising demand of money for purchasing a T.V. Set by keeping her without food and by subjecting her to insult. The defence is coming with a case that accused were not residing with husband of Anita and they were no concern with the household affairs of Satish, husband of Anita. P.W.1

Mahadeo deposed in examination-in-chief that after marriage Anita on two occasions complained him that the accused are demanding money and harassing her by keeping her without food. He deposed to have visited the house of accused and requested them not to illtreat Anita. He deposed that for the first time when Anita came to his house for celebrating festival of Nag Panchami, she complained about conduct of the accused and then after 4 to 5 months when he visited the house of accused, she again complained him. In his cross-examination it is brought on record that accused No.1 father-in-law of Anita is having two acres land. He gets this land cultivated from some cultivator and he maintains himself and his wife Mandodari, the accused No.3 from this income. It is also brought on record that Anita's husband Satish is running a shop and he takes care of himself from income earned by him. It is also brought on record that accused No.2 is the employee. He is having separate source of income. As discussed in foregoing paras the contents of spot panchnama reveal that the room where the incident occurred is a self-contained house having amenities of kitchen, drawing room and bed room in the said single room. All these pieces of evidence taken together reveal that since the marriage of Anita, accused were not residing jointly with Satish, husband of Anita.

14. Evidence of P.W.3 Vithal, the panch on the spot panchnama and the villager residing in the same village, where Satish is residing deposed that Satish was residing separate from the accused and he was taking care of himself, his wife and a child from the income earned by him. As I mentioned earlier, contents of spot panchnama also reveal that the room where incident occurred was a self-contained house. This fact also goes to show that Anita with her husband was residing separate from the accused. This fact established by the evidence on record, creates suspicion about the prosecution case that accused were harassing Anita by starving her.

15. Now let us consider the evidence about demand of money. P.W.1 Mahadeo deposed that Anita complained him that accused are saying that her father had not provided proper dowry. He also stated that Anita said that the accused instructed her to bring a colour T.V. From her parents. Evidence of Mahadeo do not find corroboration from contents of F.I.R. lodged by him immediately after the death of Anita. There is drastic difference in the evidence of Mahadeo regarding above fact and the contents of F.I.R. While deposing before the Court Mahadeo deposed to have received information of ill-treatment and demand of dowry when Anita visited his house on the festival of Nag Panchami. In the F.I.R. this fact is not stated by him. He, on the contrary, stated that before about 8 to 10 days of the incident visited matrimonial home of Anita, Anita informed him that the accused are subjecting her to ill-treatment. Even on this occasion he doesn't appear to have received any information from Anita about demand of money or valuables. Contents of the F.I.R. reveal that on that occasion Anita informed him that the accused are physically and mentally harassing her alleging that her parents used black magic to win over husband of Anita. In the F.I.R. it is mentioned that on that occasion Mahadeo informed the accused that he will comply with their demand in one or two months. Mahadeo had not deposed before court about his so-called visit to the house of the accused about which he stated in the F.I.R. Last paragraph of the F.I.R. exh.25 contain generalize allegations. In this generalize allegations also it is not mentioned that accused were saying Anita to bring T.V. It is on the contrary mentioned that accused were saying Anita to bring Rs.10,000/- for purchasing colour T.V. So, the evidence of Mahadeo is inconsistent with the contents of F.I.R. The above discussed contradictions in his earlier statement and the evidence goes to show that he is deposing before Court concocted facts to make the court believe that the accused were harassing Anita to get valuables or money.

16. Prosecution examined P.W.2 Balasaheb, brother of Mahadeo to establish factum of ill-treatment on the part of the accused and unlawful demand of money by them. P.W.2 Balasaheb deposed that after marriage Anita came to village Chinchwadgaon at her parents' house on the festival of Nag Panchami. He deposed that on that occasion Anita visited his house and complained him that accused were demanding Rs.10,000/- for purchasing a T.V. and they are keeping her without food. He deposed that he then visited house of Anita and Anita again complained him about the demand of money by the accused. In his cross-examination it is brought on record that the facts about the visit of Balasaheb to the matrimonial home of Anita

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and his conversation with Anita and also the fact about visit of Anita to his house when she visited her parents' house on the festival of Nag Panchami are not appearing in his previous statement. He deposed to have stated all these facts to the police officer, who recorded his statement. P.W.4 P.S.I. Mr. Chavan, who recorded his statement, however, deposed that Balasaheb had not stated these facts to him, he, therefore, had not recorded these facts in his statement. Omissions of these facts from the previous statement of P.W.2 Balasaheb proved by the evidence of the police officer, who recorded his statement reveal that evidence of Balasaheb about receiving information from Anita about the conduct of the accused on both the occasions, is after thought evidence. So, the evidence of Balasaheb in respect of information received by him from Anita about conduct of the accused and about demand of money, is unreliable. In view of this discussion, testimony of P.W.1 Mahadeo neither received corroboration from contents of F.I.R. nor received corroboration from the evidence of his brother P.W.2 Balasaheb, so the evidence adduced by the prosecution is not cogent and reliable evidence and is not sufficient to establish the fact that the accused harassed Anita either for demand of dowry or with a view to coerce her parents to meet unlawful demand of money raised by them.

17. Counsel for the accused relied on observations in the case of **Smt. Sarla Prabhakar Waghmare V. State of Maharashtra and others, [1990 Cr.L.J.407]** where Honourable Bombay High Court held that every harassment or every type of cruelty will not attract provisions of Sec. 498-A of the Indian Penal Code. As per His Lordship the prosecution must establish that beating or harassment of the victim was with a view to force her to commit suicide or to fulfill illegal demands. He also relied on observations in the case of **Shivaji Janaba Patil & Ors. V. State of Maharashtra [2004 ALL MR (Cri) 36]** where Honourable Bombay High Court held that every petty bickering or disagreement cannot be treated as "cruelty" in parlance of law in respect of Ss. 498-A, 304-B of IPC. He also relied on observations in the case of **Devidas Baburao Karpe V. State of Maharashtra [2004(3) B.Cr.C. 711]** where His Lordship held that absence of evidence of cruelty on record is fatal for the prosecution.

18. As discussed in foregoing paras in the present case father and uncle of deceased Anita are brought before the Court to establish the instances of cruelty and demand of dowry. Their evidence as discussed by me is at variance with their previous statements. There are major improvements in their depositions. Honourable Apex Court in the case of **Kalyan and others V. State of U.P. AIR 2001 Supreme Court 3976 (SC)** held that when there is variance between F.I.R. and deposition made in Court and when there are major improvements in depositions of eye-witnesses, the prosecution case suffers and the prosecution cannot be said to have proved the facts required to establish ingredients of the offence. In the present case also similar is the situation.

19. Accused No.2 while recording his statement under Sec.313 of Cr.P.C. filed a written statement stating therein that he was residing separate from his father and also from the husband of deceased Anita. The evidence in this regard is already considered by this Court. He also tried to raise a defence of alibi by mentioning that accused Nos.1 and 3 had been to Dr. Bhopale practicing at Beed the place of District head quarter and he and his wife i.e., accused No.4 had been to the hospital of Dr. Pawar at Majalgaon, the head quarter of Taluka on the day on which Anita sustained burns. Accused produced on record prescriptions from the said doctors. The documents produced by the accused cannot be considered as they are not proved by examining the persons, who prepared it. The offence with which the accused are charged is in respect of subjecting Anita to cruelty since her marriage till the date of her death. Considering this aspect, the factum of absence of the accused from the village where incident occurred is neither material nor relevant. As the prosecution had not adduced appropriate evidence and failed to establish the facts to raise presumption under Sec.113-B of the Evidence Act, the weakness of the defence is not a material aspect for the discussion.

20. In view of these reasons, I come to conclusion that prosecution failed to establish that the accused subjected Anita to cruelty or harassment and such cruelty or harassment was either in

connection with demand of dowry or to coerce her parents to meet unlawful demand of money. I, therefore, answer point Nos. 3 and 4 in negative.

AS TO POINT NO. 5:

21. In view of the above discussion, it is quite evident that the prosecution failed to establish the death of Anita was suicidal. It is established by the prosecution that Anita died or burns within seven years of her marriage. The evidence adduced by the prosecution is not sufficient to establish that Anita was harassed in connection with demand of dowry or to coerce her parents to get money or valuables. I, therefore, hold that the prosecution failed to establish ingredients to bring the conduct of the accused within the definition of offences made punishable by the provisions of Sec. 306, 304-B, 498-A of the Indian Penal. I, therefore, pass following order.

O R D E R.

- 1) Accused Nos.1 to 4 are acquitted of the offence punishable under Sec. 498-A, 304-B, 306 r/w. 34 of the Indian Penal Code vide 235(2) of the Code of Criminal Procedure.
- 2) Their bail bonds stand cancelled.
- 3) Seized property, being worthless, be destroyed after the appeal period is over.

Majalgaon,
Date: 01.01.2008

(Ajay Nathani,
Additional Sessions Judge-2,
Majalgaon.

Analysis –

From the manner of the investigation of the crime, the lacuna in which I pointed out in the judgement, it seems that the investigating officer has not considered the dimensions of the death required to be analysed for the offence under Section 304B of the Indian Penal Code. Before the introduction of Section 304B in the Indian Penal Code, causing homicidal death was a crime, as was abetting death by way of suicide. Besides that, causing death by negligence was also a crime. In this scenario, the court was to distinguish the issue of death to find out whether the death was natural, suicidal, accidental, or homicidal. Section 304B introduced the concept of "unnatural death," which covers every death that is not a natural death. The evidence collected by the investigation officer was also cryptic. The investigating officer does not question any of the neighbours or people who happened to notice the inferno at the deceased's house and assisted in getting her out. The result of this lacklustre investigation was not going to yield any positive results. The crux of the case is in the appreciation of evidence, considering the improvements in the evidence and material contradictions in the contents of the FIR and the evidence of the author of the FIR.

The essence is that while one investigates or tries a crime relating to an unfortunate death or any other serious crime, the pain and suffering of the victim should touch the heart of the investigator and all other entities dealing with the trial, and then only can proper justice be done.