Bombay High Court
Shrimal Shobhachand Bora And Ors. vs State Of Maharashtra on 2 November, 1992
Equivalent citations: I (1993) DMC 170
Author: M Saldanha
Bench: M Saldanha
JUDGMENT M.F. Saldanha, J.

1. Following an unfortunate incident at Goregaon on 19-10-1984 where in a young married woman by the name of Meena sustained sever burn injuries, the Police registered an offence on 20-10-1984. The father of the girl lodged a complaint to the effect that the husband, who is original Accused No. 3 Sunil Shrimal Bora, and his parents, who are original Accuied Nos. 1 and 2, were responsible for the death of Meena. It was his contention that there was an original demand for Rs. 7.000/- by way of dowry and that his daughter had been ill-treated by the Accused and that, consequently, the suicide by Meena, which had taken place on 19.10.1984, was caused by the three Accused who were also liable under Section 498A of the Indian Penal Code for having treated her cruelly. The couple was married in February 1982 and the marriage was about 2-1/2 years old when Meena sustained the burn injuries. On the basis of the complaint, the Police arrested the three Accused and on completion of their investigations chargesheeted all three of them. After the case was committed to the Court of Session, an application for discharge of the Accused came to be filed in which icveral contentions were raised, one of them being that the relevant Sections under which the Accused stood charged bad come on to the statute book at a point of time subsequent to some of the incidents that are alleged and that, therefore, the Sections could have no application. The learned Additional Sessions Judge, Greater Bombay, who beard the respective learned Counsel, has embarked upon an elaborate discussion relating to the relevant provisional of law and, basing his decision on several reported cases, held that the contention regarding the retrospective application was devoid of substance. The learned trial Judge has also, in his order dated 20-ID-1991, uphold the prosecution contention that the references in the evidence to the demand for dowry and the statements of the neighbours are sufficient to create a prima facie suspicion in (he mind of the Court that the Accused are not entitled to be discharged. It is against this order that the present Criminal . Revision Application has been filed.

2. This Court had admitted the petition on 20-! 1-1991 and granted interim stay of the proceedings. Subsequently, an application came to be filed on behalf of the original complainant for vacation of the stay, at which time a direction was issued for early hearing of this application. A further complaint was addressed to the Hon'ble the Chief Justice alleging that because of the pendency of the present proceedings the trial has been held up, pursuant to which the preient Criminal Revision Application was placed on board for immediate hearing and disposal.

3. Shrimati Ponda, learned Counsel appearing on behalf of the applicants, has pointed out to me that the only evidence of any consequence in this case consists of the dying declaration of the deceased girl Meena as also the statement of her father and the statements of the witness. Shrimati Ponda has referred in detail to the dying declaration of Meena recorded on 19-10-1984 and has pointed out that she places very strong reliance on this dying declaration instead of disputing it. Shrimati Ponda has submitted that the dying declaration unequivocally makes out a case that Meena

was childless and that this appeared to be the ground on which "she had to listen to the talk of persons in the house". Shrimati Ponda does not dispute the fact that having regard to the strata in life to which the Accused belonged that if the girl did not conceive a child in the early stages of a marriage that it would be a matter not only of concern hut obviously of some degree of unpleasantness to everyone concerned. She pointed out that the girl has very clearly stated that she was virtually fed up with life because of this problem and that she committed suicide of her own accord and she added that she has no complaint or grievance against anybody elie. It is the contention of, Shrimati Ponda that this dying declaration, therefore, is of no assistance to the prosecution for the purpose of establishing either of the two charge. She thereafter referred in detail to the statement of the father who has made nothing more than a vague reference to some demand for dowry which again was at a point of time far remote from the date on which the incident took place. He does refer, in passing, to the fact that according to him the Accused are responsible for the death of his daughter. This, however, is his conclusion, but he does not adduce any cogent evidence in respect of this charge. Shrimati Ponda also pointed out that the evidence of the neighbours is to the effect that she understood that the girl was being starved and was, therefore, very weak. Shrimati Ponda was also critical of a very material statement which is attributed to the father of Meena wherein he alleged that the girl had in fact, conceived on an earlier occasion and had to undergo an operation because the in-laws were not willing to spend money for her conception. She pointed out, and with some justification, that this allegation runs directly contrary to the case of childlessness which is made out by the girl in her dying declaration. It is the submission of Shrimati Ponda that in the absence of cogent, reliable and sufficient material before the Court that-the continuation of the trial would be nothing short of harassment to the Accused when it is as clear as daylight that no conviction can result therein. She, therefore, submitted that regardless of the grounds on which the learned Additional Sesssions Judge has rejected the application, namely, the correctness of the theory of retrospective application of the relevant Sections, etc., that the Accused are still entitled to a discharge.

4. As against this, Shri Mirajkar the learned A,P.P., submitted that, undoubtedly, the incident has taken place barely 2-1/2 years after the couple were married. He contended that the girl suffered extensive burn injuries, that she was in agony, that she was obviously in a state of trauma and, therefore, that the Court should not attach too much significance to her having exonerated the Accused which was obviously done out of a tense of fear. It is his submission that the reference to her inability to bear a child must be construed by the Court as a situation whereby the husband and his parents would have tortured the girl and virtually driven her to commit suicide. He contended that the father's evidence strongly corroborates the dying declaration and makes up for whatever is unstated therein and that in any event, the prosecution must be given an opportunity to prove its case. The learned A.PP. submitted that the Indian Penal Code was amended precisely to take care of cases of cruelty in that strata of society where poor women lost their lives because of unreasonable demand; or where they were driven to suicide because of harassment, mental or physical, and that, contcquently, this Court ought not to intervene at this point of time.

5. It is not permissible to import ideological considerations into a decision that is required to be taken on the basis of the case record. One does not dispute the gravity of the situation and all that has been submitted by the learned A.P.P., but at the same time it is also necessary to evaluate clearly

and from an unbiassed state as to whether or not the prosecution has made out enough material for purposes of framing a charge and, more importantly, whether the material adduced by the prosecution would be good enough to sustain a conviction under Sections 306 and 498A of the Indian Penal Code. The basic ingredients of these Sections require that there must be evidence to indicate that the Accused have caused or abetted the suicide. The consequences of a conviction under Section 306 of the Indian Penal Code are grave and the evidence to sustain a conviction must, therefore, pass the legal test of scrutiny. As far as the offence under Section 498A of the Indian Penal Code is concerned the Courts in numerous cases have had occasion to define the gravity of cruelty that ii required to be established, the consistency of that cruelty and, above all, the nexus in point of time between what is alleged and what ultimately happened. It is on the basis of these principles that the present record will have to be carefully evaluated.

6. The dying declaration, taken at its face value and assuming that it is acceptable in the form in which it is today, would still be in sufficiend to make out either of the two charges. At the very highest, it can be held that the deceased girl was required to listen to some unpleasant talk Ana that she was a victim of an unhappy situation because of the fact that she did not conceive a child within 2-1/2 years of the marriage. This alone would not, in my mind, be insufficient material for purposes of the prosecution establishing either of the two charges against the three Accused. The evidence of the father is extremely sketchy. He was, undoubtedly, worried, upset and in distress attributed the suicide to the ill-treatment on the part of the in-laws of Meena. This hypothesis, however, cannot take the place of cogent material on the basis of which alone a conviction can be sustained. The purpose of proceeding with a Sessions trial is not to allay twirl-feelings and to thereby punish the accused in the absence of sufficient, reliable and cogent evidence. It is a requirement of law that if the material that emerges after the investigation is insufficient to sustain the framing of a charge and a subsequent conviction that the Accused is entitled to pray for a discharge.

7. A careful scrutiny of all the evidence on record and the submissions that have been advanced by the learned A.P.P. in support of the prosecution would still not bring the material that has been adduced by the prosecution within the ambit of being sufficient to sustain a charge against any of the three Accused. In this view of the matter, regardless of the position in law regarding the point of retrospective application, the learned Additional Sessions Judge was in error in having rejected the application for discharge of the Accused. To my mind, the material is clearly insufficient and, therefore, the order of the learned Additional Sessions Judge is liable to be set aside.

8. In the result, the Criminal Revision Application succeeds. The rule is made absolute. The three Applicants before the Court stand discharged of the offences under which they stood chargesheeted by the Investigating Authorities. The bail bonds of the Applicants to stand cancelled. The interim nay to stand vacated.