

Ramsuresh @ Dahu Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : May-01-2013

Appellant : Ramsuresh @ Dahu

Respondent : The State of M.P.

Judgement :

1 Cr.A.No.926/2005 HIGH COURT OF MADHYA PRADESH: JABALPUR Division
Bench: Hon'ble Shri Justice Rakesh Saxena Hon'ble Shri Justice Subhash
Kakade CRIMINAL APPEAL No.926/2005 Ramsuresh Sahu @ Dadu son of
Chandrashekhar Sahu, aged about 20 years, resident of village Paraie Sukhratola,
Police Station Chitrangi, District Sidhi,M.P.Appellant -Versus- State of Madhya
PradeshRespondent ----- For the appellant:
Shri V.K.Lakhera, Advocate. For the respondent: Smt.Nirmala Nayak,
Govt.Advocate with Shri Amit Pandey,Panel Lawyer.
----- Date of hearing:

25. 04/2013 Date of Judgment:

01. 05/2013 *****

JUDGMENT

Per: Rakesh Saxena,J.Appellant has filed this appeal against the judgment dated
02.03.2005 passed by II Additional Judge, Sidhi to the Court of I Additional

Sessions Judge, Sidhi in Sessions Trial No.139/2004 convicting the appellant under sections 304-B and 498-A of the Indian Penal Code and sentencing him 2 Cr.A.No.926/2005 to imprisonment for life and rigorous imprisonment for 3 years with fine of Rs.5000/- on each count, respectively. In default of payment of fine further rigorous imprisonment for 6 months.

2. In short, the prosecution case is that Munni @ Gita Bai was married to appellant in the year 1999. On 19.3.2004, she died otherwise than under normal circumstances in the house of her husband in village Paraie district Sidhi. Rammani (PW-3), the cousin of appellant, gave an intimation to police station, Chitrangi that at about 8 o'clock in the morning, Gita @ Munni along with her mother-in-law had gone to reap the crops on the field. She came back home at about 11 o'clock. While she was cooking she felt pain in her heart, she came out and asked for some water. While she was being taken to Sidhi for treatment she died. A marg report Ex.P/4 was recorded on the said information. Police conducted inquest proceedings and recorded statements of witnesses. The dead body of deceased was sent for postmortem examination to district hospital, Sidhi. On 24.3.2004 Nandlal Sahu (PW-1), the father of deceased, submitted an application to Superintendent of Police making accusation against the accused persons of having caused dowry death of his daughter. When this report was received by 3 Cr.A.No.926/2005 station officer of police station, Chitrangi, on 12.6.2004 an offence under sections 498-A, 304-B/34 I.P.C. and section 3/4 of Dowry Prohibition Act was registered against the appellant and his father Chandrashekhar Sahu. During investigation, statements of witnesses were recorded by the police and after completion of investigation, charge sheet was filed and the case was committed for trial.

3. Charges under sections 498-A, 304-B and 306 of the Indian Penal Code were framed against the appellant and Chandrashekhar Sahu. They abjured their guilt and pleaded false implication contending that they were innocent and that deceased had died due to some ailment. They also examined Vishal Sahu (DW-1) in their defence.

4. Learned trial Judge upon trial, after appreciating the evidence on record, held the appellant guilty of the charges under sections 498-A and 304-B of the Indian Penal Code and sentenced him to imprisonment for life for offence under section 304-B I.P.C., however, finding the evidence insufficient against co-accused Chandrashekhar Sahu acquitted him. Appellant was also acquitted of the charge under section 306 I.P.C. Aggrieved by his conviction and sentence, appellant has filed the present appeal before this Court. 4 Cr.A.No.926/2005 5. Learned counsel for appellant submitted that the conviction of appellant under section 304-B I.P.C. was illegal and unjustified since it was not proved by the reliable evidence that the death of deceased took place within 7 years after her marriage and further that there was no unequivocal evidence to establish that deceased was subjected to cruelty in connection with the demand of dowry soon before her death. In alternative, learned counsel prayed for reduction of the sentence awarded to appellant by the trial Court. On the other hand, learned counsel for the State supported the impugned judgment and justified the conviction and sentence awarded to appellant.

6. We have heard the learned counsel for the parties at length, perused the impugned judgment and the evidence on record carefully.

7. To constitute an offence under S.304-B I.P.C. the following essentials must be satisfied: i) The death of a woman must have been caused by burn or bodily injury or otherwise than under normal circumstances; ii) Such death must have occurred within seven years of her marriage; iii) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband; 5 Cr.A.No.926/2005 iv) Such cruelty or harassment must be for or in connection with demand of dowry.

8. Though Rammani (PW-3), the cousin of appellant, stated that the deceased was suffering with some ailment because of which he tried to carry her to hospital and brought her up to the road, but he came to know that she had already died. He, therefore, submitted report Ex.P/4 to police. The report was recorded by ASI R.C.Mishra (PW-9) whereupon he registered Marg Intimation Ex.P/4. He summoned the witnesses, conducted inquest proceedings and recorded

memorandum Ex.P/2. He then sent the dead body of deceased for postmortem examination. When inquest memorandum was recorded, Nandlal Sahu (PW-1), the father of deceased, was also present. Rammani (PW-3) and Sugiya (PW-6) though tried to say that deceased was ill, therefore, she was being taken to hospital but she died, yet there is no evidence on record to indicate that deceased used to remain ill and that because of illness she died. In the inquest memorandum Ex.P/2 Investigating Officer mentioned that some injuries were seen on the body of deceased, and apart from it, it was suspected that something poisonous was consumed by the deceased which resulted into her death. Viscera of the deceased was also preserved 6 Cr.A.No.926/2005 and was sent to Forensic Science Laboratory, Sagar for chemical examination, however, no report in that regard was produced in the Court.

9. Postmortem examination of the deceased was conducted by Dr.R.K.Soni (PW-7) who observed as under: External injuries: Ante mortem contusion 1cm below adam's apple size 3.5. x 1.. Second ante mortem contusion seen at anterior aspect of right forearm size 6. x 1.. Bloody frothy secretion present at both nostrils. Vaginal secretion also present. Faecal matter at anal opening. Whole face and neck cyanosed, blackish in colour, tip of finger, tongue, lip cyanosed. Mucosal membrane cyanosed. Petechial haemorrhage spot at conjunctiva. Remaining part of the body was fair. Internal injuries: Thyroid cartilage fractured in anteroposterior position. In the opinion of Dr.R.K.Soni, the cause of death of deceased was asphyxia due to fracture of thyroid cartilage associated with ante mortem contusions present at 1cm below of adam's apple. The death was homicidal in nature. The duration of death was within 30 years prior to autopsy. Viscera was preserved to send for chemical analysis for confirmation of finding and final opinion. 7 Cr.A.No.926/2005 10. From the evidence of Dr.Soni (PW-7), it is apparent that the death of deceased was homicidal in nature. Her death had taken place at the house of appellant. Though viscera was preserved and sent to Laboratory for chemical examination, but due to negligence or carelessness, the report of chemical examination was not produced in the Court. Doctor, however, observed that fracture of thyroid cartilage in anteroposterior position indicated that something hard was forcefully pressed after keeping the same on thyroid cartilage. Postmortem report Ex.P/6 was written and signed by him and also by his

colleague Dr. Vaish.

11. It has, thus, been established that the death of deceased was caused by bodily injury, otherwise than under normal circumstances.

12. Learned counsel for the appellant submitted that the evidence of prosecution witnesses with respect to the fact that deceased died within 7 years after her marriage is discrepant, contradictory and unreliable. Learned trial Judge, from the evidence of Nandlal Sahu (PW-1), the father of deceased, Parwati (PW-2), the mother of deceased and Aruna (PW-5) found it established that the marriage of deceased with the appellant had taken place in the year 1999. 8 Cr.A.No.926/2005

13. Nandlal Sahu (PW-1) categorically stated that his daughter was married to appellant in the year 1999. In the year 2002 Gavna. ceremony was performed. He firmly denied that deceased was married in the year 1991. Despite a lengthy cross- examination nothing could be elicited out from his evidence to indicate that the death of deceased took place more than 7 years after her marriage.

14. Parwati Bai (PW-2) reiterated that deceased was married to appellant in the year 1999. It is true that the said fact was found missing in her police statement Ex.D/3 wherein she stated that Gita was married to appellant about 7-8 years ago, but her Court statement that the marriage of Gita had taken place in the year 1999 finds corroboration from the evidence of Nandlal Sahu (PW-1), the father of deceased.

15. Rammani (PW-3) stated that the marriage of appellant with deceased had taken place in the year 1991 i.e. about 13-14 years before her death, but his evidence stands contradicted by Nandlal Sahu (PW-1), the father of deceased. Evidence of Aruna (PW-5) also appears discrepant. In cross- examination, at one place she stated that the marriage of Gita was not performed 13-14 years ago or 7-8 years prior to her marriage whereas in her 9 Cr.A.No.926/2005 police statement Ex.D/4 she stated that her marriage took place 7-8 years after the marriage of Gita.

16. Sugiya (PW-6) also stated that the marriage of Gita had taken place 13-14 years before her death, but the evidence of Nandlal Sahu (PW-10), the father of

deceased, in this regard seems more reliable. After perusal of the evidence of all these witnesses, we find that learned trial Judge committed no error in appreciating the evidence in this regard and holding that the deceased died within 7 years of her marriage.

17. On the question whether deceased was subjected to cruelty or harassment by the appellant soon before her death in connection with demand of dowry, the evidence of Nandlal Sahu (PW-1) and Parwati (PW-2) is important. Nandlal Sahu stated that after the marriage of deceased in the year 1999, Gavna. was performed in the month of Vaishakh. 2002. After Gavna., when deceased went to her in laws house 1-2 times, appellant started maltreating her saying that her father did not give a gold chain and a gold ring to him. He made demand of the same and intimidated her that on not meeting the said demand he will continue to maltreat her. When father-in-law of deceased came to take her, he refused to send her on the ground that appellant 10 Cr.A.No.926/2005 maltreated her. However, on the assurance given by her father-in-law that not she will face no difficulty, he sent her to his house. In cross- examination, Nandlal admitted that no dowry was settled at the time of her marriage, but when her daughter went to her in laws house, they started demanding dowry and maltreating her. He, however, clarified that demand was made only by the appellant. Her daughter never told about the demand being made by her father-in-law. Nandlal categorically stated that he sent his daughter on the assurance given by her father-in-law. Her father-in-law took Gita to his house on 14th March, 2004, and on 19th March, 2004 Gita was killed by poison. Evidence of Nandlal thus indicated that cruelty was meted out to deceased in connection with demand of dowry by the appellant soon before her death. The evidence of Nandlal (PW-1) stood corroborated by the evidence of Parwati (PW-2), the mother of deceased.

18. According to Parwati (PW-2), when her daughter came to her house, she told to her that her husband used to harass her for ring. On the last occasion when Gita came to her house, she reiterated the said demand by her husband. She lived for about 20-25 days at her house. She, though did not wish to 11 Cr.A.No.926/2005 go to her husband's house because of her harassment, but her father-in-law took her responsibility and carried her. On the 5th day after she

reached to her husband's house she died. Though certain contradictions and omissions were pointed out in the evidence of this witness, but in view of the fact that this witness came from a rural background, no much significance can be attached to them. Aruna (PW-5) stated that a day before her death Gita had come and informed her that her husband harassed her. Aruna was married in the same village in which the deceased was married.

19. In the light of the evidence of aforesaid witnesses, the evidence of Sugiya (PW-6), the cousin of deceased, that deceased and her husband lived with love and affection does not appear true. Learned trial Judge after appreciating the evidence held it established that deceased was subjected to harassment and cruelty by the appellant for not meeting the demand of dowry, soon before her death. In our opinion, learned trial Judge appreciated the evidence in correct perspective and rightly held that deceased was subjected to cruelty for not meeting the demand of dowry soon before her death. Since by the prosecution evidence, it has been established that the death of deceased occurred 12 Cr.A.No.926/2005 otherwise than under normal circumstances within 7 years of her marriage and that soon before her death she was subjected to cruelty/harassment by the appellant in connection with the demand of dowry, the presumption under section 113-B of the Evidence Act could be drawn.

20. For the aforesaid reasons, we find that learned trial Judge committed no error in holding the appellant guilty and convicting him under sections 304-B and 498-A of the Indian Penal Code. The finding of conviction is, therefore, affirmed.

21. Learned counsel for the appellant submitted that at the time of occurrence, appellant was a young boy of about 20 years of age which is apparent from his arrest memorandum Ex.P/8. It is quite possible that he might not have attained such maturity to understand and appreciate the gravity of his act. Including remission appellant has already served out more than 11 years of his sentence. In these circumstances, learned counsel prayed for reduction of jail sentence of appellant. Learned counsel for the State, however, opposed the aforesaid prayer on the ground that the manner in which deceased met with her death did not call for any sympathy for the appellant. 13 Cr.A.No.926/2005 22. Keeping in view the

young age of the appellant at the time of occurrence and the fact that he has already served out more than 11 years of his sentence, we deem it appropriate and hereby reduce the sentence of appellant under section 304-B of the Indian Penal Code, from imprisonment for life to rigorous imprisonment for a period of 10 years. However, the conviction and sentence of appellant under sections 498-A I.P.C. awarded by the trial Court is affirmed. Sentences on both the counts shall run concurrently.

23. Subject to modification in the sentence as indicated above, appeal stands dismissed. (Rakesh Saksena) (Subhash Kakade) Judge Judge b

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