

Ritesh Kumar Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Oct-09-2013

Appellant : Ritesh Kumar

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Siddharth Datt

Judgement :

CRA No.1531/2008 1 HIGH COURT OF MADHYA PRADESH JABALPUR DIVISION BENCH: Honble Shri Justice A.K. Shrivastava, & Hon'ble Shri Justice G.S. Solanki CRIMINAL APPEAL No.1531/2008Appellant: Ritesh Kumar s/o Ganesh Prasad Limbje, R/o Ward No.3, Shanti Nagar, Balaghat, Police Station Balaghat, District Balaghat (M.P.) VersusRespondent : State of Madhya Pradesh through Police Station Kotwali, District Balaghat (M.P.) ----- Shri S.C. Datt, Senior Advocate with Shri Siddharth Datt, Advocate for the appellant. Shri Umesh Pandey, Public Prosecutor for the respondent/ State. -----

JUDGMENT

(Delivered on this 9th day of October, 2013) Per Justice A.K. Shrivastava: Feeling aggrieved by the judgment of conviction and order of sentence dated 16.07.2008 passed by learned First CRA No.1531/2008 2 Additional Sessions Judge, Balaghat in Sessions Trial No.145/2006 convicting the appellant under Section 304-B IPC and thereby sentencing them to suffer life imprisonment and further

convicting him under Section 4 of the Dowry Prohibition Act, 1961 and thereby sentencing him to suffer 2 years R.I. and fine of Rs.2000/-; in default of payment of fine further R.I. of six months, the appellant has taken the shelter of this Court by preferring this appeal under Section 374(2) of the Code of Criminal Procedure, 1973.

2. No exhaustive statements of fact are required to be narrated for the purposes of disposal of this appeal since in very elaboration they have been narrated in paras 3 to 5 of the impugned judgment passed by learned Trial Court, however, for ready reference it would be condign to mention that marriage between the appellant and Sunita (hereinafter referred to as the deceased.) was solemnised on 2.5.2004 and she had died on 26.4.2006 on account of burn injuries in her nuptial home. As per the case of the prosecution, the present appellant and other acquitted co-accused persons were making a demand of Rs.50,000/- and a Tata Sumo car which was not fulfilled by the parents of the deceased, as a result of which the deceased was succumbed to burn injuries. It is stated that co-accused Rakesh CRA No.1531/2008 3 who is younger brother of appellant telephonically informed Dilip Asati that accident had occurred in his home in which the deceased has succumbed to burn injuries. Eventually, said Dilip Asati submitted a report in the concerned police station which was reduced in Marg Intimation Report No.19/2007 (Ex.P-7).

3. On the basis of the marg intimation report, the criminal law was triggered and set in motion. The investigating agency arrived at the spot, prepared the spot map and the dead body of the deceased was sent for postmortem. The statements of the witnesses including the parents of the deceased were recorded. After collecting the evidence, investigating agency found that the appellant and other acquitted co-accused persons have committed the offence and eventually arrested them.

4. After the investigation was over, a charge-sheet was submitted in the committal Court which on its turn committed the case to the Court of Session from where it was received by the Trial Court for trial.

5. Learned Trial Judge on the basis of the averments made in the charge-sheet, framed the charges punishable under Sections 304-B IPC and 3/4 of the Dowry Prohibition Act against the present appellant and other co-accused persons, which they CRA No.1531/2008 4 denied and requested for the trial.

6. The prosecution, thereafter, examined its witnesses and also placed Ex.P-1 to P-18, the documents on record. The defence of the accused persons including the appellant is of false implication and same defence they set forth in their statement recorded under Section 313 Cr.P.C and in support of their defence, they examined four witnesses, namely, Chandrakumar (DW-1), Govind (DW-2), Umabai (DW-3) and Ashok (DW-4). All these witnesses were examined on the point that no demand of dowry was made by any of the accused persons.

7. Learned Trial Judge after marshalling the evidence of the prosecution vis-a-vis to the defence witnesses and by considering the testimony of the witnesses on the touchstone and anvil of the documents came to hold that only the appellant had committed the offence under Section 304-B IPC and also under Section 4 of the Dowry Prohibition Act. However, the learned Trial Judge did not find the charge under Section 3 of the Dowry Prohibition Act to be proved against the present appellant and also did not find that the charges are proved against the acquitted co-accused persons. Eventually, the other co-accused CRA No.1531/2008 5 persons have been acquitted, but, no appeal has been filed against their acquittal by the State of M.P. Hence, the judgment of Trial Court acquitting the other co-accused persons, namely, Gaurabai and Rakesh and acquittal of present appellant under Section 3 of the Dowry Prohibition Act became final. However, the learned Trial Judge on the basis of the evidence placed on record and the documents which were proved found that appellant had committed the offence punishable under Section 304-B IPC and also under Section 4 of the Dowry Prohibition Act and eventually, convicted the appellant and passed the sentence which I have mentioned herein-above.

8. In this manner this appeal has been filed by the appellant assailing the judgment of his conviction and order of sentence.

9. Shri S.C. Datt, learned senior counsel assisted by Shri Siddharth Datt, learned counsel for the appellant vehemently contended that looking to the testimony of the father of the deceased it is not proved that the appellant made any demand of dowry which was not fulfilled by the father of the deceased as a result of which the deceased was subjected to burn injuries resulting into her death and if that is the position the CRA No.1531/2008 6 learned Trial Judge erred in convicting the appellant under Section 304-B IPC and also under Section 4 of the Dowry Prohibition Act. Learned senior counsel further submits that case of the present appellant is akin to that of the acquitted co- accused persons and therefore, the result also should have been the same but the learned Trial Court by adopting the theory of pick and choose has convicted the appellant while other co- accused persons have been acquitted and therefore, the conviction of the present appellant is bad in law.

10. An alternative submission has also been put forth by learned senior counsel that if this Court comes to the conclusion that on account of the act of the appellant the deceased had died, no reason has been assigned directing to suffer life imprisonment. It has been submitted by learned senior counsel that the appellant had already suffered the Jail sentence of more 5 years and 6 months and if the remission period is added, it would be about 8 years and therefore, it has been prayed that the appellant be enlarged for the period he had already undergone.

11. On the other hand, Shri Umesh Pandey, learned Public Prosecutor argued in support of the impugned judgment CRA No.1531/2008 7 and submitted that there is specific evidence of the parents of the deceased unerringly pointing out the guilt of the present appellant in regard to the ingredients of Section 304-B IPC that soon before her death the deceased was subjected to cruelty or harassment for and in connection with the demand of dowry and if that is the position the learned Trial Court did not err in convicting the appellant under Section 304-B IPC and also under Section 4 of the Dowry Prohibition Act and passing the impugned sentence. Hence, it has been prayed that this appeal be dismissed.

12. Having heard learned counsel for the parties, we are of the view that this appeal deserves to be allowed in part.

13. In the present case, Shyamlal (PW-1) is the father of the deceased while Geetabai (PW-2) is Chachi (aunt) of the deceased. On bare perusal of their testimony we find that specifically they have deposed against the present appellant that he was making demand of dowry Rs.50,000/- cash from the deceased and a Tata Sumo car from the father of the deceased and when this demand was not being fulfilled the deceased was harassed and ill-treated. After microscopically examining the testimony of this witness we find that three days earlier to the CRA No.1531/2008 8 incident a telephonic conversation took place between the deceased and her father Shyamlal (PW-1) requesting him to come immediately otherwise she would face the dire consequences and her life is put on the pivot. Thereafter, the deceased had died on 26.4.2006 on account of receiving the burn injuries at her nuptial home. Hence, according to us, the prosecution has successfully proved that soon before her death the deceased was subjected to cruelty for and in connection with demand of dowry. Hence, we are of the considered view that the learned Trial Court did not commit any illegality in convicting the appellant under Section 304-B IPC and Section 4 of the Dowry Prohibition Act. Thus, the conviction of the appellant under these offences is hereby affirmed.

14. On coming to the alternative submission put forth by learned senior counsel for the appellant, we find that there is nothing on record that the appellant is having any criminal antecedent. Further we find that after two years of the marriage the incident had occurred and therefore, rightly the learned Trial Court has convicted the appellant under Section 304-B IPC but according to us it is not a case where the life imprisonment is contemplated. Looking to the entire gamut of the matter, it would be appropriate to punish the appellant for a period of 8 years R.I. CRA No.1531/2008 9 15. For the reasons stated hereinabove, the appeal succeeds and is hereby allowed in part. The impugned judgment of conviction convicting the appellant under Section 304-B IPC and further convicting him under Section 4 of the Dowry Prohibition Act is hereby affirmed, however, the sentence is modified to the extent indicated hereinabove. {A.K. Shrivastava} {G.S. Solanki} Judge Judge

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