

State Vs. Mahadev and Ors.

State Vs. Mahadev and Ors.

SooperKanoon Citation : sooperkanoon.com/39008

Court : Delhi

Decided On : Feb-02-2015

Judge : G. S. Sistani

Appellant : State

Respondent : Mahadev and Ors.

Advocate for Def. : Mr. M. K. Gautam

Advocate for Pet/Ap. : Mr. Firoz Khan Ghazi

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL LEAVE PETITION No.464/2014 Date of decision :

2. d February, 2015 % . APPELLANT STATE Through : Mr. Firoz Khan Ghazi, APP for the State. versus .RESPONDENTS MAHADEV & ORS. Through : Mr. M. K. Gautam, Advocate for Respondent Nos. 2 to 4. CORAM : HONBLE MR. JUSTICE G. S. SISTANI HONBLE MS. JUSTICE SANGITA DHINGRA SEHGAL

JUDGMENT

(ORAL) 1. This appeal has been preferred by the State of Delhi against the judgment dated 26.04.2014 of Shri Rajneesh Kumar Gupta, Additional Sessions Judge-01 (West), Delhi in SC No.104/2010 acquitting the respondents of the charges under Section 498-A/304-A/34 Indian Penal Code and in alternative 302-

A/34 Indian Penal Code.

2. The case of the prosecution in nutshell is that Smt. Geeta got married to accused Mahadev on 16.02.2010; that she was subjected to cruelty and harassment being unable to meet the demands of dowry made by the respondents; that on 25.06.2010, she was reportedly brought dead at Deen Dayal Upadhyay Hospital vide DD No.24-A; that the statements of the parents of the deceased were recorded by the Sub-Divisional Magistrate, Patel Nagar; that a case under Section under Section 498-A/304-B/34 Indian Penal Code was registered, investigation was completed, charge sheet filed; that the respondents pleaded not guilty and claimed to be tried on framing of charges under Section 498-A/304-B/34 Indian Penal Code and alternatively under Section 302/34 Indian Penal Code.

3. The prosecution examined sixteen witnesses in all. In their explanation under Section 313 Code of Criminal Procedure, the respondents claimed innocence. Two defence witnesses were also examined in their support.

4. Mr. Firoz Khan Ghazi, learned APP for the State while advancing his arguments contended that the impugned judgment of acquittal is contrary to the material available on record and the same is based on the presumptions, conjectures and surmises and is in gross ignorance of settled law laid down by the Honble Supreme Court of India as well as by this Honble Court in various cases and is liable to be set aside. It is argued that the marriage of the deceased and respondent No.1 was short lived as the deceased died after 5 months of her marriage. It is further argued that the learned Trial Court erred in ignoring vital pieces of evidence and failed to appreciate the statements given by PW2 and PW3 father and mother of the deceased.

5. On the other hand, Mr. M. K. Gautam, learned counsel for the respondents supported the decision of learned Trial Court and argued that no case under Section 498A/302/304B/34 is made out against the respondents as the death of deceased is not a dowry death and the present case does not fall within the preview of Section 304B Indian Penal Code and has relied upon Hira Lal v. State (Govt. of NCT), Delhi (2003) 8 SCC80 wherein the Honble Court observed as

under:

8. (1) 304-B. Dowry death: Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death. Explanation - For the purpose of this Subsection, 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961). (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. The provision has application when death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304B Indian Penal Code, the following essential ingredients have not been answered: (i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance. (ii) Such a death should have occurred within seven years of her marriage. (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband. (iv) Such cruelty or harassment should be for or in connection with demand of dowry. (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death. Section 113-B of the Evidence Act is also relevant for the case at hand. Both Section 304B Indian Penal Code and Section 113-B of the Evidence Act were inserted as noted earlier by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:

113. B. Presumption as to dowry death - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that

such person had caused the dowry death. Explanation - For the purposes of this section, 'dowry death' shall have the same meaning as in Section 304B of the Indian Penal Code (45 of 1860). The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10-8-1988 on "Dowry Deaths and Law Reform". Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of "dowry death" in Section 304-B Indian Penal Code and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". Presumption Under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials: (1) The question before the court must be whether the accused has committed the dowry death of the woman. (This means that the presumption can be raised only if the accused is being tried for the offence Under Section 304-B Indian Penal Code.) (2) The woman was subjected to cruelty or harassment by her husband or his relatives. (3) Such cruelty or harassment was for or in connection with any demand for dowry. (4) Such cruelty or harassment was soon before her death.

9. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B Indian Penal Code shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B Indian Penal Code are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the

circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption Under Section 113B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304-B Indian Penal Code and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods "soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession". The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. 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, it would be of no consequence.

We have heard the counsel for the parties and perused the material on record.

7. Returning to the evidence adduced during trial, we notice that Geeta, the deceased died by hanging, within 5 months of her marriage to respondent No.1. Since, the death of Geeta occurred otherwise than under normal circumstances, the core issue involved in the present case remains limited to the question that whether any demand for dowry was made by the respondents or that any other demand was made by the respondents and that whether deceased was subjected to cruelty or harassment for or in connection with such demands.

8. Before proceeding further, we shall discuss the term Dowry. Honble Supreme Court has explained the same in S. Goptal Reddy Vs. State of Andhra Pradesh,

AIR 1996 SC2184 that Property or valuable security so as to constitute dowry within the meaning of the Act must, therefore, be given or demanded as consideration for marriage.

Therefore, the term consideration assumes importance because if any article is not given as a consideration for marriage, then it would not be covered with definition of dowry. The term dowry was dealt with by Supreme Court in other cases as well. In Appasaheb & Anr. Vs. Stte of Maharashtra, 2007 (1) Crimes 110 (SC), Honble Supreme Court as held as under:

9. In view of the aforesaid definition of the word dowry any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for dowry as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 9. 304-B IPC viz. Demand for dowry is not established the conviction of the appellants cannot be sustained.

To answer the aforesaid queries, first we shall examine the testimony of Ramesh Chand, father of deceased who appeared as PW2 in the witness box and

deposed:

xxxxxxx I had spent about Rs. Five lacs in the marriage and given sufficient dowry except car at the time of her marriage. xxxxxx After marriage my daughter used to complain to my wife that her husband used to beat her every now and then. xxxxxxxx In the month of May 2010, I along with my wife and nephew went to matrimonial home of Geeta. At that time, father in law of my daughter namely Suresh Kumar accused present in court was present there and he informed us that my daughter was pregnant and that if a male child is born to her, I would have to give a car at that time. xxxxxx On 25.06.2010 at about 4:30 p.m., my wife received a telephone call from the accused Mahadev that deceased had committed suicide by hanging herself. xxxxxx The deceased was killed by the accused persons. Again said she was killed for dowry.

During his cross examination, PW2 Ramesh Chand deposed :

xxxxxxx I had not given the details as to how I spent Rs. 5 Lacs on the marriage of my daughter. Vol. I had three and half lac rupees of my savings and I took loan from my friend for Rs.1.5 Lacs xxxxxxxx.

I did not make any complaint regarding the beating and harassment caused to my daughter due to fear of my honour and insult. xxxxxxxx I also did not make any complaint to police regarding harassment caused to my daughter by her Jeth and Jethani Meena.

10. Smt. Ram Bateri (mother of the deceased) appeared in the witness box as PW3 and deposed :

I had three children including deceased Geeta who was my eldest daughter. She was married to Mahadev (since deceased) on 16.02.2010 according to Hindu rite ceremonies. xxxxxxxx After marriage Geeta came to our house and told us that she was being tortured by her in laws and that behaviour of her in laws towards her was not good and that accused Meena used to tell her that she would not let her live properly at her matrimonial home (GHAR NAHI BASNE DUNGI. My daughter also told me that all the accused persons were demanding a car from her and that

when she refused to fulfil the demand of car, accused persons started beating her and also used to taunt her for not bringing car. xxxxxxxx After 2/3 days of return to her matrimonial home, we had visited the matrimonial home of Geeta. My husband and my nephew and Bhabhi had also accompanied me at that time. At that time, my daughter was pregnant and her father in law in the presence of my daughter told us that if a boy child was born to her, we would have to give a car at that time. We expressed our inability to fulfil the demand of car. My daughter was not treated properly by the accused persons. My daughter also used to telephone me and used to tell me that she was being beaten by all the accused persons and that her mother in law was not allowing her to take food and that she was also harassing her. On 25.06.10, I received telephone call at about 12 noon that her in laws was not allowing her to attend the marriage of son of my sister and thereafter she disconnected the phone. On the same day at about 4:30 p.m. I received a telephone call from Mahadev (her husband) that Geeta had died and that if he wanted to see her face for the last time, we should visit DDU Hospital.

11. The material witnesses have quoted only one instance for providing a car to them which relates to the visit of PW2 to the matrimonial house of deceased, when her father-in-law told him that they would have to give a car to them, if their daughter, who was pregnant had a male child whereas, PW3 stated that her daughter had informed her that she had been beaten by her in-laws when she refused to fulfil the demand of a car, which is in major contradiction to the statement made by PW2. Besides this, there is nothing to suggest that there was any demand of dowry moreso no specific demand of dowry in the testimony of PW2 and PW3. It is pertinent to note that PW2 stated that he never lodged any complaint against the respondents at any point of time for demand of dowry. In fact, on the fateful day, the deceased gave a telephone call to PW2 around 12:00 p.m. that her in-laws were not permitting her to attend the marriage of her cousin brother and later in the day about 4:30 p.m. he was informed about the death of deceased by respondent No.1, husband of the deceased.

12. Section 304-B Indian Penal Code is attracted only if it is proved that the woman who dies in unnatural circumstances has been subjected to cruelty or harassment by her husband or any relative of her husband and such cruelty and

harassment has been meted out to her in connection with demand of dowry and the cruelty and harassment has been meted out to the woman soon before her death. The period which can come within the term soon before cannot be put within the four corners of time frame and it is left to the Court for its determination depending upon the facts and circumstances of each case.

13. In State of West Bengal vs. Orilal Jaiswal 1994(1) SCC73 it has been observed that: "The courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

14.

15. Dr. Santosh Kumar appeared in witness box as PW15 and deposed:

xxxxxxxxxxThe detailed internal examination of neck is mentioned in the PM report i.e. no any extra vacation of blood clots seen underneath the ligature mark and hyoid bone was found intact. As per opinion of Dr. Guru Prakash bruise mentioned in injury No.1 to 3 of external injury are possible in scuffle and cause of death was found to be antemortem ligature hanging and the final opinion was reserved for opinion after receipt of FSL report of blood and viscera.

It is in this background, it is to be assessed whether any cruelty had been meted out to the deceased and she was induced to end her life. On close reading of the testimonies of prosecution witnesses, nothing has emerged on record to suggest that the deceased had been subjected to cruelty or harassment for or in connection with the demand of dowry 'soon before death'. The testimonies of PW2 Ramesh Chand and PW3 Ram Bateri are in general and not specific. No specific

incident has been ascribed by the witnesses to suggest the cruelty and harassment extended by the respondents. There is inconsistency in their statement and they are interested witnesses. None of the material witnesses stated that the deceased was harassed soon before her death for or in connection with demand of dowry though the death occurred within five months of her marriage.

16. In the present case, the prosecution has failed to establish that soon before her death, Geeta was subjected to cruelty or harassment by respondents for or in connection with any, demand of dowry.

17. From the careful scrutiny of all these testimonies, we find that allegation referred to demand of car had no connection with the marriage of deceased with Mahadev. Therefore, such alleged demand cannot be treated as demand for dowry. In that situation, there cannot be any question to invoke presumption under Section 113-B of Evidence Act or to raise presumption of guilt under Section 304-B Indian Penal Code against the respondents as the allegation in itself do not satisfy the required ingredients of Section 304-B Indian Penal Code. Any cruelty as contemplated under Section 304-B Indian Penal Code has to be in connection with demand of dowry and even if, it is established that cruelty was there, but demand of dowry is not established by the prosecution, then there cannot be any question of assuming guilt under Section 304-B Indian Penal Code.

18. From the above discussions, we find that there is no sufficient ground/material for proceeding against the respondents for the offences under Section 498-A/302/304-A/34 Indian Penal Code and there is no infirmity in order dated 26.04.2014 passed by the learned Trial Court. Hence, the leave petition stands dismissed. Trial Court Record be sent back to the concerned court. G. S. SISTANI, J.

SANGITA DINGRA SEHGAL, J.

2 ND FEBRUARY, 2015

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com