

State Vs. Ram Kishan and Others

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Court : Delhi

Decided On : Feb-13-2015

Judge : G. S. Sistani

Appellant : State

Respondent : Ram Kishan and Others

Advocate for Pet/Ap. : Mr. Sunil Sharma

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL LEAVE PETITION No.92/2014 Date of decision:

13. h February, 2015 % . Appellant STATE Through : Mr. Sunil Sharma, APP for the State. versus .Respondent RAM KISHAN & ORS. Through : None. CORAM : HONBLE MR. JUSTICE G. S. SISTANI HONBLE MS. JUSTICE SANGITA DHINGRA SEHGAL G. S. SISTANI, J.

(ORAL) 1. By the present criminal leave petition filed under section 378 of the Code of Criminal Procedure, the State seeks leave to appeal against the impugned judgment dated 20.08.2011 passed by the learned Additional Sessions Judge in sessions case No.21/09 whereby the respondents (accused before the trial court) were acquitted of the charges punishable under sections 498A/304B/34 of Indian Penal Code.

2. The facts of the case as noticed by the learned trial court, are as under:

1.0 Briefly stated, the case of the prosecution is that on 19.02.2008, at around 1:05 am, on receipt of DD No.31A, Ex.PW13/A to the effect that Ms. Pushpa W/o Deepak R/o C-1506, Tigri colony, New Delhi aged about 28 years has been dead with a history of hanging, SI Balbir Singh along with Ct. Rajesh reached at Batra Hospital. The dead body was sent to AIIMS mortuary and SDM was informed Ms. Pushpa was reported to have died unnatural death within 7 years of marriage. Sh. Alok Sharma, Executive Magistrate, Sub-Division, Kalkaji recorded the statement of Sh. Sundar Lal, father of the deceased Pushpa @ Parveen Babi. In his statement Sundar Lal had stated that he had married his daughter with Sh. Deepak on 22.04.04. At the time of marriage, there was no demand of dowry from the side of in-laws. He had spent a sum of Rs. 5 lakhs. However, after around 15 days of marriage, his daughter was started to be harassed on the demand of dowry by her husband Deepak, Ram kishan father-in-law, Bimla mother-in-law, Rajesh brother-in-law and Hema sister-in-law and they also used to beat her. Complainant tried to intervene in the matter and advised the accused persons. He also used to help them during this period. The accused persons used to remain calm for sometime however, they again used to raise the demand of dowry. Sundar Lal stated that around 2 days back, his daughter had telephoned her mother and brother and she was looking happy. Complainant stated that at around 1 am, father-in-law of his daughter is creating drama and called him to hospital. On receipt of this telephone, the complainant party reached Batra Hospital where they were told by a Security Guard that Deepak and others have brought the dead body of his daughter to the hospital. Security guard further stated that the accused persons were taking back the dead body but the Guard intercepted them and informed the police. The complainant suspected that his daughter had been murdered by Deepak, Ram Kishan, Bimla, Rajesh and Hema. Executive Magistrate also recorded the statement of Smt. Sushila, Mother of the deceased and Rajesh, brother of deceased and recommended the registration of FIR. Pursuant to this, a case FIR No.94/08 u/Ss.498A/304B/34 IPC and u/S.3 & 4 Dowry Prohibition Act, Ex.PW14/A was lodged. The post-mortem was conducted. In the post-mortem report, Ex.PW5/A, the cause of death was opined to be asphyxia due to antemortem hanging. After post-mortem, the dead body was handed over to the

relatives of the deceased vide memo Ex.PW1/C. Site plan Ex.PW11/A was prepared. Accused Deepak was arrested vide memo Ex.PW11/D, his personal search was conducted vide memo Ex.PW11/E. Accused Deepak made disclosure statement Ex.PW11/F. It is pertinent to mention here that remaining accused persons were not arrested during the investigation and charge sheet was filed after placing them in column No.2. 2.0 Charge sheet was filed before the court of Ld. MM. Case being exclusively triable by the Sessions court, was 3. committed to the court of sessions. Being a prima facie case, charge u/Ss.498A/304-B/306/34 IPC was framed against the accused persons to which they pleaded not guilty and claimed trial.

Prosecution examined as many as 18 witnesses in support of its case. The respondents were examined under Section 313 of the Code of Criminal Procedure wherein they denied all the incriminating evidence led by prosecution and submitted that they had been falsely implicated in this case.

4. The learned counsel for the State submits that the judgment of acquittal passed by the learned trial court is contrary to the facts and law and thus the same is liable to be set aside and the respondents be convicted under Sections 498A/304B/34 of the Indian Penal Code 5. The learned counsel for the State submits that the learned Trial Court has overlooked the testimonies of of PW-1 Sunder Lal, father of deceased PW-2 Sushila, mother of deceased, PW-3 Rajesh Kumar and PW-4 Girdhari Lal, brothers of deceased, who have clearly deposed that the deceased (Pushpa) was subjected to cruelty and harassment due to demand of dowry soon before her death.

6. The learned counsel for the State further submits that the learned trial court failed to keep in mind that the deceased died within 4 years of her marriage and there is no explanation on the part of the respondents revealing any other reason or specific circumstances which forced the deceased to end her life. This clearly suggests that deceased was being harassed for dowry by the respondents.

7. It is also submitted by the learned counsel of the State that PW1 Sunder Lal in his statement has deposed that about 4-5 months before the death of deceased, he had fulfilled the demand for cash made by the respondents in order to settle the

matrimonial life of his daughter from which it is clear that undue demands of dowry were being made by the respondents from the family of the deceased and harassment was also being meted out to her to create a pressure on her family to give in to their demands.

8. We have heard the counsel for the State and examined the material available on record.

9. The entire case of the prosecution rests upon the testimony of PW1 Sunder Lal, PW2 Smt. Sushila, PW3 Rajesh Kumar and PW4 Girdhari Lal. Before proceeding further, it is necessary to analyse the testimonies of these witnesses and to examine whether the death of the deceased, who was married to Deepak/respondent No.5 on 22.04.2004 was otherwise than under normal circumstances i.e. due to Asphyxia as opined by PW15 Dr. B. L. Chaudhary, who conducted post mortem on the deceased and it is also to be seen whether she was subjected to cruelty or harassment for or in connection with such demands soon before her death.

10. PW1 Sunder Lal deposed:

Praveen was my daughter. She was married on 22.04.2004 with Deepak accused present in court. xxxxxxxxxxxx After the marriage accused persons kept my daughter well only for 15 days. For this period there was no demand. After 15 days my daughter came to my house and told that her husband and above named relatives of her husband are giving beatings to her for fulfilment of demand of dowry. Accused persons used to demand money from my daughter Praveen @ Pushpa and non fulfilment of demand they used to beat her. My daughter told me about this fact to me. I used to give money to my daughter from time to time to meet the demand of accused persons and used to get the compromised between my daughter and accused persons by paying the amount. After the compromise for few days the accused use to remain silent but later on they again started raising the demand.

11. PW2 Smt. Sushila deposed :

Deceased Pushpa was my daughter. She was married on 22.04.2004 with Deepak xxxxxxxxxxxxxxxxxxxxxxxx. After the marriage of my daughter came to my house after 15 days. My daughter informed me that her in laws i.e. her husband Deepak, Ram Kishan, her father in law, Smt. Bimla Devi, her mother in law, Sister in Law Hema and brother in law Raj are harassing her for demand of dowry. She informed me that they are asking as to what she had brought at the time of marriage. She informed that for this reason, these persons were giving beating to her. My daughter remained in my house for 08 days and thereafter my daughter taken by accused Deepak. I was also visited the house of my daughter when she was having a child aged about 6-7months. I saw my daughter was sleeping at that time, I woke up her and inquired the matter and she told that for the last three days, she was not given the food. At that time, I went there after receiving the information from Ram Kishan that my daughter consumed something. This was incident about 2-3 months prior to the death of my daughter. xxxxxxxx During the period from marriage till her death I was in touch with my daughter on telephone. I always observed that she was in some trouble. Her in laws were not even giving her proper food. During this period on one occasion I gave Rs.20,000/- to my daughter on her demand and I also gave Rs.5,000/- to Deepak Lodhiwal upon asking of my daughter. I also used to give money time to time in the tune of Rs.1,000/- or so.

12. PW3 Rajesh Kumar deposed:

I met my sister after 15 days after her marriage. She was not looking well. I came to know that she was being harassed by her in laws and her husband for fulfilment of demand of dowry. I came to know from my mother that in laws of my sister are not keeping her well and they are giving beatings to her for fulfilment of demand of dowry.

13. PW4 Girdhari Lal deposed on the same lines as PW3 Rajesh Kumar.

14. From the testimonies of above witnesses, it is to be seen whether dowry was demanded by the respondents from the deceased. The term Dowry has been explained by the Honble Supreme Court of India in S. Gopal 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. State 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 304-B IPC viz. Demand for dowry is not established the conviction of the appellants cannot be sustained.

15. PW1 Sunder Lal deposed I used to give money to my daughter from time to time to meet the demand of accused persons and used to get the compromised between my daughter and accused persons by paying the amount.

PW2 Smt. Sushila deposed I was also visited the house of my daughter when she was having a child aged about 6-7months. I saw my daughter was sleeping at that time, I woke up her and inquired the matter and she told that for the last three days, she was not given the food.

PW3 Rajesh Kumar and PW4 Girdhari Lal deposed I came to know from my mother that in laws of my sister are not keeping her well and they are giving beatings to her for fulfilment of demand of dowry.

16. From the testimonies of aforesaid witnesses, it is clear that none of the witness quoted any incident from where it can be inferred that there was any specific demand of dowry. The incident narrated by the witnesses was general in nature. From the testimonies of aforesaid witnesses, it only falls that deceased was unhappy in her matrimonial home and was having a disturbed married life. The evidence adduced by the prosecution does not show that any demand was meted out by the respondents under Section 2 of Dowry Prevention.

17. 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 further 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.

18. In connection to the expression soon before her death used in Section 304B Indian Penal Code, in Satvir Singh Vs. State of Punjab reported at (2001) 8 SCC633 it has been observed that:

21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is 'at any time' after the marriage. The third occasion may appear to be an unending period. But the crucial words are 'in connection with the marriage of the said parties'. This means that giving or agreeing to give any property or valuable security on any of the above three

stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of 'dowry'. Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage 22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304B is to be invoked. But it should have happened "soon before her death". The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasis the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the death would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case 19. was sufficient to snuff its cord from the concept "soon before her death."

In Narayanmurthy Vs. State of Karnataka and Anr., (2008) 16 SCC512 it was not established that the deceased was subjected to any harassment or cruelty for dowry soon before the death. The Court held (para28):

20. This deficiency in the evidence proves fatal to the prosecution case. Even otherwise, mere evidence of cruelty and harassment is not sufficient to being in application of Section 304B, IPC. It is to be established that `soon before death', deceased was subjected to cruelty or harassment by her husband for, or `in connection with demand for dowry. In Durga Prasad ad Anr. Vs. State of Madhya Pradesh, (2010) 9 SCC73 the prosecution failed to fully satisfy the requirements of both Section 113 of Indian Evidence Act and Section 304B of IPC. It was held that

no case can be made out on ground of insufficient evidence against the respondents.

21. Thus to conclude, we find that allegations referred to time to time demand of dowry are in general and not specific. No specific incident has been ascribed by any of the witnesses to suggest the cruelty and harassment extended by the respondents had no connection with the marriage of deceased with respondent No.5. 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. 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 four years months of her marriage.

22. 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/304-B/34 Indian Penal Code and judgment of acquittal dated 26.04.2014 recorded by the learned Trial Court does not call for any interference. Hence, the leave petition is meritless, the same is dismissed. Trial Court Record be sent back to the concerned court. G. S. SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

13TH FEBRUARY, 2015 GR

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