

Rameshwar Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Sep-25-1991

Reported in : II(1992)DMC486

Judge : G.R. Pandey and ;V. Bhardwaj, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304B; [Evidence Act, 1872](#) - Sections 113B

Appeal No. : Cr. A. No. 59 of 1991

Appellant : Rameshwar

Respondent : State of Madhya Pradesh

Advocate for Def. : G. Bera, Adv.

Advocate for Pet/Ap. : J.P. Gupta and ;K. Trivedi, Advs.

Disposition : Appeal allowed

Judgement :

V. Bhardwaj, J.

1. This is an appeal filed by the convict appellant against his conviction Under Section 304B I.P.C. and the sentence of 7 year's R.I. imposed on him by the VIIIth Addl. Sessions Judge, Indore.

2. The prosecution case is that on 11.8.87 one Ashok Kumar S/oSunderlal filed a F.I.R. that deceased Ushabai W/o Rameshwar had died because of burn injuries suffered by her. On investigation it was found thatUshabai was married to Rameshwar 3 years prior to the incident. Her husbandwas not treating her well and was demanding money for purchase of Luna byway of dowry. A case of dowry death was, therefore, registered and afterfurther investigation the accused/appellant Rameshwar was prosecuted on acharge Under Section 304B I.P.C. On trial the accused/appellant was convicted andsentenced as mentioned above.

3. Aggrieved by the conviction and sentence the appellant has filedthis appeal.

4. Shri J.P. Gupta, Senior Advocate appearing for the appellantsubmitted that the conviction is not based on legal evidence. He submittedthat in the F.I.R. the demand of dowry or ill-treatment because of the demandof dowry being not fulfilled are not mentioned. The F.I.R. was lodged by aperson who later deposed of his knowledge of the facts and the back-groundabout the alleged dowry death.

5. According to Shri Gupta this was the fatal commission whichpointed out that even the complainant knew that it was an accidental death butlater on built up a story of dowry death.

6. Shri Gupta further pointed out that all the prosecution witnesseswere close relations of the deceased from her parent's side and even their conduct immediately after the incident clearly suggested that it was a case ofaccidental death. All these witnesses have not said a word about dowry deathor demand of dowry when right from the beginning all of them were presentand the Police Officers were also present on the spot. Shri Gupta furtherpointed out that the incident was of 11.8.1987 and the statements of prosecution witnesses were recorded by the Police on 4.9.1987.

7. It was further contended on behalf of the appellant that chargeUnder Section 304B I.P.C. cannot be said to be proved in the case because the prosecution has completely failed to prove that it was a dowry death. According tothe appellant there is no evidence to show that the deceased was subjected tocruelty or

harassment by the appellant seen before her death' and it was also not proved that the deceased was subjected to cruelty or harassment for or in connection with any demand for dowry. In support of his submissions Shri Gupta has relied upon the decisions reported in Sharad v. State of Maharashtra (AIR 1984 SC 1622) G.B. Patel v. State of Maharashtra, (AIR 1979 SC 135); Balkrushna v. State of Orissa, (AIR 1971 SC 804); (AIR 1945 Privy Council 18) and 1984 (II) Crimes 584. Shri Desai for the State supported the conviction sentence.

8. By the Dowry Prohibition Amendment Act, 1986 (Act No. 43 of 1986) a new Section 304B relating to dowry death was introduced in the Indian Penal Code. It reads as under :-

'304-B. (1) 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 purposes of this Sub-section, '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.'

9. Dowry has been defined in Section 2 of the Dowry Prohibition Act, 1961 as hereunder :

'In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly :-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person

at or before or after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case or persons to whom the Muslim Personal law (Shariat) applies.

10. The Dowry Prohibition Act, 1986 also introduced a new Section 113B in the Indian Evidence Act, which 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 I.P.C. (45 of 1860)'.

11. In the light of the aforesaid provisions of law, we have to examine the evidence in the case to find out whether the offence Under Section 304B I.P.C. has been proved beyond reasonable doubt against the appellant or not,

12. Shri Gupta, learned Counsel for the appellant has taken me through the evidence of PW 1 Ashok Kumar who has lodged the F.I.R. PW 2 Chhotelal, the father of the deceased; PW 4 Laxmibai, mother of the deceased; PW 5 Ashabai, sister of the mother of the deceased as also PW 9 Vinod, PW 12 Satyanarain and PW 16 Jitendrasingh Rathore, Investigating Officer. Shri Gupta laid emphasis on the commissions in this F.I.R. about the demand of dowry and harassment because of non-fulfillment of that demand. In F.I.R. Ashok Kumar S/o Sunderlal whose wife is the sister of the mother of deceased has stated that he had received a message on telephone from Vinod the son of his sister that deceased Ushabai had received burn injuries. On that Ashok-Kumar went to her house and saw that she was lying dead completely burnt in her room. He has also stated in the F.I.R. that how she got burnt is not known to him. Thus the F.I.R. lodged was completely innocuous and did not blame anyone for the death.

13. Shri Gupta submits that the same person has introduced a story in his statement before the Court that his wife Ashabai had told him about one and half year prior to the incident that when Ashabai had gone to the house of deceased Ushabai and talked to her the clothes of deceased Ushabai were stinking of kerosene. On being asked by Ashabai, deceased Ushabai had told Ashabai that appellant Rameshwar was trying to kill her by setting her on fire.

14. He further stated that Ashabai told him that Ushabai told her that appellant Rameshwar was demanding Rs. 4-5 thousand as dowry or in the alternative was demanding a Luna vehicle.

15. On being asked in the cross-examination about the omissions in the FIR about the demand of dowry and harassment because of non fulfillment of such do and the witness simply stated that he did not have that much time to narrate all these things to the Police or to get them incorporated in the FIR. He also stated that he was frightened and, therefore he lodged the report and went away. Shri Gupta pointed out that the entire statement relating to the demand of dowry and attempt to set the deceased on fire was hearsay and was not admissible in evidence. The truthfulness of the statement is also doubtful because of the omission to incorporate the allegations in the F.I.R.

16. P.W. 2 Chhotelal Dongarji, in the father of the deceased. He has testified the fact that the marriage was performed very well. He has stated that deceased Ushabai used to come to his residence at times and used to tell that her husband Rameshwar harassed her, beats her and demands Rs. 5,000/- as dowry. The witness also states that deceased Ushabai had told him that Rameshwar demands Rs. 5,000/- or in the alternative a Luna Vehicle and used to beat Ushabai for this. This witness also testified that about a year prior to the incident Ushabai had told him that Rameshwar had poured Kerosene on her body. This witness who is the father of the deceased also introduced a new angle to the story by stating that Ushabai, the deceased had told him a year before the incident that her husband had illicit relations with the wife of his brother and on her restraining him from keeping such illicit relations, Rameshwar used to beat her. The witness also deposes that Ushabai had told him that Rameshwar harasses and beats Ushabai.

The witness also stated that his wife had complained to Arjun who is maternal uncle of Rameshwar about pouring of kerosene on Ushabai an year before the incident and the said Arjun rebuked Rameshwar and advised him properly and, therefore, no action was taken about that incident earlier. Several omissions in his statement to the Police were pointed out to this witness and he could not satisfactorily explain the omissions. Shri Gupta had pointed out that this witness also has given out a hearsay evidence about things which had taken place a year before the incident.

17. P.W. 4 Laxmibai is the mother of Ushabai. She had testified that Rameshwar had started harassing Ushabai 6 months after the marriage. The demand of Luna was also an year and half prior to the incident and the demand of Rs. 5,000/- was also of that time. This witness has said the kerosene was poured on Ushabai, 4-6 months prior to the incident. This witness had introduced a new witness, a neighbour of Ushabai (Dholakwali) who had informed this witness that Rameshwar beats Ushabai and demands money or Luna. The witness has also given an opinion that because of this harassment Ushabai set herself to fire and died. In her cross-examination she had admitted that at the time of marriage no talk about dowry had taken place. Omissions in her statement to the police were pointed out to this witness and she could not give any satisfactory explanation about them. In her cross-examination this witness has also deposed that she could not name the Dholakwali who was the neighbour of Ushabai. The information given by Dholakwali was also stated to have been given at the time when Ushabai was lying dead.

18. P.W. 5 Ashabai is the wife of Ashok Kumar who has lodged the F.I.R. and sister of the mother of the deceased. She has also testified to the incident of pouring kerosene on Ushabai, which is said to have taken place one and quarter year before the incident. She stated that when she rang the doorbell of Ushabai's residence, Ushabai saw her from second storey. Then she came down. Her clothes were completely drenched in kerosene. She did not tell her anything about it and when she offered to call her mother Laxmibai, she accepted the suggestion and told her to call her. At that time Ushabai also told Ashabai that Rameshwar harasses her, beats her and asks her to bring Rs. 5,000/- from her parents or bring

Luna from them. Ashabai also deposes that Ushabai had told them that kerosene has been poured by her husband Rameshwar on her. Omissions in her statement to the Police were also pointed out to her and she could not explain them properly.

19. This is all the evidence relating to harassment and demand of dowry.

20. In *Emperor v Khwaja Nazir Ahmed*, (AIR 1945 Privy Council 18) Their Lordships of the Privy Council observed that the object of the provisions as to the FIR is to obtain early information of alleged criminal activity to record the circumstances before there is time for them to be forgotten or embellished. In Sharad's case (supra) Their Lordships of the Supreme Court have in para 48 observed that when all persons examined on a point alter close relations and friends of the deceased, there is possibility of exaggeration. In view of the close relationship and affection any person in the position of the witness would naturally have a tendency to exaggerate or add facts which may not have been stated to them at all. Not that this is done consciously but even unconsciously the love and affection of the deceased would create a psychological hatred against the supposed murderer and, therefore, the Court has to examine such evidence with very great care and caution. Even if the witnesses were speaking a part of the truth or perhaps the whole of it, they would be guided by spirit of revenge or nemesis against the accused person and in this process certain facts which may not be stated could not have been stated may be imagined to have been stated consciously by the witnesses in order to see that the offender is punished. This is human psychology and no one can help it.

21. On the point of delay in recording statements reliance has been placed by the appellant on a decision of Supreme Court in *Balkrishna's case* (supra) and *C.B. Patel case* (supra). In the latter case the Supreme Court has observed that in the facts and circumstances of the case delay in recording the statement of material witnesses casts a cloud of suspicion on the credibility of the entire case and work on the prosecution story. Normally in a case where the commission of crime is alleged to have been seen by the witnesses who are easily available a prudent Investigator would give to the examination of such witnesses precedence over other witnesses.

22. Tested on the touchstone of the above case law the evidence in the case does not qualify the test of credibility to bring home the guilt to accused appellant. The FIR does not raise any doubt the death being a dowry death, the demand of dowry, harassment or the earlier attempt to set the deceased on fire. As observed by the Privy Council the versions given later only by the witnesses is a definite embellishment crept in during the period between lodging of F.I.R. and examination of witnesses by the Police, a period of over 23 days. The delay in examining the witnesses is clearly unreasonable and unexplained.

23. All the witnesses were close relations and were available to the Police right from the date of the incident. The testimony of all the aforesaid witnesses who are close relatives of the deceased has to be examined with great care and caution. It is clear that these interested witnesses have given liberty to their flight of fancy and have greatly exaggerated and embellished the story. The conviction cannot be held relying on the testimony of such witnesses.

24. Even on merits the ingredients of offence Under Section 304B IPC have not been proved by the prosecution. Though the death of the deceased has taken place within 7 years of her marriage by burns, the prosecution has failed to show that seen before her death she was subjected to cruelty or harassment by her husband/appellant. The witnesses have testified to things which had taken place one and half years prior to the incident and no incident seen before the death was alleged or proved. The allegations of cruelty and harassment one and 11/2 year prior to the incident cannot be said to have taken place seen before the death of the deceased.

25. Moreover the mother of the deceased has clearly admitted that at the time of the marriage no talk of dowry had taken place. That the cruelty or harassment was for and in connection with demand for dowry has also not been proved in the case.

26. The definition of dowry in Section 2 of the Dowry Prohibition Act, 1961 as amended by (Dowry Prohibition Amendment Act, 1986) provides that dowry means any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage or by parents of the either party to the marriage or by any other person to either party to the

marriage or to any other person on or before or any time after the marriage in connection with the marriage of the said parties.

27. Therefore, the demand of Rs. 4-5 thousand or of Luna Vehicle alleged to have been made by the accused appellant will have to be proved to be in connection with the marriage and/or will have to be shown to be agreed to be given by the other side. Both these elements are absent in the demand of Rs. 4-5 thousand or Luna Vehicle alleged to have been made by the accused appellant. There is not a word in the evidence about the demand having been agreed to by the parents or any other person or that it was in connection with the marriage. On the contrary the mother of the deceased has clearly admitted that there was no talk of dowry at the time of marriage.

28. The presumption as to dowry death Under Section 113B of the Evidence Act shall also not be available to the prosecution because as already observed above it has not been proved that soon before her death the deceased was subjected to Cruelty or harassment for or in connection with any demand for dowry.

29. In the result the conviction of the appellant by the Trial Court cannot be upheld.

30. The Trial Court had held the offence Under Section 304B IPC proved against the appellant relying on highly exaggerated testimony of interested witnesses who were examined by the Investigating Officer 24 days after the incident. The ingredients of the offence Under Section 304B IPC were also not proved by the Prosecution.

31. The conviction and the sentence deserves to be set aside and is hereby set aside.

32. The appeal is allowed and the appellant is acquitted of the charge. He shall be released forthwith.'