

Mukesh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Aug-17-2007

Reported in : 2007(4)MPHT394

Judge : A.P. Shrivastava, J.

Appellant : Mukesh

Respondent : State of M.P.

Judgement :

A.P. Shrivastava, J.

1. This appeal is directed against the judgment of conviction and sentence dated 2nd July, 2001 passed by Additional Sessions Judge, Ganj-Basoda in Sessions Trial No.84/2000, by which the appellant has been convicted under Section 304B of IPC and sentenced to under rigorous imprisonment for seven years and under section 201 of IPC, sentenced to undergo rigorous imprisonment for one year with a fine of Rs. 500/-with default stipulation. Both the sentences are run concurrently.

2. In brief, the story of the prosecution is that on 18.2.2000, Kalyan Singh(P.W.7) lodged the report at the police station Natren, informed about the death of his uncle's daughter Mithlesh Kumari who died due to burn. Marg intimation was recorded by the police. After investigation, it is found that she was married to the appellant about 8-9 months back. On the fateful night, she was along-with her

husband. After hearing the cry of the deceased, Umrao Singh(P.W.9) and Niranjana (P.W.2) went to the house of the appellant and saw that Mithlesh Kumari was died. Appellant told that he killed Mithlesh Kumari. Appellant confessed that he has killed Mithlesh before Kalyan Singh (P.W.7) and Bhupat Singh. The dead body of the deceased was cremated without intimation to the police. It is alleged that appellant used to torture the deceased due to demand of dowry. The crime was registered against the appellant. After investigation, charge-sheet was filed before the Court and the learned trial Court convicted and sentenced the appellant accordingly as stated in above para one of this judgment.

3. It is submitted by the counsel for the appellant that the learned trial Court has not appreciated the evidence properly and has wrongly convicted the appellant. The learned trial Court has not accepted the extra judicial confession of the appellant. There is no evidence that there was demand of dowry 'soon before her death'. Counsel for the appellant also submitted that there is delay in lodging the FIR.

4. On the other hand, learned Counsel for the respondent/State submits that there is ample evidence against the appellant/accused that the deceased was being tortured with regard to demand of dowry and she died in suspicious condition'soon after her marriage'. Therefore, the learned trial Court has rightly convicted the appellant.

5. Regarding the cause of death, there is no post mortem of the deceased as she was cremated in hurry by in-laws of the deceased. The prosecution has examined in all twelve witnesses. Out of which Divan Singh(P.W.6) is father of the deceased, Kamla Bai(P.W.8)is mother of the deceased, Vikam Singh(P.W.3) and Kalyan Singh(P.W.7) are brothers of the deceased, Niranjana Singh (P.W.2) and Umrao Singh(P.W.9) are neighbours of the deceased while Kailash(P.W.4) and Mohan Singh(P.W.5) are independent witnesses.

6. In this case, there are two sets of evidence. One is extra-judicial confession of the appellant and another is circumstantial evidence on the basis of which it is found that the deceased died due to suspicious condition.Kalyan Singh(P.W.7)lodged the report at the Police Station Natren. As per First

Information Report Ex.P.1, it is informed that the death of the deceased was in suspicious condition and she was found that in her house, when incident was informed to the father of the deceased it is informed that she was being tortured by the appellant due to demand of dowry and she was killed by the appellant.

7. Kalyan Singh (P.W.7) in his statement deposed that appellant informed him that he has killed his sister Mithlesh. This fact was also narrated to the parents of the deceased. But, in his statement this fact was omitted in Ex.D.9 that appellant Mukesh killed Mithlesh. The court observed that had Kalyan Singh(P.W.7)knew that appellant killed the deceased. He subsequently mentioned this fact in Ex.P.1.Kalyan Singh(P.W.7) also stated that it is not informed this fact anybody for about a month. Apart from this, he also did not disclose this fact in his police diary statement recorded under Section 161 of Cr.P.C which is Ex.D.9.The other witness Bhupat Singh was not examined by the prosecution. Therefore, the testimony of this witness in this regard was not believed by this Court. Therefore, in this case, the extra-judicial confession of the appellant was not accepted by the learned trial Court. The reason assigned by learned trial Court appears to be correct and based on legal evidence.

8. The next point is as to whether the deceased was being tortured by the appellant due to demand of dowry and she died in suspicious circumstances. Divan Singh (P.W.6) deposed that appellant told to Kalyan Singh as the demand was not fulfilled, therefore, he killed the deceased. Kalyan Singh (P.W.7) informed him that appellant was demanding colour T.V and motorcycle.

9. In this case, it is not in dispute that deceased died within seven years of her marriage and death was caused in suspicious circumstances. Prayog Singh(P.W.1) deposed that his brother informed him Mithlesh condition is not good. Therefore, he went to village Kherai. When he reached there, it was informed that she was died and already cremated. Vikam Singh (P.W.3)deposed that his father Divan Singh (P.W.6) informed him Mithlesh was not keeping well. Then he along- with Kailash (P.W.4) went to village Kherai where he got information that Mithlesh was died and also cremated by in-laws of the deceased. Vikam Singh (P.W.3)Divan Singh (P.W.6) and Kamala Bai (P.W.8) also gave

similar statement. From the above evidence of the prosecution witnesses, it is clear that the deceased died in suspicious circumstances and she was being cremated without informing the parents or relatives of the deceased. In paras 31 and 32, the findings recorded by the learned trial Court are just and proper.

10. The next question is as to whether she was being tortured due to demand of dowry. The father of deceased Divan Singh (P.W.6) deposed that demand was made by the appellant for motorcycle and colour TV. When her daughter came back from her in-laws house, she disclosed her mother that appellant made demand for motorcycle and colour TV. Kamala Bai (P.W.8) is mother of the deceased, corroborated this fact in her testimony and told that her daughter came her house and told that appellant was demanding colour TV and motorcycle.

11. Counsel for the appellant submits that demand of dowry is not established. There is no evidence 'soon before her death'. There was no demand of dowry made by the appellant. In support of his submission, he relied on Dinesh Kumar S/o. Kanhayalal Rawal and Ors. v. State of M.P. 2006(3)MPLJ Page 82 in which it is held that appellants found guilty under Section 304B of Penal Code by trial Court. Presumption under Section 113A of Evidence Act can be invoked only if all the ingredients of the offence are proved by the prosecution beyond reasonable doubt. Prosecution failed to prove the real cause of death of the deceased. There are material contradictions in the statements of the witnesses about the harassment of deceased by the appellants. It is also not proved that the deceased was subjected to cruelty with regard to the demand of dowry soon before her death. The conviction of the appellant is set aside.

12. Learned Counsel for the appellant also placed reliance in the case of Megha Singh v. State of Haryana 1997 SCC (Cri) 267 in which it is held that investigation by the very police officer who lodged the complaint, held, not conducive to fair and impartial investigation. No other independent witness examined. Therefore, it is held that the evidence did not inspire confidence.

13. Regarding the word 'soon before death', in order to attract application of Section 304B of IPC, the essential ingredients are as follows:

- (i) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;
- (ii) Such a death should have occurred within 7 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.

Presumption under Section 113B 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 a woman;
- (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.

A conjoint reading of Section 113B of the Indian Evidence Act and Section 304B of the 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 113B of the Evidence Act and Section 304B of IPC 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.{Kamesh Panjiyar alias Kamlesh Panjiyar v. State of Bihar reported in : 2005 CriLJ1418 }

14. In this case, it is established that the deceased was died in suspicious circumstances within eight-nine months of her marriage with the appellant. There is ample evidence that she was subjected to cruelty or harassment by the appellant due to demand of dowry. Once it is established that the death was caused in suspicious circumstances due to demand of dowry, the presumption of evidence act would attract. There is no evidence given by the defence under what circumstances, the deceased was died in the house of the appellant. Appellant was present in the house when she was died. Therefore, adverse inference can be drawn against the appellant why she was cremated so fast without performing the post mortem or intimating the relatives or parents of the deceased. In the circumstances, the learned trial court has rightly found guilty of the appellant/accused and convicted him under Sections 304B and 201 of IPC.

15. Looking to the overall evidence and facts and circumstances of the case, the conviction awarded by the learned trial court is just and proper. The sentence as awarded by the learned trial Court is also hereby affirmed. Bail bond of the appellant shall stand discharged. He is further directed to surrender before the trial Court to serve out the remaining part of sentence. In the result, the appeal stands disposed of accordingly.