

Anil Kumar Jain Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Apr-12-1996

Reported in : 1996CriLJ3191; II(1996)DMC640

Judge : V.K. Agarwal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304B

Appeal No. : Crl. Appeal No. 509 of 1992

Appellant : Anil Kumar Jain

Respondent : State of M.P.

Advocate for Def. : D.V. Pendharker, G.A.

Advocate for Pet/Ap. : S.L. Kochar and ;Arun Kochar, Advs.

Disposition : Appeal allowed

Judgement :

V.K. Agarwal, J.

1. The accused/appellant has preferred this appeal against his conviction for offence punishable under Section 304B of the IPC and sentence of 7 years R.I. imposed on him therefor, by judgment dated 28.4.92 in S.T. No. 91/ 91 of the Court of Illrd Additional Sessions Judge, Bhopal.

2. The undisputed facts are that the deceased Hemlata was married to accused/appellant on 14.2.89. Deceased Hemlata died of hanging on 23.7.89, i.e. within about six months of her marriage. The prosecution story in brief is that the accused/appellant used to ask deceased Hemlata to bring money from her parents and relatives and used to maltreat and torture her. On account of the maltreatment and cruelty, the deceased Hemlata committed suicide by hanging herself. The accused/appellant had called his landlord Ramprasad Prajapati (PW 1) immediately after the incident, who lodged the report (Ex.P-7) of the incident. Police came to the spot and got opened the door of the room in which the deceased had committed suicide. The dead body was sent for post-mortem examination. Dr. D.K. Satpati (PW 11) conducted the post-mortem examination on the body of deceased Hemlata on 24.7.89 and opined as per his report (Ex. P-10), that the cause of death of Hemlata was asphyxia as a result of hanging. It was also reported that the death was within 24 hours of the post-mortem examination. Viscera was preserved and was advised to be sent for chemical analysis.

3. Learned Trial Court framed charge for offence punishable under Section 304B of the IPC against the accused/appellant, which was denied by the accused/appellant. After trial, by the impugned judgment the learned Trial Court found that the offence punishable under Section 304B of IPC has been proved beyond reasonable doubt against the accused/appellant, and he was accordingly convicted and sentenced as has been mentioned earlier.

4. Learned Counsel for appellant challenging the finding of Trial Court, has urged that the offence punishable under Section 304B of the IPC is not made out against the accused/appellant. In this connection it has been mainly urged that there is no evidence regarding maltreatment, harassment or cruelty by the accused/appellant towards deceased Hemlata. It has also been urged that the statements of witnesses are general and vague. Learned Counsel for appellant in support of his contention has placed reliance on Keshab Chandra Panda v. State, 1995 Cr.L.J. 174=I (1995) CCR427, Bhakhar Ram v. State of Rajasthan, 1995 Cr.L.J. 1345=II (1995) CCR 729 & Babaji Charan Barik v. State, 1994 Cr.L.J. 1684=II (1994) DMC 382 (DB). As against this the learned Counsel for respondent/State has urged that the accused/appellant is shown to have meted out ill-treatment to the deceased,

who was forced to commit suicide within six months of her marriage and therefore, the accused/appellant has been rightly convicted and sentenced by the learned Trial Court.

5. Coming to the evidence in the case, Babulal Jain (PW 4), who is the father of deceased Hemlata has stated that immediately after his daughter's marriage with accused/appellant, the accused/appellant came alongwith his daughter, deceased Hemlata from Pali, Distt. Lalitpur to Bhopal, where Babulal Jain (PW 4) used to reside. Babulal Jain (PW 4) further stated that he had advised the accused/appellant, Anil Kumar Jain to seek some employment, but the accused/appellant did not agree and expressed that he would do some business and that Babulal Jain (PW 4) should give him some amount. Babulal Jain (PW 4) then after pledging ornaments of his wife obtained loan and got arranged a 'Panthela' for the accused/ appellant and also got him a residence on rent.

6. Babulal Jain (PW 4) further states that on 23.7.89 in the evening the accused/appellant had come to him and informed that the deceased Hemlata had closed herself in a room and that her feet are visible from outside. Thereafter, they went to the house of the accused/appellant, where the Police had already arrived and it was discovered that the deceased Hemlata was dead and hanging by the rope from the roof. Though in the earlier part of his statement Babulal Jain (PW 4) has not stated anything about the demand of money, but has subsequently stated that the deceased Hemlata used to be sad and morose and though she did not tell him anything, but had told her mother that the accused/appellant used to demand money from her. According to Babulal Jain (PW 4), in view of the above demand, he had arranged for money and got the business of accused/appellant started. Thus, from the above statement of Babulal Jain (PW 4) it would appear that he had fulfilled the demand of accused / appellant for money and he does not state that any additional amount was demanded by the accused/appellant from him.

7. Kamla Bai (PW 5), who is the mother of the deceased Hemlata has also stated that Rs. 3,000/- were arranged by them by pledging the ornaments to start the business of the accused /appellant. Kamla Bai (PW 5) further states that her daughter deceased Hemlata used to be silent and would not say anything even

when asked. Kamla Bai (PW 5) has stated that her daughter had demanded money from her and it appeared to her that the accused / appellant must have asked money from the deceased. Kamla Bai (PW5) has thus not stated that the accused /appellant had actually made any further demand of money. Kamla Bai (PW 5) has in the later part of her statement also stated that Hemlata told her that the accused/appellant used to ask for money everyday. However, Kamla Bai does not specify the actual amount which was being demanded by the accused /appellant. Kamla Bai (PW 5) in cross-examination has stated that her daughter after returning from her in-laws had told her that the accused/appellant had demanded Rs. 200/- from her. The above statement of Kamla Bai (PW 5) is not corroborated by the statement of her husband Babulal Jain (PW 4).

8. It may also be noticed that though Kamla Bai (PW 5) and Babulal Jain (PW 4) have stated that the ornaments of Kamla Bai were pledged to obtain loan for the business of accused/appellant, but it is pertinent to notice that in the written report (Ex.P-8) by Babulal (PW 4) it has been alleged that the ornaments of deceased Hemlata were pledged, which fact however has been denied by Babulal Jain (PW 4) in his statement. Therefore, statements of Babulal (PW 4) and Kamla Bai (PW 5) that the ornaments of Kamla Bai were pledged and amount arranged, are doubtful. As pointed out earlier, there is no specific allegation that the accused /appellant continued to demand any amount from the in-laws even after he started business.

9. The prosecution has also examined Ramesh Kumar Jain (PW 2), who is the maternal uncle of deceased, who states that the accused/appellant had come to him on 5th July, '89 and had requested that the amount of Rs. 4,000/- to 5,000/- be arranged for his business, but Ramesh Kumar Jain (PW 2), expressed his inability. Ramesh Kumar Jain (PW 2) however has not stated anything about maltreatment or torture by the accused /appellant to his wife, i.e. deceased Hemlata. It may also be noticed in this connection that Kamal Kumar Jain (PW 13), who is also the maternal uncle of deceased Hemlata and brother of Ramesh Kumar Jain (PW 2) in this context has stated that accused/appellant had demanded Rs. 8,000/-, from his brother i.e. Ramesh Kumar Jain (PW 2). This obviously is in contradiction to what Ramesh Kumar Jain (PW 2), has stated. Ramesh Kumar Jain (PW 2) has also

stated that Hemlata, who was his niece had come to him alone and on being asked as to why the accused/appellant had not accompanied her, deceased Hemlata had expressed that she alone knows as to what type of person the accused/appellant is and she also stated that she should be served with breakfast as she was in a hurry and had to return back. The above statement of Ramesh Kumar Jain (PW 2) does not disclose that the accused/appellant had asked deceased Hemlata to bring money from Ramesh Kumar Jain (PW 2) or that there was any maltreatment on the part of accused/appellant with deceased Hemlata.

10. Kamal Kumar Jain (PW 13) has stated that deceased Hemlata had come to him on 2nd July, 89 on being sent by the accused/appellant for bringing money. Kamal Kumar Jain (PW 13) states that deceased Hemlata had told him that the accused/appellant had sent her for bringing money and had given her one hour's time for the purpose. However, Kamal Kumar Jain (PW 13) has further stated that since he had no money, he did not give anything, upon which Hemlata returned back. It may be noticed that Kamal Kumar Jain (PW 13) also does not state as to how much amount was asked by Hemlata from him nor has he stated that Hemlata had expressed that some maltreatment was meted out to her.

11. The aforementioned statements of Ramesh Kumar Jain (PW2) and Kamal Kumar Jain (PW 13), thus also do not disclose that there was any maltreatment by the accused/appellant with the deceased Hemlata. Moreover, though the statement of Kamal Kumar Jain (PW 13) is that Hemlata had come to him to ask for money, but his statement appears to be in general terms and is vague, and it does not specify as to how much amount was asked by the accused/appellant through Hemlata.

12. Labhmani Jain (PW 6), who is the uncle of deceased Hemlata has stated that after about four months of the marriage with Hemlata, accused/appellant alongwith Hemlata had come to Bhopal and after residing with his in-laws, the accused/appellant had taken a separate residence for themselves. He has also stated that on being requested by the accused/appellant his brother Babulal Jain (PW 4) arranged a 'Panthela' for the accused/appellant, wherein the accused/appellant used to carry on his business. Labhmani Jain (PW 6) has further stated

that his brother and sister-in-law, i.e. Babulal Jain and Kamla Bai had told him that, the accused/appellant was always demanding money and used to harass the deceased Hemlata. It may be noticed that, the above statement is vague and moreover, even the statements of Babulal Jain (PW 4) and Kamla Bai (PW 5) do not establish that the accused/appellant always used to ask for money and used to harass the deceased. Clearly, therefore, the above statement of Labhmani Jain (PW 6) does not deserve credence.

13. In fact, if the above statement of Labhmani Jain (PW 6) is to be believed then, it would appear that the accused/appellant had come to Bhopal, after about four months after his marriage, which admittedly took place in the month of Feb., 89, therefore, he alongwith Hemlata must have come to Bhopal, in the month of June, 89 and the deceased Hemlata committed suicide on 23.7.89 i.e. after about a month of their coming to Bhopal, where the accused /appellant had resided for sometime with the in-laws and thereafter, had started his business of 'Panthela' and also started residing separately. Thus, it would appear that, within less than a month of their residing separately, the deceased Hemlata had died. Thus, it would appear that within a month of coming to Bhopal, the request of the accused/appellant to start the business was fulfilled by Babulal Jain (PW 4) as a 'Panthela' was arranged for him. The accused/appellant asked for more money thereafter, is not disclosed from evidence. It also does not appear probable that even though his desire of starting his own business having fulfilled by the in-laws, the accused/appellant would have again demanded any money immediately thereafter.

14. Kasturi Bai (PW9), who is the wife of Labhmani Jain (PW 6) has also stated that, after some time of marriage of accused/appellant, he had come alongwith his wife Hemlata to Bhopal and accused/appellant had expressed that he would not do any service but instead would start some business, upon which Babulal Jain (PW 4) got arranged a 'Panthela' to him, where the accused/appellant used to do business. Kasturi Bai (PW 9) also stated that, after starting business of 'Panthela', the deceased Hemlata died. She has stated that the deceased was unhappy with the appellant and had told her that the accused/appellant used to ask for money. She has also stated that the accused/appellant had taken Rs. 500/- from her 'Deorani' i.e. younger sister-in-law. It is not clear from the above statement of

Kasturi Bai (PW 9) as to from whom the amount of Rs. 500/- was taken by the accused/appellant. The younger sister-in-law 'Deorani' has not been examined in the case, neither there is any other evidence in this regard. The statement of Kasturi Bai (PW 9) regarding Hemlata having told her about the demand of money made by the accused/appellant again is quite vague and no particulars as to what amount had been asked by the accused/appellant have not been specified by her.

15. To sum up, it would appear from the evidence on record that, after their marriage, accused/appellant and his wife deceased Hemlata had come to Bhopal and according to the request of accused/appellant, his father-in-law Babulal Jain (PW 4) had arranged for money and acquired a 'Panthela', in which the accused/appellant had started his business. Though, it also appears that the deceased Hemlata appeared to be not happy and satisfied and looked sad, but the deceased apparently never complained to any of her close relations, including her parents Babulal Jain (PW 4), Kamla Bai (PW 5), maternal uncles, Ramesh Kumar Jain (PW 2) and Kamal Kumar Jain (PW 13), about any harassment by the accused/appellant. It does not appear from the evidence on record that there was any specific demand of money.

16. It may also be noticed in this context that, Kalawati Bai (PW 7), who was the immediate neighbour, living in the adjacent house with common wall with the house of accused/appellant, has stated that, there used to be no quarrel or dispute between the accused/appellant and Hemlata. Kalawati Bai (PW 7) has also stated that, had there been any quarrel between the accused/appellant and deceased Hemlata, she would have come to know about it, as she lives in the adjoining house in the neighbourhood of accused/appellant. Similarly, Ramprasad Prajapati (PW 1), who is the landlord of accused/appellant also stated that there was no dispute between the accused/appellant and the deceased. Therefore, from the statements of neighbour and landlord of the accused/appellant, it does not appear that there was any dispute between the deceased and the accused/appellant, or that harassment or maltreatment was meted out by the accused/appellant to his wife deceased Hemlata. Had there been any dispute between the accused/appellant and deceased or maltreatment or harassment by the accused/appellant with deceased Hemlata, neighbours including the landlord Ramprasad Prajapati

(PW 1) would certainly have had some inkling and knowledge about it.

17. It also appears that the deceased died within a short time probably after about 15 days of starting of the 'Panthela' which was arranged by her father Babulal Jain (PW 4), in fulfilment of the wishes of the accused/ appellant, therefore, it is not plausible nor proved that, even after the fulfilment of his demand of starting his own business, the accused/appellant continued to ask for more money and within a short duration harassed the deceased so much, so as to lead her to commit suicide. The statements of prosecution witnesses in this regard are vague and are very general in character. In any case, it does not appear there from, that the accused/ appellant used to maltreat his wife.

18. It may be, that the accused / appellant had a desire to start his own business and might have asked for money for the same; which in fact was also arranged after pledging the ornaments of deceased Hemlata by her father as has been mentioned in report (Ex. P-8) and a 'Panthela' was started by him; but by itself such a conduct of the accused/appellant, without there being any evidence regarding maltreatment or harassment would not amount to cruelty. It may also be that the deceased was noticed to be unhappy after the marriage, but this could not necessarily be attributed to maltreatment or harassment by the accused/appellant.

19. It may also be noticed in this connection that the father of the deceased Babulal Jain (PW 4) has admitted in para 10 of his statement that his daughter's kidney was damaged. Kamla Bai (PW 5), mother of the deceased has also not denied the fact that the kidney of her daughter was damaged, but has pleaded ignorance about it. Dr. Ramnath Verma (DW 1) has stated that he had treated Hemlata, who complained of pain in the stomach. Smt. Tara Jain (DW 2), who is the cousin sister-in-law of the deceased Hemlata also stated that the deceased complained of stomach ache to her. Therefore, from the above material on record it would appear that the deceased probably had some chronic and serious ailment relating to kidney. It is also clear that the accused/appellant was a poor person without employment or business and was struggling to start his business, but was without money. In the circumstances, a newly married wife might not have felt satisfied with her husband or with the state of affairs of her marital home and its

financial condition or might have felt dejected and depressed on account of her chronic and probably serious ailment and therefore, may have become morose and sad, as she has been described by the witnesses of the -prosecution. But, her depressed mental state was the result of maltreatment or cruelty meted out to her by the accused/appellant, cannot be deduced from the evidence on record.

20. It may also be noticed that the Sub-Inspector Vipin Tiwari (PW 15) has stated that a diary of the deceased alongwith other material were seized as per seizure memo (Ex. P-7). In cross-examination he has admitted that in diary dated 23.7.89, a note written and signed by the deceased was found to the effect, that she was committing suicide of her own Will and that nobody should be harassed on account of the above. The above note in the diary by the deceased also indicates that the deceased has committed suicide of her own. Even in the note of suicide she had not levelled any allegation against the accused/appellant. Had the accused/ appellant been torturing, harassing or maltreating her, the deceased would have certainly made such a mention in the suicide note in her diary. Absence of such an allegation in the suicide note is also indicative of the fact that the accused/appellant was not maltreating or torturing the deceased and she might have been impelled to commit suicide for some other reasons.

21. It may be mentioned here that, for proving the commission of offence punishable under Section 304B of the IPC, it should be established that:

(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 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 for dowry. (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

22. Though, in the instant case, the death of deceased Hemlata admittedly took place within seven years of the marriage, otherwise than under normal circumstances, i.e. by commission of suicide by Hemlata. but there appears to be no reliable evidence that the accused/appellant had subjected her to cruelty or harassment in connection with demand for dowry or otherwise.

23. In the above context, it will be useful to refer to some decisions. In the case, which related to offence punishable under Section 498A of IPC, reported in 1993 Cr. L.J. 3019, Ravindra Pyarelal Bidian and Ors. v. State of Maharashtra, (Bombay High Court) the scope and meaning of 'Cruelty' was considered and it was observed that, each and every harassment does not amount to cruelty. The harassment has to be with a definite object, namely to coerce the woman or any person related to her to meet any unlawful demand. Hence, mere harassment is by itself not cruelty. Similarly, merely demand for property, etc., itself is not cruelty. It is when harassment is shown to have been committed for the purpose of coercing a woman to meet the demand, then it would amount to 'Cruelty'. Similarly, in the case reported in 1992 Cr.L.J. 1444=I (1993) CCR 70, Ramesh Chand v. State of U.P. (Allahabad High Court), it was pointed out that, demand should be unlawful and a mere demand from the wife to bring some jewellery would by itself not be unlawful.

24. In 1995 Cr.L.J. 174=I (1995) CCR 427, Keshab Chandra Panda v. State (Orissa High Court), it has been observed that, in the provisions made under Section 113B of Evidence Act and under Section 304B of IPC, one of the common essential ingredient is that the deceased must have been subjected to cruelty or harassment, soon before her death, for or in connection with demand of dowry. Reference may also be made to 1994 Cr.L.J. 1684, Babaji Charan Barik v. The State, Orissa High Court.

25. In the instant case, it would appear from the foregoing discussion of evidence on record that, the accused/appellant had made a demand of money, in order that he may start his business and the above desire of the accused was also met. In the circumstances, there being no further specific allegations and proof regarding further demand by the accused/appellant or any cruelty or harassment being

meted out to the deceased by him, the earlier demand cannot be termed as unlawful and therefore, it does not stand established that the appellant treated the deceased with 'cruelty'. Therefore, charge for offence punishable under Section 304B of IPC cannot be held to have been proved. Reference may also be made in this connection to 1995 Cr.L.J. 1345=II (1995) CCR 729, Bhakhar Ram and Anr. v. State of Rajasthan, (Rajasthan High Court).

26. Clearly, therefore the conviction of the accused/appellant under Section 304B of IPC cannot be sustained. The above legal and factual position of the case seems not to have been properly and correctly appreciated by the learned Trial Court, while recording the finding of guilt against the accused/appellant, and it appears that the learned Trial Court was guided more by conjectures and surmises rather than by objective assessment of evidence on record. Therefore, the appeal deserves to be allowed.

27. In view of the above, the appeal succeeds and is allowed. The conviction and sentence awarded by the learned Trial Court against the accused/appellant for offence punishable under Section 304B of IPC is set aside. The accused/appellant is directed to be set at liberty forthwith, if he is not required to be detained in any other case.