

Anoop Kumar Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Oct-29-1998

Reported in : 1999CriLJ2938

Judge : V.K. Agarwal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304B, 306, and 498A; [Evidence Act, 1872](#) - Sections 113A and 113D

Appeal No. : Cri. Appeal No. 539 of 1998

Appellant : Anoop Kumar

Respondent : State of Madhya Pradesh

Advocate for Def. : A.K. Verma, Adv.

Advocate for Pet/Ap. : Rajendra Singh and ;R.K. Shukla, Adv.

Judgement :

V.K. Agarwal, J.

1. The accused/appellant stands convicted for offences punishable under Sections 304B and 498A of the Indian Penal Code. He has been sentenced to undergo Rigorous Imprisonment for 7 (seven) years and to pay fine of Rs. 5,000/- (five thousand) in default of payment of fine to undergo Rigorous Imprisonment for one

year, for offence under Section 304B of I.P.C. while he is sentenced to undergo Rigorous Imprisonment for 2 (two) years and to pay fine of Rs. 1,000/- (one thousand) in default of payment of fine to undergo Simple Imprisonment for four months for offence under Section 498A of Indian Penal Code; by judgment dated 23-2-1998, in Sessions Trial No. 271/90, by Addl. Sessions Judge and Special Judge, Jabalpur.

2. Undisputably the deceased Deepa Rai was married to the accused/appellant Anoop Kumar on 26-2-88 at Bareilly (U.P.). She committed suicide by hanging herself on 5-7-1989 at Jabalpur. Complainant Gopendu Kumar Biswas (P.W. 7) and Dugendu Kumar Biswas (P.W. 8) are the brothers while Smt. Chandra Biswas is the sister of deceased Deepa.

3. The prosecution case stated in brief is that the complainant Gopendu Kumar Biswas (P.W. 7) had in the marriage of his sister Deepa with accused/appellant Anoop given dowry according to his capacity, and had spent about Rs. 1,50,000/- in the marriage. After the marriage deceased Deepa Biswas resided with her husband the accused/appellant, and his other family members at Jabalpur. The accused/appellant and his other relatives after the marriage made demand of dowry. The deceased Deepa was assaulted and tortured by her in-laws and also by the accused/appellant. The deceased Deepa intimated her brother Gopendu Kumar Biswas (P.W. 7) about the demand and maltreatment as above. However, keeping in view her future, they used to tell her to carry on with her husband and his family members.

4. It is also alleged that the accused/ appellant was a person of doubtful character. He consumed liquor and used to remain absent from the house sometimes for the whole night. On protests by the deceased Deepa he used to threaten and assault her. The complainant Gopendu Kumar Biswas (P.W. 7) and Satish Bhasin had come to Jabalpur and had persuaded the accused/appellant to change his ways and habits. The accused/ appellant and his brothers Ashok and Vinay had assured the complainant Dugendu Kumar Biswas (P.W. 8) and Satish Bhasin, that they would not give any cause for complaint in future. However, situation did not improve, and maltreatment with deceased Deepa continued.

5. A daughter was born to deceased Deepa Rai, and on that occasion the complainant Dugendu Kumar (P.W. 7) had given a sum of Rs. 10,000 (ten thousand) in connection with the ceremonies of the birth. The accused/appellant wished to start his own business which required an investment of R. 3,00,000/- and he asked Rs. 1,00,000/- from the complainant Dugendu Kumar (P.W. 8) for the said purpose. Since his demand as above was not met, the accused/appellant and his family members tried to throttle Deepa. On receiving information complainant Dugendu Kumar (P.W. 8) had come to Jabalpur. He sent a written report (Ex. P/10) dated 12-7-1989 of the incident.

6. On the basis of above written report (Ex. P/10) Police Omti Jabalpur recorded First Information Report and registered the offence. The inquest report (Ex. P/3) on the dead body of deceased Deepa Rai was prepared and the dead body was sent for post-mortem examination. Dr. A.C. Nagpal (P.W. 3) conducted postmortem examination on the body of deceased Deepa Rai. It was reported in the post mortem report (Ex. P/4) that here was a dark red ligature mark in front of the neck from right to left side. It was leaning obliquely higher on the left side and faint on the right lateral side of neck missing at the nape of neck. Ligature mark was 23 cms. in size. The ligature pattern discernible on front and left lateral side of neck for 17 cm. x 1 cm., Skin of the ligature was dark red and hard. It was opined that the ligature mark the ante-mortem and the deceased died of asphyxia which was caused by hanging. During investigation Letters (Ex. P/8-A to Ex. P/8-I) were seized by the Investigating Officer, ASI B.P. Mishra (P.W. 6) as per seizure memo (Ex. P/9). After concluding other usual formalities during investigation charge-sheet was filed against the accused/appellant and the co- accused his brothers Ashok Kumar and his mother Smt. Sarla.

7. Learned trial Court framed charges for offences punishable under Sections 498A and 304B of the Indian Penal Code against the accused/appellant as also against other co-accused Ashok Kumar and Vinay Kumar, brothers of the appellant and Smt. Sarla Rai, his mother. They abjured guilt. By the impugned judgment trial Court acquitted the co-accused Ashok Kumar, Vinay Kumar and Smt. Sarla Rai. However, it was held that charge for offences punishable under Sections 498A and 304B of Indian Penal Code are proved beyond reasonable

doubt against the accused/appellant and he was accordingly convicted and sentenced therefor, as has been mentioned earlier.

8. The learned Counsel for the accused/ appellant has challenged the finding of guilt recorded by the learned trial Court. It has been urged that the oral evidence led by the prosecution or the letters (Ex. P/8-A to Ex. P/8-I) produced by the complainant Gopendu (P.W. 7) do not disclose that there was any demand of dowry. It has also been urged that it has not been established from the evidence and material on record that the accused/appellant harassed the deceased Deepa, or subjected her to cruelty, soon before her death, for or in connection with any demand of dowry. Therefore, his conviction either under Section 498A or 304B of the Indian Penal Code, is not sustainable. It has also been urged that written report (Ex. P/10) sent by complainant Gopendu (P.W. 7) is not only belated but has been sent after the due deliberation levelling false allegations against the accused/appellant.

9. However, learned Counsel for the respondent/State has urged that there is clear and cogent evidence on record which shows that the appellant had constantly been making demands and harassing the deceased. Therefore, the accused/appellants' conviction as well as sentence are fully justified.

10. The statement of complainant Gopendu Kumar (P.W. 7) and Dugendu (P.W. 8) -- the brothers of deceased Deepa Rai, and the statement of Smt. Chandra Biswas (P.W. 9) -- the sister of deceased Deepa Rai, would indicate that the accused/appellant and the deceased Deepa Rai were married on 26-2-88 at Bareilly (U.P.). It is also not disputed that deceased Deepa Rai resided with the accused/appellant and his family members at Jabalpur after her marriage. She died on 5-7-89. The dead body was sent for postmortem. Postmortem report (Ex.P/3) of Dr. A.C. Mangal (P.W 3) discloses that she died due to asphyxia due to hanging, which indicates that she committed suicide. Therefore, indisputably the deceased was married within 7 years of her death and that her death occurred otherwise than under normal circumstances. Therefore, the questions that arise for consideration are as to whether :

(a) Deceased Deepa Rai soon before her death was subjected/cruelty or harassment by the accused/appellant?

(b) that such cruelty or harassment was for or in connection with any demand of dowry?

11. In the above connection Complainant Gopendu Kumar Biswas (P.W. 1) has stated that the accused/appellant, his brothers co-accused Ashok Kumar and Vinay Kumar and his mother Smt. Sarala Rai used to harass the deceased for bringing lease dowry. He has further stated that his sister deceased Deepa Rai had told him and other family members at Bareilly when she visited them, regarding her harassment as above on account of demand of dowry. Gopendu (P.W. 7) has stated that the accused persons demanded Rs. 1,00,000/- (one lac) for opening the shop of accused/appellant, but Gopendu (P.W. 7) expressed his inability to pay the above amount. He has also stated that he had paid Rs. 5,000/- (five thousand) for furniture to his sister deceased Deepa Rai in two instalments one of Rupees 3,000/- (three thousand) and the other of Rs. 2,000/- (two thousand). He further states that a daughter was born to his sister on 18-3-98 and a month thereafter ceremony in connection to birth was held for which he came from Bareilly to Jabalpur, and had given Rs. 10,000/- (ten thousand) to Ashok Kumar the elder brother of the accused/appellant towards expenses of the ceremony.

12. Complainant Gopendu (P.W. 7) has further stated that he as well as his other family members apprised the accused/appellant of their circumstances and requested the accused/appellant and his relatives not to harass deceased Deepa. The accused/appellant and his family members has assured that in future the deceased would not be harassed. He has further stated that letters (Ex.P/8-A to Ex.P/8-I) were written by deceased Deepa which he produced before the police and they were seized from him as per seizure memo (Ex. P/9). He had sent a complaint dated 12-7-89 to the Supdt. of Police regarding the death of his sister-deceased Deepa.

13. Smt. Chandra Biswas (P.W. 9) has stated that deceased Deepa had come to Bareilly from Jabalpur, four or five times after her marriage. She states that deceased Deepa had informed her that the accused/appellant had asked for Rs.

1,00,000/- (one lac) for starting his shop, upon which Smt. Chandra Biswas (P.W. 9) told about it to Gopendu (P.W. 7) - her brother, and other family members. Smt. Chandra Biswas (P.W. 9) has further stated that deceased Deepa used to tell her that the accused/appellant always taunted that her relatives were distitutes and had not. given anything in dowry. Deceased Deepa also used to complain that the accused/appellant was in the habit of drinking and would come home late in the night. The accused/appellant would also insist the deceased Deepa should also take liquor and on her refusing to do so, she was beaten by the appellant and that accused/appellant also levelled false allegations against her. She has stated that letters (Ex.P/8-A, Ex.P/8-G and Ex.P/8-1) were addressed to her by the deceased.

14. Dugendu (P.W. 8) brother of deceased Deepa has staled that deceased committed suicide on account of demand of dowry. However, he has not specified any particulars regarding the said demand. Smt. Chandra Biswas (P.W. 9) has also stated that deceased Deepa committed suicide on account of harassmt regarding the demand of dowry.

15. From the statement as above of Gopendu (P.W. 7) -- brother of deceased, it would appear that the accused/appellant had demanded Rs. 1,00,000/- (one lac) for starting his shop, regarding which he had expressed his inability. Similar is the statement of his sister Smt. Chandra Biswas (P.W. 9) who has State that the deceased Deepa had told her that the appellant was demanding Rs. 1,00,000/- (one lac) for starting his shop.

16. Learned Counsel for the appellant had submitted that the demand as above would not amount to demand of dowry, and it was natural for the appellant to seek financial assistance for starting his business from his relatives including his in-laws. In support of his contention learned Counsel for appellant has referred to Kamesh Chandv. State of U.P., 1992 Cri LJ1444, wherein the Allahabad High Court has observed that even if the husband had asked the wife to bring some jewellery, this by itself could not be unlawful demand as no law would punish mere demand without settlement of dowry at the time of marriage.

17. It has further been urged that in the circumstances of the instant case, the mere demand of the accused/appellant of an amount from the relatives of his wife

without any further persistence or harassment on that account would not make the demand as unlawful or a demand of dowry.

18. It is clear from the evidence led in the case that the demand as above was only by way of help for starting the business. It may further be noticed that Gopendu (P.W. 7) had expressed his inability to his sister to pay the above amount. It is also noted that the above demand has not been mentioned in any of the letters (Ex. P/8-A to Ex.P/8-I) written by the deceived to her close relatives including Gopendu (P.W. 7) and Smt. Chandra Biswas (P.W. 9). it therefore appears that the accused/appellant thereafter did not pursue the demand as above. It also does not appear that the accused/appellant in any way insisted on the amount being paid. Obviously therefore such a demand would not amount to a demand of dowry.

19. It is also to be noticed that Gopendu (P.W. 7) has also stated that there was demand of some amount by his sister deceased Deepa for purchasing furniture. He states that in all Rs. 5,000/- (live thousand) were paid by him, towards purchase of furniture by his sister-the deceased Deepa. It may be noticed that the deceased Deepa requested that the above amount be given to her, as she wanted to purchase dressing table and almirah, as has been referred to by her in her letters (Ex. P/8-A and Ex. P/8-H). It is true that there is no direct evidence that the above request by deceased Deepa was at the instance of the accused/appellant as there is no mention in the said letters that the accused/appellant had directed the deceased to ask for the amount. However, it is abundantly clear from her letters that Deepa was greatly embarrassed in asking for the above amount which speaks for itself and shows deceased was compelled by her circumstances in her matrimonial home, to make the said demand. However, since on reading of said letters written by deceased Deepa, and on consideration of the oral statement of Gopendu (P.W. 7), it does not appear that the request for payment of furniture was at the instance of the accused/ appellant, hence the demand by deceased Deepa for purchase of furniture as above therefore, would also not amount to demand of dowry by the appellant.

20. Gopendu (P.W. 7) has also stated in para 7 of his statement that a daughter was born to her sister-deceased Deepa, on 10-3-89, and that he had arrived at Jabalpur to participate in the ceremony and festivity relating to the above birth. He has further stated that since he was told by accused persons that the expense of ceremonies have to be borne by 'Mama' -- the maternal uncle; he had given an amount of Rs. 10,000/- (ten thousand) to Ashok Kumar - the elder brother of the accused/appellant. It is clear there-fore, that the amount as above was not given in pursuance of demand of dowry by the appellant, but was only given as it was customary to do so.

21. Thus, the evidence as above does not establish that the accused/appellant or any of his relatives demanded dowry. The question that now deserves to be considered is whether the deceased was treated with cruelty?

22. Smt. Chandra Biswas (P.W. 9) - sister of deceased, has stated that the latter had told her that the accused/appellant used to harass the deceased. He would taunt her that sufficient dowry was not given in their marriage and that the relatives of deceased Deepa were destitutes. He would also consume liquor and would come late in the night. He would also insist that deceased Deepa should give him company in drinking. On deceased Deepa declining to accede to his demand he would beat her and would level false allegations against her character. She has further stated in para 5 that deceased Deepa had also told her that the accused/appellant had illicit relations with a girl named Bharti, who used to frequently telephone him. Gopendu (P.W. 7) has also stated that deceased Deepa always used to tell them that the accused/appellant continuously harassed her. They had also requested the accused/appellant and his relatives not to harass her, upon which they had assured that they would not do so, but it appears that the matters did not improve.

23. Reference in this connection may also be made to the letters written by deceased Deepa which are marked as (Ex.P/8-A to Ex.P/8-I). From letter (Ex.P/8-D), it would appear that deceased Deepa was in a state of mental torture and tension. Though she wanted to express herself but could not do so on account of her inability. She has expressed that she is having a volcano within her and that

there were such occurrences taking place in her matrimonial household which were not worth mentioned and that she was averse to even write about them. The contents of the said letter also contains reference though in an indirect manner that the accused/ appellant was not maintaining relations with deceased Deepa, which she as wife normally expected. She had beseeched her sister Smt. Chandra Biswas (P.W. 9) in the said letter to do something in the matter, so that the accused/appellant gets attached to her and starts caring for her.

24. In letter (Ex. P/8-D) deceased Deepa has requested that some amount be sent on the occasion of some function, so that she may not to have suffer humiliation and may not be taunted. She has also narrated the incident of her humiliation on account of paltry amount of Rs. 50/- (fifty) only being given by her sister Smt. Chandra Biswas (P.W. 9) to a child of her matrimonial family.

25. Smt. Chandra Biswas (P.W. 9) in para 8 of her statement has stated that the deceased had indirectly mentioned therein that the appellant had extramarital affair and that deceased Deepa wanted that the accused/appellant should sever his relations with that girl and should become faithful and get attached with the deceased. The letter (Ex. P/8-C) written to Smt. Chandra Biswas (P.W. 9) is the expression of poignant feelings of deceased Deepa, and shows that she was in a state of intense mental agony and torture. The letter (Ex. P/8-E) mentions about the taunts and misbehaviour by her in-laws. She has stated therein that she was being humiliated beyond her forbearance. She has also thereby requested her sister Smt. Chandra Biswas (PW 9) that they should not visit her at Jabalpur in any ceremony or function because she is being taunted in her matrimonial home. Deceased by the said letter forbade her sister and other to visit her, because she feared that they may be humiliated by her in-laws.

26. Letter (Ex. P/8-I) also indicates that the deceased seems to be in great mental distress and tension, as she apprehended that in the marriage of some relative, something may not be said regarding the disclosures made by deceased Deepa to her relatives from the parents side. It would also appear from that letter that she wanted that the relatives from her husband's side should be told that deceased was talking well about them and that they were not of the type as they appeared at

the time of her marriage.

27. From letter (Ex. P/8-B) it appears that it was written by the deceased Deepa in sheer desperation and a frantic request thereby has been made by her to her brothers that she should be taken back to her parents home immediately on receipt of letter. It was also been stated in that letter it was probably that last letter being written by her implying that she may not live in case she was not taken back to her parents' home. It appears that apprehensions expressed in the said letter by deceased Deepa, materialised and deceased Deepa was forced to take the extreme step of committing suicide by hanging herself.

28. Clearly therefore, the reading of the letters of the deceased as above, unmistakably indicate that deceased Deepa was being subjected to humiliation and harassment. She was taunted as coming from a poor family. There was expectation of payments from time to time by her brothers and sisters. It also appears that she felt great embarrassment in asking money for furniture, and on other counts, but was compelled to meet the said expectations while she was at her matrimonial home. It is abundantly clear from the letters that deceased Deepa was in constant and acute mental agony, on account of the circumstances prevailing in her matrimonial home. It is also apparent from her last letter (Ex. P/8-B) written shortly before her death that she had decided not to continue to live in her matrimonial home with the accused/appellant.

29. The statement of her sister Smt. Chandra Biswas (PW 9), indicates that the accused/appellant had illicit affair with a girl. He used to drink and insist that deceased Deepa should also give him company by taking drinks with him. On her refusing to do, so, appellant would beat her. He would come late in the night. He taunted her that dowry given in their marriage was inadequate. He would also caste aspersion on the character of deceased Deepa his wife.

30. Admittedly deceased Deepa was married to the accused/appellant on 26-2-1988, and committed suicide within 1 1/2 years thereafter. This was shortly after giving birth to a daughter. Commission of suicide by deceased within a short span of 1 1/2 years of her marriage leaving behind her young daughter was obviously for some extremely compelling reasons. Those reasons are disclosed by the

statements of her sister Smt. Chandra Biswas (PW 9), her brother Gopendu (PW 7) and Dugendu (PW 8), who stand fully corroborated by letters (Ex.P/8-A to Ex. P/8-I) of the deceased which are indicative of the constant torture and torment, which the deceased was facing at her matrimonial home. The evidence as above clearly establishes that the deceased was constantly taunted, harassed and humiliated, at her matrimonial home. The above evidence also indicates that the appellant: had illicit relations with another girl and shows intense desire of deceased that her husband - the accused/appellant, should sever such relations and should become faithful and attached to her. The letters also indicate the low mentality and expectations of the appellant and his family members.

31. Obviously, the accused/appellant was mainly responsible for the above predicament of his wife the deceased Deepa. She was under great mental stress and agony from almost the beginning of her married life, till she met her unfortunate end, due to the behaviour of the accused/ appellant. In the foregoing circumstances, there appears to be no doubt that the accused/appellant treated her with cruelty within the meaning of explanation (a) of Section 498A of the Indian Penal Code.

32. In *Gurucharan Singh v. Satpal Singh* 1990 Cri LJ 562 : AIR 1990 SC 209, it has been laid down that constant dowry demands from a newly wedded wife and consequent taunts, maltreatment, cruel behaviour, torture and insinuation that she was carrying an illegitimate child are grave, and serious provocation, and were enough to drive an ordinary woman in the Indian set up to commit suicide.

33. It is thus established that deceased Deepa was compelled to commit suicide by hanging herself within about 1 1/2. years of her marriage with the accused/appellant leaving behind her young daughter. However, since it has not been proved that the accused/appellant demanded dowry therefore presumption under Section 113D of the Evidence Act is not attracted. But, as has been noticed earlier since the accused/appellant persistently treated deceased Deepa with cruelty, a presumption under Section 113A of the Evidence Act will have to be drawn, and it is therefore held to be established from the above evidence and circumstances of the case that the accused/appellant had abetted the commission

of suicide by deceased Deepa.

34. Therefore, though the conviction of the accused/appellant under Section 304B of the Indian Penal Code is not justified, but for the foregoing reason;-, lie deserves to be convicted for offence punishable under Section 306 of the Indian Penal Code, and further his conviction under Section 498A of the Indian Penal Code also, deserves to be maintained.

35. Accordingly, the appeal is partly allowed. The conviction of the accused/appellant under Section 304B of the Indian Penal Code is set aside and instead he is convicted under Section 306 of the Indian Penal Code. His conviction under Section 498A of the Indian Penal Code is maintained. In the circumstances- the accused/ appellant is sentenced to undergo Rigorous Imprisonment for five years and to pay fine of Rs. 5,000/- (five thousand) under Section 306 of the Indian Penal Code, in default to which to undergo further Rigorous Imprisonment for 1 (one) year. Sentence as awarded by trial Court under Section 498A of Indian Penal Code to undergo Rigorous Imprisonment for two years and fine of Rs. 1,000/- (one thousand) in default of which further Rigorous Imprisonment for four months is maintained. Substantive sentences of imprisonment as above shall run concurrently.