

Rakesh Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Sep-30-1998

Reported in : 1999CriLJ4915

Judge : V.K. Agrawal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304B and 498A

Appeal No. : Cri. Appeal No. 2537 of 1997

Appellant : Rakesh

Respondent : State of Madhya Pradesh

Advocate for Def. : Narayan Dubey, Adv.

Advocate for Pet/Ap. : Surendra Singh, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

V.K. Agrawal, J.

1. The accused/appellant stands convicted for offences punishable under Sections 498A and 304B of the Indian Penal Code and has been sentenced to undergo Rigorous Imprisonment for 10(ten) years for offence under Section 304B of I.P.C.

while he has not been separately sentenced for offence under Section 498A of the Indian Penal Code, by judgment dated 29-11-1997, in Sessions Trial No. 59/90 by 1st Addl. Sessions Judge, Mandla.

2. Undisputably, the accused/appellant was married to deceased Radha bai in the month of June, 1989. She committed suicide on 28-11-89 i.e. within about six months of marriage by consuming some poisonous substance. Sushila Bai (P.W. 2) and Jamuna Prasad (P.W. 3) are the parents of deceased Radha Bai while Kamal Kumar Chaorasia (P.W. 6) and Vimal are their sons and brother of deceased Radha Bai.

3. The prosecution case stated in brief is that the accused/appellant and his parents used to demand dowry from deceased Radha Bai and since the above demand was not met, she was harassed, tortured and subjected to cruelty by the accused/appellant and his parents. The accused/ appellant also caused aspersion on the character of deceased Radha Bai. Feeling frustrated Radha Bai consumed some poisonous substance and ended her life. Jamuna Prasad (P.W. 3) lodged a written report regarding the incident as per Ex. P/ 2-A, addressed to S. H.O. Mandla. The offence was registered against the accused/appellant on the basis of that report. The inquest report (Ex. P/ 6) on the dead body of deceased Radh Bai was prepared by D.S.P. M. S. Kanwar (P.W. 11). It was sent for postmortem examination vide memo (Ex. P/7-A). Dr. S. K. Pandit (P.W. 7) and Dr. P. C. Masahra (P.W. 9) conducted postmortem on the dead body of deceased Radha Bai. Their postmortem report is as per Ex. P/7. A letter (Ex. P.3 A) was seized. After concluding other usual formalities during investigation, charge sheet was filed against the accused/appellant as well as his parents-co-accused Tulsiram and Lalita Bai.

4. The learned trial Court framed charges for offences punishable under Sections 498A and 304B of the Indian Penal Code against all the accused persons. They abjured guilt. By the impugned judgment, the learned trial Court though acquitted co-accused Tulsiram and Lalita Bai the parents of accused/appellant, however the accused/appellant was found guilty for the said offences and has been convicted and sentenced therefore as has been mentioned earlier.

5. Learned counsel for the accused/appellant has urged that there is no reliable evidence to establish that the accused/appellant at any time demanded dowry, or that he subjected deceased Radha Bai to cruelty. It has also been submitted that there is material and evidence on record to indicate that deceased Radha Bai had illicit relationship with one Mani, regarding which the accused/appellant had written letters to the brothers and father of deceased Radha Bai and had protested about the same. This might have led to the deceased Radha Bai committing suicide. As against this, learned counsel for the respondent/State has submitted that from the evidence on record, it is abundantly clear that the accused/appellant used to demand dowry and had maltreated deceased Radha Bai, which led her to take the extreme step of committing suicide.

6. The father of deceased Jamuna Prasad (P.W. 3) has stated that deceased Radha Bai was married to the accused/appellant in the month of June 1989 and she died on 28-11-1989. It would appear from his statement that at the time of marriage, a dispute with co-accused Tulsiram the father of accused/appellant had occurred. Said dispute was regarding distribution of glasses to the 'Baratis' as gift he has clarified in para 6 of his statement that Tulsiram had stated that number of 'Baratis' was 145 which Jamuna Prasad was not prepared to accept, due to which the dispute had taken place. Therefore, from the above evidence of Jamuna Prasad (P.W. 3), it would appear that at the time of marriage, the only dispute between him and the father of accused/appellant was that that Tulsiram - the father of accused/appellant, wanted 145 glasses towards gift to the 'Baratis' while Jamuna Prasad (P.W. 3) was not agreeable to give that number of glasses to the 'Baratis', as he considered that the number of 'Baratis' was less. It may be noted that there is no other evidence regarding the demand of dowry by the accused/appellant in the case.

7. It may be noted that the incident as above, usually occur at the time of celebration of marriage and are not taken seriously by either of the sides. It may also be noted that if the matter was serious, the accused/appellant's father would have pursued it, but there is no allegation that he did so. Moreover, it may be noted, that even if the above statement of Jamuna Prasad (P.W. 3) is accepted on its face value, even then it would only show that the dispute as above was

between the accused/appellant's father Tulsiram and Jamuna Prasad (P.W. 3) - the father of deceased Radha Bai. But the accused/appellant had nothing to do with such a dispute. It was not stated by Jamuna Prasad (P.W. 3) that there was any demand as above, by the accused/appellant.

8. Sushila Bai (P.W. 2) - the mother of deceased Radha Bai has also stated that the father of accused/appellant Tulsiram had raised a dispute at the time of 'Bida', by which she presumably is referring to the demand of 145 glasses, as stated by Jamuna Prasad (P.W. 3). Sushila Bai (P.W. 2) has further admitted that firstly immediately after her marriage and thereafter in the month of September 1989, when the grand-mother of deceased Radha Bai expired, she had visited them. Sushila Bai (P.W. 2) has admitted in para 6 of her statement that on the above occasions deceased Radha Bai had not complained of anything to her. Sushila Bai (P.W. 1) has however stated that on the third occasion in the month of November 1989, deceased Radha Bai was sent to them by her in-laws for three days. She further states that the accused/appellant had come to take deceased Radha Bai with her and that Radha Bai and accused/appellant had gone to Panagar to the sister of accused/appellant. Sushila Bai (P.W.2) further states that when deceased Radha Bai returned back from Panagar, she seemed to be greatly shaken and she had told Sushilabai that the accused/appellant and his sister had beaten her at Panagar and that she would now die.

9. It may however be noted that though Sushila Bai (P.W. 2) had stated that she had informed about the beating of deceased Radha Bai to her husband Jamuna Prasad (P.W. 3) by the accused/appellant and his sister; but Jamuna Prasad (P.W. 3) or Kamal (P.W. 6) have not corroborated the above statement of Sushila Bai (P.W. 2). Jamuna Prasad (P.W. 3) has stated in the above context that when his daughter deceased Radha Bai had returned from Panagar, she was looking frightened and it appeared as if somebody had beaten her. But he has admitted that Radha Bai herself had not told about anything. He has further stated that only after the death of Radha Bai, he came to know that the accused/ appellant and his sister Madhuri had beaten Radha Bai.

10. It may be noted that had his wife Sushila Bai (P.W. 2) told Jamuna Prasad (P.W. 3) that Radha Bai was beaten by the accused/appellant and his sister, he would have certainly stated so. It may also be noted that in his report (Ex. P/4) and police diary statement (Ex. P/2) there is a conspicuous omission regarding the above incident of alleged beating by the accused/appellant and his sister. Therefore, the oral statement of Sushila Bai (P.W. 2) in the above regard, stands falsified.

11. Kamal Kumar (P.W. 6) - the brother of deceased Radha Bai has not stated anything about the incident of beating of deceased Radha Bai by the accused/appellant and his sister. In fact, he has stated that he does not know as to how the accused persons i.e accused/appellant and his parents used to treat the deceased Radha Bai. He states that he is not aware as to whether Radha Bai had made any complaint regarding maltreatment by the accused/appellant and his parents.

12. Therefore, it is clear that neither Jamuna Prasad (P.W.3) nor Kamal (P.W. 6) have stated that Sushila Bai (P.W. 2) told them about the beating by the accused/appellant and his sister of deceased Radha Bai, at Panagar. Obviously, if the beating as above was given, then not only Jamuna Prasad (P.W. 3) and Komal (P.W. 6) - the father and brother of deceased would have stated so, but the same would have also been mentioned in the written report (Ex. P/4) lodged by Jamuna Prasad (P.W. 3). Thus, the demand of dowry by the accused/appellant or any harassment or cruelty being meted out to the deceased for or in connection with such a demand is not established.

13. In the above context, it may be noted that the defence of the accused/appellant is that deceased Radha Bai had love affair with one Mani, who was the tenant of parents of deceased. The above fact is admitted by Sushila Bai (P.W. 2) in para 9 of her statement. However, Jamuna Prasad (P.W. 3) has chosen to deny the above fact and he has denied that Mani was living in their house. This denial of Jamuna Prasad speaks for itself.

14. It may be noted in this connection that Jamuna Prasad (P.W. 3) has admitted that a letter (Ex. P/3-A) sent to him by the accused/appellant. The above letter

indicates that the appellant had complained about affection of Radha Bai for someone, before her marriage. He has also mentioned therein that in the interest of deceased Radha Bai and in his own interest, he does not wish to send her to her maternal home alone and he had advised his brothers-in-law i.e. brothers of deceased Radha Bai - Kamal (P.W. 6) and Vimal that they should also in the interest of Radha Bai not take her with them. The letter clearly is an expression of sincere and genuine feelings of the appellant for the welfare of the deceased and positively and unmistakably indicates that the accused/appellant wished to live happily and cordially with his wife - the deceased Radha Bai. It may be noted that photocopy of letter (Ex. D/3) written by said Mani to the deceased has been produced in defence. The said letter also shows that Mani was in love with the deceased. Therefore, the above evidence and material on record highly probabalises the defence of the accused/appellant that deceased Radha Bai had relations with some other person prior to her marriage with the accused/appellant. It was therefore natural that accused/appellant did not want to send the deceased to her parents. The circumstances as above also indicate that the deceased may have committed suicide on account of frustration, due to some other cause; and not because the appellant subject her to cruelty.

15. In view of above, it is clear that the accused/appellant never demanded any dowry from Radha Bai or her in-laws. The statements in this regard of the parents of deceased Jamuna Prasad (P.W. 3) and Sushila Bai (P.W. 2) are not supported by any other independent evidence and their statements do not stand the test of scrutiny. They are close relatives of deceased and may have given exaggerated version.

16. In *Sharad Birdhichand Sarda v. State of Maharashtra* AIR 1984 SC 1622 : (1984 Cri LJ 1738), it has been observed :

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 for 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 a spirit of revenge or nemesis against the accused person and in this process certain facts which may not or could not have been stated may be imagined to have been stated unconsciously by the witnesses in order to see that the offender is punished. This is human psychology and no one can help it.

17. It may also be noticed that the statements of Sushila Bai (P.W.2) and Jamuna Prasad (P.W. 3) has not been wholly relied upon by the trial Court also, as despite their statements co-accused Tulsiram and Lalitabai were acquitted. Therefore, the statements as above of parents of deceased in the face of such inherent weakness therein, regarding the demand of dowry cannot be accepted on their face value.

18. The scrutiny of evidence and the material on record as above clearly indicates that the accused/appellant did not demand any dowry nor he harassed the deceased Radha Bai or subjected her to cruelty for or in connection with the demand of dowry. Hence, his conviction either under Section 498A or 304B of the Indian Penal Code does not appear to be justified.

19. Accordingly, the appeal is allowed. The conviction as well as sentence of the accused/ appellant under Sections 498A and 304B of the I.P.C. are set aside. He stands acquitted. He be released forthwith, if not required to be detained in connection with any other case.