

Sarman Vs. State of Madhya Pradesh

Sarman Vs. State of Madhya Pradesh

SooperKanoon Citation : sooperkanoon.com/509620

Court : Madhya Pradesh

Decided On : Nov-22-2005

Reported in : I(2006)DMC450

Judge : A.K. Shrivastava, J.

Acts : Evidence Act - Sections 32 and 113B; [Dowry Prohibition Act, 1961](#) - Sections 2; [Indian Penal Code \(IPC\), 1860](#) - Sections 20, 201, 302, 304B and 498A; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 161 and 374(2)

Appeal No. : Criminal Appeal No. 106 of 1998

Appellant : Sarman

Respondent : State of Madhya Pradesh

Advocate for Def. : M.P.S. Bhadoriya, P.P.

Advocate for Pet/Ap. : Nutan Saxena, Adv.

Disposition : Appeal allowed

Judgement :

A.K. Shrivastava, J.

1. Feeling aggrieved by the judgment of conviction and order of sentence dated 5.2.1989 convicting the appellant under Sections 304B and 302/201, I.P.C. and

sentencing him to suffer rigorous imprisonment for seven years and one year respectively and fine of Rs. 500 in default, further rigorous imprisonment of one month, appellant has knocked the doors of this Court by preferring this appeal under Section 374(2) of the Code of Criminal Procedure, 1973.

2. Appellant No. 1 Rambaran who was the husband of Moharshree (hereinafter referred to as the 'deceased') breathed his last during the pendency of this appeal as a result of which his name has been deleted from the array of appeal since the appeal was abated against him,

3. In brief, the case of the prosecution is that complainant Gangaram s/o Ramkishan is a resident of Gopalpura, Morena. His daughter, the deceased, got married two years earlier to the date of incident to deceased appellant Rambaran, who is son of the appellant Sarman. The incident took place on 9.5.1993. Gangaram, who is the father of the deceased on inquiry found that on account of some illness the deceased died. However, the appellant nor his family members did inform him in regard to the illness of the deceased and about her death. According to complainant deceased died not in normal circumstances. Complainant Gangaram lodged a report on 11.5.1993 in the concerning police station.

4. On lodging of the report, criminal law was triggered of and set in motion. Investigating Agency at the spot, recorded the statements of the witnesses, arrested the accused persons and prima facie found that the appellant and deceased co-accused Rambaran committed the offence under Section 304B, I.P.C. Since dead body of the deceased was cremated, therefore, the case was also registered under Sections 302/20, I.P.C. apart from Section 304B, I.P.C.

5. A charge-sheet was submitted in the Competent Court, which on its turn committed the case to the Court of Session where the case was tried.

6. Learned Trial Court, on scrutiny of the charge-sheet, framed charges against the accused persons punishable under Sections 304B, and 201 read with Section 302, I.P.C. Needless to emphasise that both the accused persons abjured their guilt. Their defence is of maladroitness. Defence of the accused is that the

deceased was pregnant and on account of miscarriage she passed away.

7. In order to prove the charges, prosecution has examined as many as seven witnesses and placed Exs. P/1 to P/5 on record. In their defence, the accused persons examined six witnesses.

8. The Trial Court after examining the record found that both the charges are proved against the accused persons and eventually convicted them and passed sentences which I have mentioned hereinabove. Hence this appeal has been preferred by the accused persons.

9. I have already mentioned herein above that during the pendency of this appeal, appellant Rambaran (husband of the deceased) died as a result of which, the appeal stood abated against him and his name has been deleted from the array of the appellants. Thus, this Court is required to see whether any offence has been committed by the appellant and whether he has been rightly convicted by the Trial Court.

10. It has been submitted by Sushri Nutan Saxena, learned Counsel for the appellant that if the prosecution evidence is considered in proper perspective, it cannot be said that any offence has been committed by the appellant. According to her, prosecution has utterly failed to prove its case beyond doubt. It has been further canvassed by her that defence of the accused is that the deceased died on account of miscarriage as she was pregnant and, in order to support their defence, several defence witnesses were examined by the accused persons including midwife (Dai) D. W. 2 Ramwati who treated the deceased on account of abortion. According to the learned Counsel, the credibility of the defence witnesses stands on the same footing on which prosecuting witnesses stand and there is no distinction between the two and, therefore, Trial Court ought to have given credence to the defence witnesses in the same manner as were being given to the prosecution witnesses. In support of her contention, learned Counsel has placed reliance on two decisions of the Apex Court in the cases of *Dudh Nath Pandey v. State of U.P.* : 1981 CriLJ618 , and *State of Haryana v. Ramsingh* : 2002 CriLJ987 .

11. Per contra, Mr. M.P.S. Bhadoriya learned Public Prosecutor argued in support of the impugned judgment.
12. After having heard learned Counsel for the parties, I am of the view that this appeal deserves to be allowed.
13. The basic document on the basis of which the criminal law was set in motion is Ex. P/4C which is a Marg report lodged by complainant Gangaram. This report is dated 11.5.1993. According to this report, deceased got married to deceased accused Rambaran two years earlier to 1.5.1993. Twenty days earlier to 11.5.1993 the son-in-law of the complainant i.e., deceased accused Rambaran, appellant Sarman and two daughters-in-law of the appellant Sarman arrived and took away the deceased from his house. On Monday, his relative Asharam came to him and informed him that the deceased has passed away. Thereafter, Asharam and Sumera went to the house of the appellant where they were informed that on account of the illness she passed away on 9.5.1993 and she has been cremated. Since the appellant and his family members did not inform the complainant in regard to illness of the deceased and also did not inform about her death and she was cremated, he is in suspicion that under unnatural circumstances, the deceased has died. On going through this report, nowhere it is gathered that there was any demand of dowry either by the appellant or his family members. There is no whisper in this report that earlier to the incident deceased was ever ill-treated by the appellant or his family members. This report is dated 11.5.1993. Thereafter, when the statement of the complainant was recorded under Section 161, Cr.P.C., on 17.5.1993 the story of ill-treatment was added. In his police statement Ex. D/4 he has stated that when for the second time the deceased arrived at his house, she told him that father-in-law and the husband ill-treat her and they also causes marpeet to her. She also showed her fingers and stated that they were burnt and now she will not go to the house of the appellant. Thereafter, when the appellant arrived at the house of the complainant and asked the complainant to send his daughter-in-law, he did not agree because his daughter was being ill-treated. The appellant and his two daughters-in-law pacified him that his daughter will not be ill-treated in future. In his police statement Ex. D/4 in the portion marked 'A' to 'A' it has been stated by him that when the deceased

died it was told by the appellant that abortion of six months took place on account of which the deceased passed away. If the Marg report Ex. P/4C of complainant dated 11.5.1993 and his police statement Ex. D/4 dated 17.5.1993 are kept in juxtaposition and are read conjointly, one can easily say that the story which has been set forth in the report Ex. P/4C has been somersaulted and altogether new facts have been added in the police statement Ex. D/4 about which there is no whisper in the report Ex. P/4C. Thus, I am of the view that here is material omission. The omission are confronted to the complainant in para 14 of his testimony. Thus, the story of causing marpeet and ill-treatment has been planted and has been added in order to give colour, cannot be ruled out. Even if police statement Ex. D/4 of the complainant is taken to be the true in its entirety, there is nothing in his statement that any demand of dowry was made either by the appellant or by the deceased co-accused. Though in the evidence of the complainant it has come that the deceased had told him that family members of the appellant insisted her to bring dowry, but this fact has neither been stated by him in his police statement Ex. D/4 nor in his report Ex. P/4C and why this material fact has been omitted, there is no explanation.

14. In order to prove a case under the clutches of Section 304B, I.P.C., it is incumbent upon the prosecution to prove the following--

- (i) woman has died on account of burn or bodily injury,
- (ii) other than normal circumstances,
- (iii) within seven years of her marriage,
- (iv) soon before her death, she was subjected to cruelty or harassment,
- (v) by her husband or any relation of her husband, and
- (vi) for or in connection with any demand for dowry.

On careful reading of Section 304B, I.P.C., one can easily say that the essential ingredient should be existed at one point of time, then only, the offence can be said to have been committed under this section. Needless to emphasise that it

should be proved that soon before her death, the deceased was subjected to cruelty or harassment in connection with demand of dowry.

15. In para 15 of his statement the complainant has admitted the information given to him about the death of the deceased on 9.5.1993 and thereafter he went to lodge the report on 11.5.1993. He has also admitted that appellant Sarman told him that the deceased was being taken away for treatment, but on the way at Dimni, she died.

16. Section 113B of the Evidence Act speaks about the presumption as to dowry death and according to this provision where a person has committed the death of a woman and it is established that soon before her death such woman was subjected by such person to cruelty or harassment for or in connection with demand for dowry, the Court shall presume that such person had caused the dowry death. Explanation has also been added to this section according to which, 'dowry' shall have the same meaning as envisaged under Section 304B of I.P.C. Under Section 304B, I.P.C. the word 'dowry' shall have the same meaning as provided in Section 2 of the [Dowry Prohibition Act, 1961](#). Word 'dowry' has been defined in Section 2 of the [Dowry Prohibition Act, 1961](#) which reads as under:

2. Definition of 'dowry'.--In this Act, 'dowry' means any property or valuable security given either directly or indirectly--

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

(b) by the parent 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 anytime after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Thus, it is imperative for invoking the legal presumption as envisaged under Section 113B of the Evidence Act to prove that soon before her death, the deceased was subjected to such cruelty or harassment.

17. In the present case, it is doubtful that soon before her death the deceased was subjected to cruelty or harassment for or any connection with demand of dowry because the report Ex. P/4C is totally silent in that regard and, thus, it is difficult to hold that the death of the deceased was dowry death.

18. At this juncture, I may profitably rely on the decision in the case of *Shamlal v. State of Haryana*, 1 (1997) CCR 231 (SC) : 1997 Cri. L.J. 1927, and it would be condign to quote paragraphs 12 and 13 of this decision which read thus:

12. In the absence of any such evidence it is not permissible to take recourse to the legal presumption envisaged in Section 113B of the Evidence Act. That rule of evidence is prescribed in law to obviate the prosecution of the difficulty to further prove that the offence was perpetrated by the husband, as then it would be the burden of the accused to rebut the presumption.

13. The corollary of the aforesaid finding is that appellant cannot be convicted of the offence under Section 304B, I.P.C. But this would not save him from the offence under Section 498A of the I.P.C., for which there is overwhelming evidence, particularly of P.W. 3, Bhagwan Dass, who heard from his daughter, which evidence is admissible under Section 32 of the Evidence Act, besides his direct dialogue with the appellant and his father. As the Trial Court and the High Court found his evidence reliable, we hold that prosecution has succeeded in proving the offence under Section 498A of I.P.C.

19. Mother of the deceased Rambeti was examined as P.W. 3. Though in her statement she stated that her daughter was ill-treated and was beaten by the appellant and husband of the deceased, but there is no whisper in her police statement Ex. D/1 that either the appellant or any member of his family made any demand of dowry to the complainant or to any other member. What she has stated in her police statement is that they voluntarily gave things in the marriage of their daughter. On going through the statement of this witness, it is gathered that the appellant and his family members told her that on account of miscarriage, the deceased breathed her last. If we test the statement of the mother of the deceased on the anvil of Section 304B, I.P.C., again there is nothing in her police statement that any demand for dowry was made either by the appellant or any member of his

family. Since no demand of dowry was ever made by the appellant or deceased co-accused and this has not been stated by Rambeti, the mother of the deceased in her police statement Ex. D/1 as well as when she appeared in the Court as P.W. 3, therefore, it is difficult to hold that the appellant made any demand of dowry.

20. Another witness is P.W. 4 Tularam, who is the brother of the deceased. He has stated that after the death of the deceased when he arrived at the house of the appellant, accused persons told him that on account of abortion, the deceased passed away. This witness has also stated that the accused persons made demand of cooler, television and one ring to the deceased and by not satisfying the demand, she was subjected to cruelty. But the demand of cooler, television and ring has not at all been stated by the father of the deceased. Apart from this, all these facts have not been mentioned in the police statement Ex. D/2 of this witness, and, therefore, the story of demand of cooler, television and ring is planted later on, cannot be ruled out.

21. Prosecution has also examined P.W. 5 Ramjilal, the other brother of the deceased. According to this witness, one Asharam told him that 'your sister' (the deceased) has died and this was informed to him on the next day of the death of the deceased. At this juncture, I may profitably discuss the evidence of Natthilal (D.W. 5) who has stated that after the death of the deceased on account of miscarriage, the appellant Sarman sent him to inform Gangaram (father of the deceased). This witness thereafter went at the house of the complainant and informed about the death of the deceased to complainant Gangaram (P.W. 2) and Asharam. Ramjilal (P.W. 5) that Asharam told him that his sister has died. Thus it cannot be said that Gangaram was not informed about the death of the deceased.

22. The defence of the accused is that the deceased was pregnant and on account of miscarriage she passed away. In that regard, defence has examined Achheram (D.W. 1), Ramwati (D.W. 2), Dwarikaprasad (D.W. 3), Gaurishankar (D.W. 4) and Natthilal (D.W. 5). All these witnesses in single voice have stated that the deceased died on account of abortion. These witnesses are the residents of the same village and are neighbours of the appellant. D.W. 2 Ramwati is a midwife who treated the deceased on account of abortion and has stated that after she

treated the deceased, some complications took place on account of which the deceased died. Achheram (D.W. 1) says that Natthilal was sent to inform about the death of the deceased to the complainant Gangaram. This witness has been corroborated by the statement of Natthilal (D.W. 5) who has stated that he did go to the house of Gangaram and informed Gangaram and Asharam about the death of the deceased.

23. I may not hesitate to mention at the cost of repetition that P.W. 5 Ramjilal has stated that Asharam told him that the deceased has died and Natthilal (D.W. 5) says that after the death of the deceased he went to inform Gangaram and Asharam about the death of the deceased. Thus death of the deceased was informed by the appellant to her parents is duly proved by the statement of defence witness as also from the statement of prosecution witness Ramjilal (P.W. 5). Defence has also taken pains to examine D.W. 2 Ramwati who treated the deceased on account of abortion. The view of the Court is that credibility to the defence witnesses should be given in the same manner as being given to the prosecution witnesses and their testimony cannot be ignored if it is clear, cogent and trustworthy. In that regard, I may profitably rely in the decisions of *Dudh Nath Pandey* and *Ramsingh* (supra). There is no effective cross-examination on the defence witnesses that the deceased died on account of miscarriage.

24. For the reasons stated hereinabove, the conviction of the appellant cannot be allowed to stand and the same is hereby set aside. Resultantly, this appeal is allowed. Appellant is on bail. His bail bonds are discharged.