

Arvind Kumar and anr. Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jun-23-2000

Reported in : 2001(2)ALD(Cri)131; 2001CriLJ2317; 2001(2)MPLJ172

Judge : Arun Mishra, J.

Acts : Dowry Prohibition Act - Sections 4; Evidence Act - Sections 113A; Criminal Law IInd Amendment, 1983; Indian Penal Code (IPC) - Sections 107, 304-B, 306 and 498-A

Appeal No. : Cri. A. No. 817 of 1989

Appellant : Arvind Kumar and anr.

Respondent : State of M.P.

Advocate for Def. : Ashok Tiwari, Adv.

Advocate for Pet/Ap. : S.L. Kochar, Adv.

Disposition : Petition allowed

Judgement :

Arun Mishra, J.

1. Sadhria entered to a wedlock on April 26th 1982 with the appellant Arvind Kumar, son of appellant No. 2 Prembai alias Gulabrani. Sadhna committed suicide

by pouring kerosene oil and setting her on fire on 2-7-82 which is after one month and 7 days of her marriage. Both the appellants have been adjudged guilty of abetment of suicide Under Section 306, IPC and making demand of dowry Under Section 4 of the Dowry Prohibition Act. Sentence of 7 years' R.I. Under Section 306, IPC and Under Section 4 of the Dowry Prohibition Act, R.I. for six months and fine of Rs. 5.000/- each was imposed, in default of payment of fine, they were ordered to undergo six months R.I.

2. Case has a checkered history, Initially both the appellants were acquitted by the trial Court on September 27, 1983. An appeal against acquittal was preferred to this Court. The appeal was allowed. Further evidence was ordered to be recorded. Thereafter the trial Court passed a judgment of conviction on August, 29, 1989 which is impugned in the present appeal.

3. Prosecution alleged that unsatisfied by the dowry the accused persons started harassing deceased Sadhna and they made the demand on 29th June and 2nd July with respect to Table Fan, Automatic Watch and Iron Almirah. Deceased Sadhna poured kerosene oil on herself and lit the fire. Report Ex. P/10 of the incident was lodged on July 3rd, 1982. Report was lodged by Santosh Kumar (PW. 7), brother of the appellant Arvind at check post Barha of police station Banda. It was mentioned in the report that while he was sleeping his sister Mamta informed that Sadhana had caught fire. Thereafter he reached the house of his father where Sadhana and her husband used to live, he saw that the entire body of Sadhna was burnt and smell of kerosene oil was coming out. Dr. Shrivastava was called for, who declared Sadhna dead. Statements of witnesses were recorded which reflect that the deceased was harassed on account of demand of dowry and was not given proper food and was asked that if she is daughter of her father. By the consistent harassment, she poured kerosene oil, set herself on fire and died on the spot. Two pieces of Match box P/11, pieces of burnt match stick, burnt clothes, four pieces of burnt nylon clothes, one mattresses, by which the deceased body was covered was recovered. Regarding the age and conduct of the deceased certificate from the school P/2 and P/3 was obtained. Sanction of District Magistrate was also taken to prosecute under Dowry Prohibition Act. Prosecution led the evidence of relatives of the deceased i.e. brother and father

and landlord and also led the circumstantial evidence, also examined the witnesses of the school.

4. Accused abjured the guilt and contended that they were falsely implicated in the case. As a matter of fact deceased was not in a fit mental condition hence she had committed suicide. There was no harassment or demand of dowry. In defence two witnesses were examined.

5. Learned counsel for the appellants has submitted that though the death took place within 1 and 1/2 months of the marriage, taut, there is no presumption available that the deceased committed suicide owing to harassment. His submission that provision of Section 113A Evidence Act as inserted by Criminal Law IInd Amendment, 1983 (Act No. 43 of 1983) is not retrospective in operation. He has further submitted that the deceased died owing to the mental unfitness and committed suicide on her own by pouring kerosene oil. Demand of dowry and harassment has not been established. His further submission is that the prosecution has failed to establish the guilt and to prove cruelty and abetment of suicide.

6. Learned counsel for the State on the other hand has submitted that presumptive Under Section 113A is clearly attracted as the death took place immediately after the marriage. Submission is that provision of Section 113A is procedural hence is retrospective in its operation. The facts and circumstances found established by the trial Court are unassailable as they are based on cogent and sound appreciation of evidence on record.

7. The first question for consideration is that whether the presumption enacted Under Section 113A Evidence Act is retrospective. It is settled law that presumption with respect to the procedural matters are normally to be construed as prospective. The presumption against the retrospective is not normally attracted to a provision of a legislation with respect to matter of procedural law unless provided otherwise in the said statute. Section 113A does not create an offence or make it punishable. It only deals with presumption which Court may draw in a particular facts situation as contemplated under the provision is found to existing. The question is no more res integra. The Supreme Court has affirmatively

pronounced the case of Gurbachan Singh v. Satpal Singh, AIR 1990 SC 209 : (1990 Cri LJ 562) the presumption Under Section 113A is retrospective. It is pertinent to quote para 36 thus :

36. The provisions of the said Section do not create any new offence and as such it does not create any substantial right but it is merely a matter of procedure of evidence and as such it is retrospective and will be applicable to this case. It is profitable to refer in this connection to Halsbury's Laws of England, (Fourth Edition), Volume 44 page 570 wherein it has been stated that :The general rule is that all statutes, other than those which are merely declaratory or which relate only to matters of procedure or of evidence, are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature....

8. Presumption Under Section 113A would obviously arise only when the necessary ingredients in order to attract that provision are established. It is required that it should be proved that suicide has been committed by woman and there should be an allegation of abetment by her husband or any relative of her husband or she has been subjected to cruelty and such presumption is extendable for a period of 7 years from the date of marriage. Presumption Under Section 113A of the Evidence Act is not conclusive, but, it rebuttable. Provision has been enacted in order to get rid of a social evil prevailing for the century over the women who are treated as second grade and not equal partner in the life. Custom of dowry based on acquisition instinct and having easy money without making efforts it has become very common to raise the demand of dowry lust and greed unsatisfied by the gift usually made in the marriage. The case at hand is also an outcome of such an evil which has taken life of bride, young girl before she could understand what is the meaning of marital house and adjust with them.

9. The circumstance indicates that the dowry articles were fixed before marriage including the money part which itself goes to show that sacrament of marriage was treated as marketable commodity. There is evidence furnished by brother of deceased Sudarshan Kumar Jain (PW-5) and Bhagchand (PW-9) father of the deceased. Sudarshan (PW. 5) has stated that the marriage was settled year back

in the year 1982, in all Rs. 18 to 19 thousands were spent, but, at the time of Vida Additional demand was raised by the accused of Fan, Automatic Watch and Iron Almira which they were, not able to meet and assured that later on after making arrangement, for the money they would give the demanded articles. Radio was given at the time of marriage. Arvind's father and grandfather were unhappy. Treats were immediately given to deceased so that she may persuade her parents to give the additional articles demanded if they cared for welfare of their daughter. Any how Watch and Fan was arranged by the parents considering the immediate harassment and ill behaviour meted out to Sadhna, but, articles purchased did not satisfy the requirement of the accused and they asked for a better Watch and Fan and did not take these articles. Arvind and Bhairam refused to take them and asked for a Watch of Rs. 728/- and a bigger size Fan and had threatened that otherwise the consequences would be bad. After two days of sending Sadhana when her brother visited her, found injury on her head. She was beaten by Prembai, mother-in-law. She also complained that she was not being given proper food and drink. Prembai also threatened that if the demanded Articles are not given consequences would be dire. On seeing bald condition of sister, brother did not eat food in the house of appellant Arvind went to the house of his brother Ashok who resided separately. Ashok had lodged a complaint in the instant case. He has categorically denied that sister was suffering with mental ailment.

10. Learned counsel for the appellant has submitted that if there was immediate quarrel, the matter ought to have been informed to the police. It is not normally expected that the immediately after the marriage police would be approached as efforts are always made by the parents and family members to see the girl may not suffer as strain in relation would be caused by approaching the police. Explanation given by Sudarshan of not approaching the police is sound and stands to reason.

11. Bhagchand (PW-9) has also supported the deposition of Sudarshan Kumar and he has stated that whatever he could manage has given on demand and when they were given at the time of second VIDA, Articles were not found up to the standard and were not accepted.

12. Preetam (PW-10) has also been examined by the prosecution, he is landlord of Bhagchand (PW. 9), the father of deceased. He is an independent witness. He has clearly deposed that when Watch and Fan were given at the time of VIDA but these articles were not taken as they were not found up to the standard by accused Arvind. He has deposed that he was informed that accused used to beat deceased. Presence of Preetam (PW. 10) at the time of marriage and when the girl visited father's house after marriage and at second VIDA which took place in the presence of Preetam is natural as he is landlord of father of deceased.

13. Deceased Sadhna died by committing suicide. She poured kerosene oil and set herself to fire to get rid of tyrannical behaviour, insult, humiliation caused to her. Demand of dowry itself is such an act which may revive or abet woman to commit suicide. No doubt demand of dowry itself is a cruelty and insult to the women-hood. It hurts sentimental feelings and when coupled with harassment and physical violence and insult to the parents, it amounts to abetment of suicide even the Articles offered were found unsuitable, not taken and better Articles were asked. Sadhna, girl was weighed in terms of money. Deceased was beaten on the head by Prembai. Such behaviour within one month of the marriage is enough to destroy all of hopes for happy settlement of life which may have been cherished by deceased. There is nothing to disbelieve the depositions of Sudarshan (PW. 5), Bhagchand (PW. 9) and Preetam (PW. 10).

14. The deceased was having no mental ailment. Sushila Bai (PW. 2), teacher of her school where she took education has certified that deceased used to behave properly.

15. It is unfortunate situation that the neighbours examined are not normally supporting the case as has happened in the present case also. Arjun Singh (PW. 4) neighbour has tried to act clean and stated that behaviour of the accused with Sadhna was good. He has been declared hostile. He obviously tried to save the neighbour having no sensitivity to the offence committed. He was unmoved by the suicide committed by the deceased and supported that though wife of Arvind was good woman, but, used to go away all of sudden and used to come back and on suggestion being put by accused he obliged by stating that she was little mad like

which is not at all borne out and he had clearly tried to help out the neighbour. It is unfortunate that either neighbours are not turning out to give evidence and only normally they are not supporting, thus, in such cases the deposition of parents, brothers etc. and other relations of the parental side of girl are only found available as witnesses. Thus, untainted and reliable evidence of such witnesses has to be treated to be of an independent witness.

16. Balmukund (PW. 6) Sarpanch of the village Bara has stated that the deceased was having injuries on the body and smell of kerosene oil was coming out. He stated his ignorance when a suggestion was put by the defence. If the girl was harassed by the accused persons. However, this witness is also close associate of accused as he says that his son had accompanied accused at the time of second VIDA ceremony. However, he has submitted that he was not aware of fact that girl was mentally retarded. His statement as to ignorance of the fact that the girl was mentally retarded points out that the defence taken by the accused is incorrect. Since this witness was near to the family, had attended the marriage and his son had gone at the time of second VIDA, he ought to have known the fact and would have stated as to mental ailment having special means of knowledge.

17. Santosh Kumar (PW-7) elder brother of the accused-appellant Arvind has deposed that at about 3 a.m. he was informed by Mamta that Sadhna had set herself on fire. When he reached, he found that fire had extinguished. This witness Santosh had called Doctor. Several neighbours were there and mother and Arvind i.e. both the appellants were present in the house. The witness obviously has not supported the demand of dowry and harassment as he is brother of accused and son of other appellant.

18. Dr. J.C. Jain (PW-14) examined after remand of the case by this Court. He has deposed that deceased was having 100% burns. Sadhna had as a matter of fact died before Dr. Shrivastava who was requisitioned by brother of accused could reach. The extent of burn found on the person of deceased goes to show that no active effort was made by accused persons the husband and mother-in-law who were in the house to save her from burns. It appears that no effort was made by either of the accused to requisition the Doctor. Only when brother of the accused

came from other house, when deceased was completely burnt, called for the Doctor, but, it was too late. Thus, it appears that not only that no effort was made to save the deceased, but, behaviour was apathetic, and inhuman which speaks volumes against accused. The deceased was treated not as a woman, but, commodity.

19. Accused-appellant No. 1 has stated vaguely that the deceased was slightly mentally disturbed. This has not been so stated by Prem Bai, mother-in-law and is not borne out from the evidence on record. The defence witness Mohanlal Pathak (DW-1) a neighbour has tried to submit that the deceased was mentally disturbed who used to wander here or there. No harassment was meted out by the accused persons. However, he has admitted that Sadhana had never talked in such a manner by which he may get an impression that she was mad. He has further stated that she was not taken to Doctor in connection with any such ailment. Chadra Kumar (DW-2) has also stated that Sadhana was a simple girl, but, was mentally disturbed, but, witness was not able to say about the behaviour of the accused persons with Sadhana. In examination-in-chief he has stated that only once he has seen Sadhana out of house at 10 p.m. Thus, from the deposition of defence witnesses and the evidence led it is not at all made out that the deceased was mentally disturbed and there is no rebuttal of presumption Under Section 113A Evidence Act. She was treated with mental and physical cruelty and the behaviour was such which had abetted deceased to commit suicide. Both appellants had subjected her to cruelty. The conduct of the appellants was wilful and led Sadhana to commit suicide. The Legislature has enacted Section 304B, IPC for such offence subsequently. In case of *Shanti v. State of Haryana*, AIR 1991 SC 1226 : (1991 Cri LJ 1713) where accused with in-laws of the deceased demanded dowry and drove out the brother as well as the father of the deceased complaining that scooter and television have not been given as dowry, it was held that cruel treatment to deceased stands established. Death was unnatural. Accused was held liable to be convicted Under Section 304B, IPC. The question whether unnatural death was homicidal or suicidal is irrelevant Under Section 304B, IPC. But, unfortunately this provision was not on the book of statute at the relevant time which has prescribed higher punishment for such an offence.

20. In case of Gurubachan Singh v. Satpal Singh (1990 Cri LJ 562) (supra) where newly wedded girl died of burn injuries. She was harassed, tortured for bringing insufficient dowry, false allegation of carrying illegitimate child was also made. Deceased committed suicide. There was delay in giving medical assistance. No burn injuries were found on finger tips of any members of family of accused. Presumption Under Section 113A was drawn and it was held that deceased committed suicide owing to instigation of her husband and in-laws. In the present case also there is absence of burn injuries on husband or mother-in-law, if they had tried to save. Such injuries are common. There was clear delay in giving medical aid. Doctor was not even requisitioned by either of the accused. Demand of dowry was there. The accused have failed to explain how the deceased died. In order to over-reach the pre- , sumption Under Section 113A, it was incumbent to show other reason of suicide as it is proved that Sadhana committed suicide, she was harassed and other ingredients attracting the presumption Under Section 113A Evidence Act are available. The accused has failed to rebut the presumption which has to be drawn in the instant case.

21. From a reading of Section 306 read with 107, IPC it is crystal clear that if any person commits suicide as a result of such instigation by other person, the person causing instigation is liable to be punished Under Section 306, IPC for abetting the commission of suicide.

22. In case of Balram Prasad Agrawal v. State of Bihar, AIR 1997 SC 1830 : (1997 Cri LJ 1640) where accused was convicted Under Section 498A, IPC. Main charge against him was Under Section 302, IPC. In the said case wife committed suicide by jumping into well, on account of cruelty by husband. There was evidence of father of wife that she was ill-treated by her husband and in-laws for dowry and for being issueless and that she had once attempted to jump into same well but was saved by neighbours. Further evidence that cruel treatment was not stopped even after she gave birth to two sons. It was laid down that presumption can be raised that the cruel treatment meted out to the deceased by accused earlier had continued unabated till the very last when she was forced to commit suicide on that fateful night. Accused was convicted.

23. In the instant case taking overall view, considering the circumstances adumbrated by the prosecution accused cannot escape the conclusion of their guilt. The appeal sans merits.

24. As to the sentence on either count Under Section 306, IPC and Section 4 of the Dowry Prohibition Act of imprisonment and fine, the appellants are not entitled for any leniency merely by the delay, the gravity of offence is not lessened and the offence is particularly against the society, womenhood and humanity. Thus, the accused are not entitled to invoke any sympathy or leniency in the sentence which has to be exemplary in such cases. The appeal is consequently dismissed.

*Against order of P.C. Dubey, 3rd A.S.J., D/-29-8-1989.

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