

Dinesh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Aug-17-2006

Reported in : I(2007)DMC692

Judge : S.S. Dwivedi, J.

Appellant : Dinesh

Respondent : State of M.P.

Disposition : Appeal allowed

Judgement :

S.S. Dwivedi, J.

1. The appellant has preferred this appeal under Section 374(2), Cr.P.C. feeling aggrieved by the impugned judgment dated 6.10.1994 passed by the IInd Additional Sessions Judge, Ratlam in S.T. No. 160/1993, whereby the appellant has been found guilty under Section 304B, IPC and has been sentenced to 10 years' RI. He has also been found guilty under Section 498A IPC and has been sentenced to three years' RI with a fine of Rs. 1,000; in default of payment of fine further ordered to suffer imprisonment for six months. Both the sentences are ordered to run concurrently.

2. The brief facts of the case are that the appellant has got married with the deceased Kiranbai on 17.1.1993 as per the Hindu rites. After the marriage both the present appellant as well as his wife Kiranbai lived together. As per the prosecution case, the appellant repeatedly harassed the deceased Kiranbai with regard to the demand of dowry and subjected her with cruelty. Resultantly, Kiranbai consumed some poisonous substance on the date of the incident i.e., on 12.6.1993 and thereby, she died. The matter has been reported to the Police Station, Station Road, Ratlam. The police has registered the Marg Report and issued a requisition for the post mortem examination of the dead body of the deceased Kiranbai. Dr. Deep Vyas (P.W. 4) performed the post-mortem but he could not give the definite opinion with regard to the cause of death. The viscera has been preserved for chemical examination and handed it over to the police for examination. The viscera report has been received wherein it is found that the viscera contained poisonous substance Glycosides. Thus the police came to the conclusion that after consuming the aforesaid poisonous substance Kiranbai died in suspicious circumstances within 7 years of her marriage, therefore, on the basis of that the police has registered a case under Sections 304B and 498A, IPC against the appellant-accused husband of the deceased Kiranbai, arrested him, recorded the statements of the parents and other relatives of the deceased and after due investigation, filed the chare sheet against the appellant before the Trial Court. The appellant accused abjured his guilt and his defence is of false implication in the case by the police. The learned Trial Court after due appreciation of the entire prosecution evidence on record, found the appellant guilty under Sections 304B and 498A, IPC and sentenced him, as stated herein before. Feeling aggrieved, the appellant has preferred this appeal.

3. I have heard learned Counsel for the parties and perused the record.

4. Learned Counsel for the appellant submits that the prosecution has not examined any independent witness with regard to the so-called demand of dowry and harassment with cruelty by the appellant/accused to the deceased. The only omnibus statement has been given by the parents of the deceased with regard to harassment, wherein this statement has not been given by these witnesses at the first available opportunity to the police statement recorded under Section 161,

Cr.P.C. Thus, the aforesaid statement with regard to the demand of dowry and harassment has been given in the Court for the first time and due to this material omission and contradiction, the aforesaid statement given by the prosecution witnesses is not worthy of any reliance. The learned Trial Court has wrongly held the appellant guilty under Sections 304B and 498A, IPC, therefore, prayed for setting aside of the impugned judgment passed by the Trial Court and for the acquittal of the appellant accused.

5. Per contra, learned Counsel for the respondent State supported the impugned judgment and finding recorded by the Trial Court and submits that the parents Bhagirath (P.W. 8), Lilabai (P.W. 9), Tarabai (P.W. 11) maternal aunt, Kishanlal (P.W. 12) brother, Balram (P.W. 13) and Fulchand (P.W. 14) maternal uncle, specifically stated before the Trial Court that it is the appellant accused, who continuously harassed the deceased with regard to the demand of dowry, due to which Kiranbai died within six months of her marriage with the appellant accused. In these circumstances, the Trial Court has rightly held the appellant guilty under the aforesaid offences and no substantial grounds are available to interfere with the aforesaid judgment and finding recorded by the Trial Court, therefore, prayed for dismissal of the appeal.

6. To bring home the aforesaid charge under Sections 304B and 498A, IPC against the appellant accused is concerned, it is admitted fact that the deceased Kiranbai is legally wedded wife of the appellant accused Dinesh. Their marriage was performed on 17.1.1993 and Kiranbai died on 12.6.1993 due to consuming of some poisonous substance. Her death has been proved by the prosecution on the basis of the statements of Bhagirath (P.W. 8) father, Lilabai (P.W. 9) mother, Tarabai.(P.W. 11) maternal aunt, Kishanlal (P.W. 12) brother, Balram (P.W. 13) maternal uncle and Fulchand (P.W. 14) maternal uncle of the deceased Kiranbai. All these witnesses specifically stated that Kiranbai died in suspicious circumstances on 12.6.1993. The statements of the aforesaid witnesses have not been controverted by the defence on this count.

7. Similarly, the medical witness Dr. Deep Vyas (P.W. 4) performed the postmortem of the deceased Kiranbai on 14.6.1993 in District Hospital, Ratlam

and preserved the viscera and various parts of the dead body of Kiranbai for examination but he could not give any definite opinion with regard to the cause of death. He also proved the post-mortem report Ex. P6.

8. The prosecution has also filed FSL report dated 4.8.1994, which has been prepared by the F.S.L., Sagar, wherein the viscera of Kiranbai has been chemically examined and the Analyst found the poisonous substance Glycosides in it, which proved the fact that the deceased Kiranbai died due to the aforesaid consumption of the poisonous substance.

9. Now the crucial point arises for consideration as to whether deceased Kiranbai was subjected with cruelty by the appellant accused immediately before her suspicious death on the date of the incident with regard to demand of dowry. For this the prosecution has examined Bhagirath (P.W. 8) father, Lilabai (P.W. 9) mother of the deceased. Both the parents specifically stated before the Trial Court that when Kiranbai and Dinesh came to their house, then both of them were demanding Rs. 10,000 but they denied payment of the aforesaid Rs. 10,000 because they had no fund for payment of the foresaid amount. Similarly, they also stated that Kiranbai also told that Dinesh was beating her after consuming liquor. This omnibus statement has been given by the parents. Similarly they have not stated this fact in their previous statement Exs. D1 and D2 recorded under Section 161, Cr.P.C. This happens to be the material omission with regard to the aforesaid statement of cruelty coupled with demand of dowry. For the first time both these witnesses stated it before the Trial Court.

10. Similar is the statement of Tarabai (P.W. 11), Kishanlal (P.W. 12), Balram (P.W. 13) and Fulchand (P.W. 14) also. All these witnesss are close relatives of the deceased Kiranbai and they also omnibusly stated before the Trial Court that Kiranbai told them that her husband Dinesh demanded Rs. 10,000 and due to the non-fulfilment of it, he is harassing her after consuming liquor. These witnesses also admitted that this statement has not been given by them to the police in their previous statement recorded under Section 161, Cr.P.C. This statement has been given only by Kishanlal (P.W. 12) in his previous statement Ex. D4 wherein he stated that Dinesh demanded Rs. 10,000 from his father. This has been stated by

his father and he is not the direct witness of such demand by accused. The remaining witnesses Balram (P.W. 13) and Fulchand (P.W. 14) are also on the same footing. They also stated with regard to the aforesaid demand of Rs. 10,000 by the appellant accused Dinesh before the Trial Court and this fact has not been stated by them in their previous statement Ex. D5 to the police. Thus, with regard to the aforesaid demand of dowry and harassment, this appears to be the material contradiction in the statement of these witnesses and due to this contradiction their statement given before the Trial Court for the first time with regard to the demand of dowry and harassment cannot be disbelieved. Similarly, as stated hereinabove, all the witnesses are close relatives of the deceased Kiranbai and they have not made any efforts to resolve the problem with regard to the so-called harassment in their village caste Panchayat, did not inform anybody or independent witness for the so-called misbehaviour of the appellant accused. This fact also did not corroborate the aforesaid statement given by the close relatives of the deceased Kiranbai.

11. The only independent witness Chhotibi (P.W. 7) has been examined on behalf of the prosecution, who happened the next door neighbour of the deceased Kiranbai, who specifically denied the fact that Dinesh has ever treated Kiranbai with cruelty and also demanded money from her. This witness has been declared hostile by the prosecution and nothing has been brought on record, on which basis it can be inferred that she willingly deposed against the prosecution.

12. For the offence under Section 304B, the prosecution is duty bound to prove the fact that 'soon before' the suspicious death of Kiranbai she has been subjected to cruelty by the accused and on the basis of the aforesaid statement of the prosecution witnesses, the prosecution has failed to bring the exact time of the aforesaid harassment or demand of dowry by the accused appellant.

13. For this proposition, 1 relied on a decision of the Apex Court reported in State of Rajasthan v. The Teg Bahadur and Ors. IV (2004) CCR 96 (SC) : 2005 SCC (Cri.) 218.

Our attention was drawn to Section 113B of the Evidence Act and Section 304B of the Indian Penal Code by the learned Counsel appearing for the accused. A

conjoint reading of Section 113B of the Indian Evidence Act and Section 304B of the Indian Penal Code shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment.

The expression 'soon before' has also been explained by the Apex Court in *Hiralal v. State* : 2003 CriLJ3711 , wherein it is held that: The expression soon before is very relevant where Section 113B of the Evidence Act and Section 304B, IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. 'Soon before' is a relative term and it would depend upon the circumstances of each case and no strait jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304B, IPC and Section 113B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before ' is not defined. A reference to the expression 'soon before used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods 'soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession. The determination of the period which can come within the term 'soon before' it left to be determined by the Courts depending upon the facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

14. The other witnesses Manmodprakash (P.W. 1) is the Head Constable, who seized the viscera as per memos Ex. P1, Rameshchandra Munshi (P.W. 2) has

prepared Exs. P2 for the arrest of the accused appellant; Ramkalyani (P.W. 3) is the witness for Ex. P3 and P4, prepared by the police; Ejnus Kudur (P.W. 5) is the witness for memo Ex. P5; P.W. 6 Vedpalsingh has recorded the Marg Intimation Ex. P8 for the unnatural death of Kiranbai; Mahendrasingh (P.W. 15) is a Constable who deposited the viscera container at the FSL as per Ex. P11; Pandurang Rao, ASI (P.W. 16) has prepared Ex. P2 for the arrest of the appellant accused and also registered the case as per Ex. P10; Surendrapalsingh (P.W. 17);; the Investigating Officer, who prepared the inquest Panchanama Ex. P4 and also recorded the statement of the prosecution witnesses.

15. The defence has also examined Dr. D.C. Boriwal (D.W. 1), who treated Kiranbai on 12.6.1993, for which he proved the report Exs. P7 and P8. He did not find any mark of injury on the body of the deceased Kiranbai.

16. Thus, on over-all re-appreciation of the entire prosecution evidence on record, I am of the considered opinion that the prosecution has failed to prove the charges under Sections 304B and 498A 1PC against the appellant and the Trial Court has wrongly held the appellant guilty under the aforesaid offences.

17. Resultantly, the appeal filed by the appellant is allowed, the impugned judgment passed by the Trial Court is set aside and the appellant accused is acquitted from the charge under Sections 304B and 498A IPC. The appellant accused is in jail, he be set at liberty, if not required to be detained in any other case. The fine amount, if deposited, be refunded to the appellant.

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