

Keshab Chandra Panda Vs. State

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Court : Orissa

Decided On : Jul-21-1994

Reported in : 1995CriLJ174; 1994(II)OLR430

Judge : A. Pasayat, J.

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

Appeal No. : Criminal Appeal No. 91 of 1993

Appellant : Keshab Chandra Panda

Respondent : State

Advocate for Def. : B. Das, Addl. Standing Counsel

Advocate for Pet/Ap. : Debasis Panda and H.S. Pati

Disposition : Appeal allowed

Judgement :

A. Pasayat, J.

1. Appellant Keshab Chandra Panda (hereinafter referred to as the 'accused') calls in question legality of his conviction for an offence punishable Under Section 304B of the Indian Penal Code, 1860 (in short, 'IPC') and sentence of seven years

imprisonment as awarded by learned Addl. Sessions Judge, Jajpur,

2. Accusation which led to trial of accused- appeiiant are as follows :

On 15-1-1989, the accused and Pravatini alias Chema Kar (hereinafter referred to as the 'deceased') entered into wedlock. Subsequently, some dissensions surfaced between them, which according to prosecution was on account of non-fulfilment of demands for dowry made at the time of marriage. The accused assaulted the deceased with an iron rod on 2-6-1989, which led to lodging of information at Kuakhia Out-Post on 3-6-1989. A Station Diary Entry was made. An effort was made to bring about amity between the accused and deceased. After a long stay in the house of her parents, the deceased returned to the household of her husband, after a decision was taken by the well-wishers of parties at a meeting on 28-1-1990, that they should iron out their differences and live together. On 5-3-1991, accused brought the deceased to the house of her parents and left her there, with a promise to take her back after few days. Ultimately deceased sent to the house of accused on 24- 3-1991. On 26 3-1991 her relatives were informed about that she had expired. They suspected foul play and set into motion. Investigation was undertaken and on completion thereof, charge-sheet was submitted and accused faced trial for commission of offence punishable Under Section 304B IPC.

3. Ten witnesses were examined to further the prosecution case. Kartik Chandra Kar (PW 1) is the brother of deceased while Keshab Chandra Kar (PW 4) is her father. Achutananda Acharya (PW 2) and Ghanshyam Mishra (PW 3) are neighbours of the deceased. Pleading innocence, accused took the stand that there was no demand of dowry at all, and death cannot be termed as dowry death. On consideration of evidence of the witnesses, particularly PW 1, 2 and 4, learned Additional Sessions Judge found accused guilty, convicted him Under Section 304B, IPC and sentenced to undergo rigorous imprisonment for seven years.

4. Learned counsel for accused-appellant has urged that evidence on record falls short of the requirement to establish an offence punishable Under Section 304B, IPC. Learned counsel for State on the other hand supported the judgment submitting that acts leading to dowry death are abominable acts and they are cruel

to the core. According to him, learned trial Judge has made an elaborate analysis to find accused guilty and no interference is called for. It is alternatively pleaded that even if it is held that an offence Under Section 304B is not made out, an offence Under Section 498A, IPC is made.

5. Section 304B, IPC. deals with dowry death which reads as follows :

'304B. (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

Explanation-For the purpose of this sub-section 'dowry' shall have same meaning as in Section 2 of the Dowry Prohibition Act, 1961,

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life'

The provision has application when death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relatives of her husband for, or in connection with and demand for dowry. In order to attract application of Section 304B, 1PC the essential ingredients are as follows ;

(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband,

(iv) Such cruelty or harassment should be for or in connection with demand for dowry,

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

Section 113B of the Indian Evidence Act, 1872 (in short, the 'Act') is also relevant for the case at hand. Both Sections 304B, IPC and Section 113B of the Act were inserted by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113B reads as follows :

'113B. When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation- For the purpose of this section 'dowry death' shall have the same meaning as in Section 304B of the Indian Penal Code.'

The necessity for insertion of the two provisions have been amply analysed in the law Commission of India in its 9 1st Report dated 10th August, 1983 on 'Dowry Deaths and Law Reform'. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry related deaths, legislature thought it wise to insert a provision relating to presumption of dowry Death, on proof of certain essentials. It is in this background presumptive Sec.113B in the Act has been inserted. As per the definition of 'dowry death' in Section 304B, IPC and the wording in the presumptive Section 113B of the Act, one of the essential ingredients, amongst others, in both the provisions is that the concerned woman must have been (soon before her death) subjected to cruelty or harassment(for or in connection with the demand of dowry). Presumption Under Section 113B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on the proof of the following essentials :

(1) The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence Under Section 304B, IPC.

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death.

6. A conjoint reading of Section 113B of the Act and Section 304B, IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances.' The expression 'soon before' is very relevant where Section 113B of the Act and Section 304B IPC are pressed into service. 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 prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period soon before the occurrence. It would be hazardous to indicate any fixed period. 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 Act. The expression 'soon before her death' used in the substantive Section 304B, IPC and Sec.113B of the Act is pregnant with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression 'soon after' used in Section 114, Illustration a) of the 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 his possession. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon 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 concerned cruelty or harassment 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 concerned death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

7. In the case at hand, there is no evidence whatsoever about any ill treatment by the accused after 2-6-1989, or even after 28-1-1990 when decision by well wishers was taken. Deceased stayed in the house of her parents for about three weeks immediately prior to her death on 26-3-1991. There is nothing in the evidence of PWs 1 and 4 to show that she made grievance of cruelty or harassment after 28-1-1990. Evidence of PW 4 in this regard is significant. He has accepted not to have received information about any ill treatment and assault by accused on the deceased on other occasions. Obviously he has referred to the incident on 2-6-1989 and not to have received any information subsequent to 2-6-1989. In other words, there is no evidence whatsoever of any cruelty or harassment having been meted out by accused to the deceased after 28-1-1990 till death of deceased on 26-3-1991. Therefore, basic requirement of cruelty or harassment soon before death to bring in application of Section 304B, IPC is absent.

8. Further question is whether a case Under Section 498A has been made out, even if accusations Under Section 304B fail. Section 499A reads as follows :

'493A. Whoever, being the husband or the relative of the husband of a woman, Subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation-For the purpose of this section 'cruelty' means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman ; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or

valuable security is on account of failure by her or any person related to her to meet such demand.'

Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman is required to be established in order to bring home the application of Sec, 498A, IPC. Cruelty has been defined in the Explanation for the purpose of Section 498A. Sub-stantive Section 498A, IPC and presumptive Section 113A of the Act have been inserted in the respective statutes by Criminal Law (Second Amendment) Act, 1983. it is to be noted that Sections 304B and 498A IPC cannot be held to be mutually exclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to Section 498A gives the meaning of 'cruelty'. In Section 304B there is no such Explanation about the meaning of 'cruelty'. But having regard to common background to these offences it has to be taken that the meaning of 'cruelty or harassment' is the same as prescribed in the Explanation to Section 498A under which 'cruelty' by itself amounts to an offence. Under Section 304S it is 'dowry death' that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498A. A parson charged and acquitted Under Section 304B can be convicted Under Section 498A without that charge being there, if such a case is made out. If the case is established there can be a conviction under both the sections. (see Akula Ravinder and Ors. v. The State of Andhra Pradesh, AIR 1991 SC 1142). Section 498A, IPC and Section 113A of the Act include in their amplitude past event of cruelty. Period of operation of Section 113A of the Act is seven years. Presumption arises when a woman committed suicide with a period of seven years from the date of marriage. In the case at hand, accused and the deceased appear to have reconciled and sorted out their differences after 28-1-1990. There is no material on record to show that after 28-1-1990, accused had subjected the deceased to cruelty which was of such a nature as to drive her to commit suicide or cause grave injury, or danger to life, limb or health, whether, mental or physical. Its submitted by learned counsel for State that assault by iron rod on 2 6-1989 must have left indelible scar in the mind of the deceased. But if she was so much upset or affected by that assault, she could not have waited for about two years to

vent out her feelings, that too after having reconciled in January, 1990. A case Under Section 498A, IPC is therefore, not made out. Additionally in the FIR there is no mention about any demand of dowry by the accused. Evidence of PWs 1 and 4 is also vague so far as demand of dowry aspect is concerned. It has not been clearly stated that accused was the person who made alleged demand of dowry. In that view of the matter, offence Under Section 498A is also not made out. The conclusions of the learned trial Judge are unsustainable. Conviction and consequential sentence as awarded by learned trial Judge are set aside. The petitioner-accused be set at liberty forthwith unless his detention in custody is required in connection with any other case.

The Criminal Appeal is allowed.

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