

Ravinder Kumar Vs. the State of Haryana

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Court : Punjab and Haryana

Decided On : Aug-18-2004

Reported in : 2005CriLJ84

Judge : V.K. Bali, J.

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

Appeal No. : Crl. Appeal No. 125-SB of 1993

Appellant : Ravinder Kumar

Respondent : The State of Haryana

Advocate for Def. : Rabhbir Chaudhary, Sr. DAG

Advocate for Pet/Ap. : Jaswant S. Jain, Adv.

Judgement :

V.K. Bali, J.

1. Appellant Ravinder Kumar, who was tried along with his co-accused Sudhir Kumar and Shanti Devi, has since been held guilty for offences under Sections 304-B and 498-A of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of seven years under Section 304-B of Indian Penal Code and one year rigorous imprisonment under Section 498-A of Indian Penal

Code as also to pay fine of Rs. 500/- and in default thereof, to further undergo rigorous imprisonment for a period of two months, vide order dated 15-4-1993. His co-accused, namely, Sudhir Kumar and Shanti Devi, have, however, been acquitted. Ravinder Kumar, through present appeal filed by him, challenges the order of conviction and sentence recorded by learned Additional Sessions Judge, Ambala.

2. The appellant along with his co-accused was tried for the offences, referred to above, on the basis of prosecution version, which was unfolded by Rajinder Nath Bansal, who, in the FIR lodged by him on 8-4-1991, stated that he had retired from the Haryana Government and had two sons and three daughters. Amita was married about three years ago with appellant Ravinder Goyal son of Prem Sagar Goyal, resident of Panchkula. Amita was, however, blessed with no child. After the marriage, mother-in-law of Amita, Shanti Devi, appellant Ravinder Kumar and brother-in-law of Ravinder Kumar, namely, Sudhir Kumar, were not behaving well with his daughter and on small matters, they used to taunt her. From their side, whatever clothes etc. were given on the occasions, the same were criticized and Amita had told them that they were troubling her. Every time Amita was counselled and told that they were helpless. On number of occasions, these persons left Amita on scooter car etc. with them late at night. Despite all this, they compromised the matter with them on every occasion but it remained in their mind that they were given less dowry. Today at about 8.30 a.m. in the morning, Ravinder Kumar accused brought his daughter Amita in a van. While the van was standing out side the house, he came to his house and told him that Amita had not taken anything since yesterday evening and her position was quite bad and asked him to call a Doctor and get her treated. The appellant told that Amita was lying in the van standing out side. They immediately went down stairs, where the van was standing and found that froth was coming from the mouth of his daughter and she was lying unconscious on which, he sent Amita to General Hospital, Sector 16, Chandigarh along with his sons Vijay Kumar and Ajay Kumar as also his wife Pushpa, in the same very van. Amita died after some time. He stated that he was sure that his daughter had been killed by Ravinder Kumar, his mother and brother-in-law, who all conspired to give some poisonous substance. Legal proceedings should be initiated against them. On the basis of the FIR lodged by Rajinder Nath

Bansal, case under Sections 498-A, 304-B, 120-B of the Indian Penal Code was registered against the appellant and his co-accused.

3. The prosecution in its endeavour to bring home the offence against the appellant and his co-accused examined Rajinder Nath Bansal, PW-1, who deposed in tune with the FIR lodged by him. Statement made by Rajinder Nath Bansal was corroborated by his son Vijay Kumar, who appeared as PW-2, PW-3 Anil Kumar, Inspector Police, proved the report under Section 173 of Code of Criminal Procedure whereas, Dr. M. P. Singh, who was examined as PW-4 proved the bed head ticket, Ex.PH, and deposed that Amita was taken to the hospital and on examination, she was found to be in unconscious state not responding to painful stimuli and her pulse and blood pressure were not recordable. Dr. J. K. Kalra, who was examined as PW-5, proved the postmortem report, Ex. PJ and further stated that the viscera of the deceased was sent for chemical examination and on the basis of chemical examination report, cause of death in this case was opined to be consumption of organic phosphorus compound. Dr. Gurmohan Singh, PW-6, proved report. Ex. PH/1 whereas, PW-7 ASI Avtar Singh gave details of the investigation conducted by him.

4. When examined under Section 313 of the Code of Criminal Procedure, the appellant stated that he and his wife Amita were living separate from his sister's husband Sudhir Kumar and his mother Shanti Devi and that after the marriage, she started getting fits of epilepsy, for which she was getting treatment at PGI, Chandigarh and further that his wife did not conceive any child that and for these two reasons, she started living under depression and became nervous and frustrated. He further stated that on 8-4-1991, his wife Amita got a fit and became unconscious and he took her to the hospital and informed her parents. He further stated that he had never made any demand of dowry from his in-laws. The appellant and his co-accused, in their defence, examined DW-1 Vishnu Dutt, Sub-Editor, Indian Express, Chandigarh and DW-2 Anil Kumar, Clerk, Office of Estate Officer, Panchkula, who sought to prove that Sudhir Kumar and Shanti Devi were not residing with the appellant. They also brought on record letters, Exs. DA, DB and DC which were actually proved from PW-1 Rajinder Nath Bansal.

5. Learned trial Court after evaluating the evidence led by the parties, whereas, acquitted Shanti Devi and Sudhir Kumar, held guilty the appellant in the manner, fully detailed above.

6. Mr. Jaswant Jain, learned counsel representing the appellant, vehemently contends that Amita committed suicide being frustrated on account of repeated attacks of epilepsy to the appellant, to which disease she was suffering as also on account of the fact that she was unable to bear a child even though, a period of three years had gone by since her marriage. He further contends that no worthwhile evidence has been brought on record of this case to show that any demand of dowry was made, either before or after marriage and, therefore, the appellant too, like his co-accused, deserves to be acquitted.

7. Before the Court might evaluate two fold contentions of learned counsel, as noted above it would be useful to find out the essential ingredients of Sections 304-B and 498-A of Indian Penal Code as the same emanate from reading of the said sections as reproduced below :

'304B. Dowry death.- (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 the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 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.'

'498A. Husband or relative of husband of a woman subjecting her to cruelty.- 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 or is on account of failure by her or any person related to her to meet such demand.'

8. A careful reading of the provisions of two Sections, extracted above, would demonstrate that whereas, Section 304-B of the Indian Penal Code deals with the death of a woman, who dies within seven years of her marriage otherwise than under normal circumstances, being subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand of dowry, Section 498-A of Indian Penal Code deals with subjecting of a woman to cruelty. By virtue of explanation appended to Section 498-A of Indian Penal Code, cruelty means any wilful conduct which may be of such a nature as would be likely to drive the woman to commit suicide or to cause injury or danger to life, limb or health. Clause (a) of the explanation appended to Section 498-A deals with wilful conduct which may drive a woman to commit suicide or cause grave injury or danger to life, limb or health. The cruelty, as mentioned in clause (a) of explanation may not, thus, relate to demand of dowry etc., whereas, clause (b) of the explanation dealing with cruelty pertains to dowry as well as the same deals with harassment of a woman with a view to coercing her or anyone related to her to meet any unlawful demand or on account of failure by her or any other person to meet such demand.

9. Having examined the bare provisions contained under Sections 304-B and 498-A of Indian Penal Code and the contentions of the counsel for the appellant having been raised before this Court, time is now ripe to evaluate the evidence led by the prosecution. From the FIR, which has almost been reproduced above, it would

appear that there was no allegation against the appellant or others that any demand of dowry was made before the marriage. What is stated instead is that after the marriage, the appellant and his co-accused were not properly behaving with Amita and further that they used to taunt her on small issues. As to whether these small issues were related to demand of dowry, has also not been proved. It has then been mentioned that whatever clothes etc. were being given to the accused on an occasion, the same were criticised or rejected. In the end, it has been mentioned that when Amita was counselled by her father and others as also that they were helpless, Amita was on one night brought at the house of her father and at that time, she was not in proper state of mind or health. It has then been mentioned in the FIR that it remained in the minds of the accused that they were given less dowry. There is nothing mentioned in the FIR with regard to demand of any particular item or money after the marriage and as mentioned above, insofar as demand of dowry before marriage is concerned, not a word is stated in the FIR. What were those small issues on which, the appellant and his co-accused were taunting Amita, have also not been mentioned. It rather appears to this Court that if these small issues would have actually been related to demand of dowry, a specific mention would have been made thereof and not that Amita was being taunted on small issues. Further, demand of dowry is not a small issue and, therefore, if there was indeed a demand of dowry and/or of a particular item, may be small, same ought to have found mention in the FIR itself. All that can be gathered from the FIR is that Amita was being taunted after her marriage and further that the gifts that were given to her by her parents were being criticised or rejected. Insofar as allegation in the FIR that it remained in the mind of the accused that they were given less dowry, is concerned, it is only an imagination on the part of the, first informant.

10. Insofar as allegation of demand of dowry during the course of trial is concerned, Rajinder Nath Bansal appeared as PW-1 and it is quite apparent that he improved upon the version given by him in the FIR when he stated in the Court that after the marriage, Shanti Devi and Sudhir Kumar started mal-treating his daughter Amita on the pretext that she had not brought sufficient dowry.

11. It is significant to mention that even in this improved version, name of the appellant does not figure. Insofar as, appellant is concerned, Rajinder Nath Bansal stated that his daughter had told him that he was not behaving properly with her. He, of course, reiterated that whenever they had taken some clothes and articles to the house of the appellant and others, the same were thrown away in their presence. Throwing away the articles in their presence is again an improved version from that of the FIR. His statement that the accused openly declared that they would not allow his daughter to live at their house unless she brought cash and other articles of standard quality from her parents, is once again an improved version than the one given by him in the FIR. Once again, his statement before the Court that once he had taken his daughter at the house of accused and the accused had told him that they will not keep his daughter at their house unless she brings cash every time she visits his house is an improved version to the one made by him in the FIR. A demand of Rs. 5,000/- made by the accused, which was sent by this witness is again an improvement. When cross-examined, this witness, in the first instance admitted that the accused had not raised any demand of dowry at the time of marriage but volunteered immediately to say that before marriage, the accused made a demand of fridge, which was met by raising a loan from the bank. This demand, he stated, was made 10 days before the marriage and was met 5 days before the marriage. He admitted that he had not stated before the police that the accused used to demand cash and they used to throw the clothes and other articles, which they had taken to their house but he explained by saying this that he was confused after the death of his daughter and did not state all these things before the police. He also admitted that he had not stated before the police that the accused had made a demand of fridge 10 days before the marriage and the same was met 5 days before the marriage. Insofar as, Vijay Kumar, PW-2, son of Rajinder Nath Bansal, is concerned, he stated that on 13-1-1988, on the occasion of Lohri, he along with his wife had gone to the house of the accused with articles valuing about Rs. 1500/- and the accused did not appreciate those articles and asked them to throw out the same. They also insisted that whenever they come to their house, they should bring articles of good quality and they used to compel his sister to bring cash from her parents. Demand of fridge before the marriage, as stated by PW-1, has not been corroborated by

this witness. He admitted in his cross-examination that they never convened the panchayat of brotherhood or called a meeting of their relatives for amicable settlement of Amita and the appellant and his co-accused, when his sister had told him that the accused were harassing her. In cross-examination, however, he stated that when the appellant had separated his house, he asked him to give a sum of Rs. 5,000/- to Rs. 6,000/- as he needed the same after making a separate residence from his family but this money was not given by him to the appellant. He admitted that he had not stated before the police about any specific demand made by the accused from them. He also admitted that he had not stated before the police that he had visited the house of the accused on the occasion of Lohri and about the behaviour of the accused.

12. From the narration and events leading to the death of Amita given in the FIR and from the statement of PW-1 and PW-2, who are the only witnesses with regard to demand of dowry, this Court is left with undeniable impression that it was not a case of harassment meted out to Amita on account of demand of dowry. It is proved that no demand of dowry was made before the marriage. An attempt seems to have been made by the father of Amita, who appeared as PW-1, of demand of dowry before the marriage by obtaining a loan, which has not been even supported by his son, who appeared as PW-2. If there was, indeed, a demand of dowry before or after the marriage, some mention of the same ought to have been made in the FIR. In fact, it is clearly mentioned by PW-1, when he lodged an FIR before the police, that his daughter was being taunted on small issues. If these issues were related to demand of dowry, it could not have assumed the character of small issue and some mention of either cash or some particular articles, it appears to this Court, must have been made. Both the witnesses i.e., father and brother of Amita, appear to have improved upon the prosecution version with regard to demand of dowry, perhaps being conscious of the fact that narration of events given in the FIR may not bring home the offence against the appellant under Section 304-B of Indian Penal Code. The mention in the FIR that it remained in the minds of the accused that they were given less dowry, as said earlier, appears to be only an imagination or a thought process of the first informant. Surely, he could not be a witness to the feelings of the appellant and his co-accused. In any case, impression of a person that the accused had a

mind of demand of dowry or that they were not properly behaving with Amita on account of less dowry having been given, cannot be termed as demand of dowry as such by the appellant or his co-accused.

13. Insofar, as, applicability of Section 304-B of Indian Penal Code is concerned, the Court is of the view that it must be proved by the prosecution that death of a woman took place within 7 years of her marriage and that she did not die a natural death and further that she was subjected to cruelty or harassment soon before her death and that such cruelty or harassment was for, or in connection with, any demand of dowry. Whereas, three ingredients of Section 304-B of Indian Penal Code may be applicable in the facts and circumstances of this case, it appears, the prosecution has not been able to lead convincing evidence to prove the fourth ingredient, which is with regard to cruelty by her husband for, or in connection with any demand of dowry. Section 304-B of Indian Penal Code read with Section 113-B of Indian Evidence Act, in view of the death within 7 years of the marriage, same being unnatural leads to raising of presumption of dowry death against the accused and before, this presumption is drawn, the Court is of the view that all the ingredients for drawing this presumption must be properly established. It is the cardinal principle of criminal jurisprudence that in every case, it is the prosecution which has to prove its case beyond the shadow of reasonable doubt. Offences such as Section 304-B of Indian Penal Code where presumption is drawn in favour of the prosecution and against the accused, is a departure from the basic principle in proving the offence against the accused and therefore, strict proof of the ingredient constituting offence under Section 304-B of Indian Penal Code must be proved.

14. In totality of the facts and circumstances of this case, the Court is of the considered view that the prosecution has failed in bringing home the offence against the appellant under Section 304-B of Indian Penal Code. However, insofar as, applicability of Section 498-A of Indian Penal Code is concerned, ingredients of the same are quite adequately made out and the appellant cannot escape from his liability to be punished under the said Section. Explanation A added to Section 498-A of Indian Penal Code deals with cruelty of any kind. Cruelty has only to be from wilful conduct of the accused, which may drive a woman to commit suicide.

It may not essentially relate to the dowry. In fact, clause (b) of the explanation attached to Section 498-A of the Indian Penal Code deals with harassment of a 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. In the present case, what the prosecution has been able to establish beyond the shadow of reasonable doubt is that the gifts taken to the house of the appellant and his co-accused on the occasions, like Lohri etc. were either criticised or rejected, which may not essentially have been thrown out as is also the prosecution version coming for the first time during the trial. Taunting Amita on small issues and further rejecting or criticising the gifts brought by her parents on occasions does amount to cruelty and the appellant, as mentioned above, has to be held guilty for an offence under Section 498-A of Indian Penal Code. In view of the discussion made above, this appeal is partly allowed. Conviction under Section 304-B of Indian Penal Code against the appellant is set aside. However, conviction and sentence of the appellant under Section 498-A of Indian Penal Code is upheld. It may be recalled that the appellant was sentenced to undergo rigorous imprisonment for a period of one year under Section 498-A of Indian Penal Code as also to pay fine of Rs. 500/- and in default thereof, to further undergo rigorous imprisonment for a period of two months. The appellant, the Court has been informed, has since already undergone sentence for a period of two years and seven months.