

Kishore Kumar Vs. State

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Court : Delhi

Decided On : Aug-07-1992

Reported in : 1993CriLJ253; II(1992)DMC331; 1992(23)DRJ482

Judge : Usha Mehra, J.

Appeal No. : Crl.R. No. 63 of 1992

Appellant : Kishore Kumar

Respondent : State

Advocate for Pet/Ap. : K.B. Kalra and; R.A. Bhatt, Advs

Judgement :

ORDER

1. The petitioner, Kishore Kumar has been charged with the offence of harassment, cruelty and death of his wife, Smt. Yashoda on 5th February, 1989. The petitioner was married to Yashoda on 12th November, 1986. The petitioner was not satisfied with the dowry articles given. He returned the T.V. and demanded the cash amount in lieu thereof. The deceased, Yashoda had also been complaining about the harassment and torture inflicted on her by her father-in-law and mother-in-law. The petitioner at the instance of his parents had also been harassing his wife. She attended the 'Pooja' ceremony at the house of Hira Lal and there she narrated about the harassment given to her. The parents of deceased Yashoda received a telephonic message about her death on 5th

February, 1989 at about 10.35 a.m. The postmortem report opined that the death was due to some obscure poisoning. It was in this background that the case against the petitioner is registered under Section 498A/304B, I.P.C. vide F.I.R. No. 24/91 of P.S. Parshad Nagar, New Delhi dated 22nd January, 1991. The learned Magistrate after taking into consideration the statements recorded under section 161, Cr.P.C. prima facie came to the conclusion that a case under Section 498A/304B, I.P.C. was made out and accordingly framed the charge.

2. It is against the framing of this charge that the present revision petition has been filed. The Revisionist has challenged the order of the learned Magistrate inter alias on the ground that the post-mortem report indicated the cause of the death by poisoning but the C.F.S.L. report negated the said opinion. therefore, in the absence of there being any report indicating that Yashoda died because of the poisoning, the petitioner cannot be implicated for her death under Section 304B, I.P.C. As regards cruelty, the testimony of Panna Devi, Phool Singh and Hira Lal would clearly show that there was no harassment inflicted by the petitioner on the deceased Yashoda. Hence the charge has been framed by the learned Trial Magistrate on presumptions, conjectures and surmises.

3. On the other hand, counsel for the State contended that there is a sufficient material available on the record which clearly implicate the petitioner for the act of cruelty which ultimately led to her death.

4. I have heard the learned counsel for the parties and perused the record. I have also gone through the inquest proceedings and the report of the Sub-Divisional Magistrate dated 28th November, 1990. I have also gone through the statements of Khem Chand and Hira Lal. Hira Lal in his statement has implicated the petitioner as well as his parents for the demand of dowry and he further stated that the reasonable demands they were fulfilling but could not fulfill the unreasonable demands of the petitioner and his relations. He further suspected foul play which led to Yashoda's death. Khem Chand the author of the F.I.R. has also implicated the petitioner when he stated that his parents had been harassing Yashoda because of their greed for dowry and for their demands. The petitioner was under their influence and because of this influence Yashoda was tortured and harassed

on account of the greed of dowry. It is because of this demand for dowry, and consequent torture inflicted on her, that they suspected foul play which led to her death. therefore, the Trial Court was prima facie of the view that the Charge under section 498A, I.P.C. has been made out. The contention of the learned counsel for the petitioner that this cannot be against the husband, to my mind, is not sustainable. The import of the statement of the deceased brother's is that the in-laws and the petitioner were harassing Yashoda and the husband was under their influence in this harassment. At the time of framing of the charge, the Court has only to form a prima facie view on the basis of the evidence available and for forming the prima facie view, the Court has not to scrutinise the evidence so deeply as is required at the time of final decision. So far as the charge under section 498A, IPC is concerned, I think the trial court was justified in arriving at the conclusion and I find no infirmity in the same.

5. As regards the charge under section 304B, I.P.C. is concerned, the provisions of Section 304B which is reproduced as under clearly shows that if the death is due to the harassment given to the lady on account of dowry which led to her death then the case prima facie under Section 304B is made out.

SECTION 304B

DOWRY DEATH

'1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal 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.

ExplanationN : For the purposes of this sub-section, 'dowry' shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961)'

6. Admittedly Yashoda was married to the petitioner on 12th November, 1986 and she died on 5th February, 1989. So the death is within 7 years of her marriage. There are statements of the deceased's brothers indicating the demand of dowry by the petitioner and his parents and these demands according to the Khem Chand communicated by the deceased to the family even one day before her death when she also informed about the abortion. therefore, prima facie the trial court took the statements of the brothers as the base for framing of the charge under section 304B, IPC.

7. The contention of Mr. Kalra, Advocate that the deceased did not die of any poison as is apparent from the C.F.S.L. report. This by itself is no ground to discharge the accused. The charge is that Smt. Yashoda died in mysterious circumstances within seven years of her marriage. What are those mysterious circumstances will be gone into at the stage of evidence when the doctors will be examined who had opined that there was some smell in the stomach of the deceased. Admittedly, the C.F.S.L. report negatives the test for common poison but as pointed out above, that by itself is no ground to discharge at this stage. therefore, taking into consideration all these facts I do not consider that the petitioner has made out any case for quashing of the charge.

The petition is accordingly dismissed.

8. Petition dismissed.

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