

Smt. Rani and Another Vs. State

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Court : Delhi

Decided On : Oct-12-1995

Reported in : 1996CriLJ1026

Judge : J.K. Mehra, J.

Acts : Indian Penal Code (IPC) - Sections 34 and 498A; Code of Criminal Procedure (CrPC) - Sections 173

Appeal No. : Cri. R. No. 52 of 1994

Appellant : Smt. Rani and Another

Respondent : State

Advocate for Def. : Ms. Mukta Gupta, Adv.

Advocate for Pet/Ap. : B.B. Lal, Adv

Judgement :

ORDER

1. The present petition has been filed by two petitioners, namely, Rani, wife of Mohan Lal and Mohan Lal, who are the sister-in-law and husband of the sister-in-law respectively of the deceased, challenging the order framing of the charges against the petitioners passed by the learned Additional Sessions Judge on 15-1-1994. The charges framed read as under :-

'That in between 26-11-92 to 5-5-93 at Flat No. 896/18 Baba Kadak Singh Marg within the jurisdiction of P. S. Parliament Street in furtherance of common intention of you all caused cruelty and harassment to Smt. Lakshmi for demand of dowry and thereby committed an offence punishable under S. 498A read with Section 34 IPC within my cognizance.

Secondly, that on the aforesaid date, time and place in furtherance of common intention of you all you Ganesh Kumar, being husband, Rani. Sister-in-law, Mohan Lal being brother-in-law and Munni Devi being mother-in-law of the deceased Lakshmi caused such cruelty and harassment for demand of dowry as a result of which she committed suicide and died on 5-5-93 within 7 years of her marriage and other than normalcy circumstances and thereby committed offence u/S. 304B read with Section 34 IPC within my cognizance.'

2. The facts, briefly stated, are as under :-

That the deceased, Smt. Laxmi was married to Ganesh, one of the accused on 26-11-1992. Laxmi committed suicide by hanging herself on 5-5-1993 in her own father's house. A day before the hanging, Ganesh, accused suspecting the fidelity of his wife, beat Laxmi badly and also taunted her for dowry and left her at her father's place. On the fateful day, i.e. 5-5-1993. Laxmi admittedly left a suicide note before committing suicide. The suicide note was recovered from the room where the deceased committed suicide by hanging herself. The translation of the suicide note reads as under :-

'Ganesh today you have suspected me without any reason as no act of mine is wrong. Papa I cannot live without him as he had turned me out of his house today. If something happens to me my dead body be sent to his house. My last wish is that I be cremated only by my husband. A dying person never tells a lie. Till the last moment. I say that there is no fault of mine. I am leaving this world without doing any wrong. My last wish should be honoured. I wish to God that if I am reborn, I should be his wife although he has pained me much. I am angry only because he has suspected me without any basis. There is in my heart no body except him - there was none before and nor will there be any in future. I am also pained that Ganesh has taunted me today for the dowry. Today Ganesh has

beaten me badly for the first time. Papa your unfortunate daughter Laxmi.

Sd/-

Laxmi.'

3. In the suicide note, which is taken to be the dying declaration, there is no mention of any in-laws making any demand for dowry or subjecting the deceased to cruelty or harassment for any connection with any demand for dowry. It appears from the dying declaration in the suicide note that the husband had taunted her for dowry on that day only and had beaten her badly for the first time. The said dying declaration opens with the words 'Ganesh today you have suspected me without any reason as no act of mine is wrong'..... 'I am angry only because he has suspected me without any basis. There is in my heart no body except him. There was none before and nor will there be any in future.' This shows that the reason for maltreatment was suspicion in the mind of husband about wife's fidelity. The further words in the said note read that 'I am also pained, that Ganesh has taunted me today for the dowry. Ganesh has beaten me badly for the first time.' This shows that beating and taunting for dowry took place on that day for the first time. A plain reading of the dying declaration would show that the main allegation which hurt the deceased most, was a suspicion by the husband about her character and she has tried to point out that there was no other person in her life except the husband. From the dying declaration, it also becomes clear that Ganesh had beaten her badly for the first time and had also taunted her for dowry on that date. There is no history of any demand for dowry or allegation of such a demand by the husband or from any of the relations of the deceased. It is only in the course of the investigation that the Aunt and the mother of the deceased stated that the deceased had earlier been also taunted by the in-laws or their relations for dowry and that she had come on earlier occasions also and had revealed the fact of such taunts for dowry to her aunt. It is on the basis of those allegations that the proceedings were initiated. The learned ASJ after going into the facts of the case has disclosed in the report under Section 173 that 'but whenever daughter used to come to her parent's house, she used to disclose to her mother and aunt that her mother-in-law and sister-in-law and her husband used to tease her for dowry. They

used to tell her that she has not brought scooter or colour television and Ganesh, at the instance of her brother-in-law, sister and mother, used to misbehave with her concerning taunts.' The Sessions Judge has also noted that 'on the day of the marriage, the brother-in-law of Ganesh and other relations abused after taking liquor and also quarreled with them.' In this quarrel, there is no mention of dowry. The Sessions Judge has, however, wrongly noted in the order that in the suicide note, it was further mentioned that her husband has again teased her for dowry. There is no mention of the word again in the suicide note and it appears that this word has been inadvertently supplied by the Sessions Judge. On the question of beating also, the suicide note clearly mentions that she has been beaten by Ganesh badly for the first time. This clearly discounts any earlier beating. Again in para-4 of the impugned order, the learned Sessions Judge has totally misconstrued the suicide note by supplying the words 'and by the in-laws'. The word 'and by the in-laws' do not appear in the suicide note. The learned Sessions Judge has observed that as per the suicide note. She has been beaten and teased for dowry and has also been treated with cruelty by the husband and by the in-laws whereas I find that the main emphasis of the suicide note is no husband's suspicion about her fidelity. In any event, I am not considering or examining the order of framing the charge against the husband or any one other than the present petitioners, who are the sister of the husband and her husband.

4. Another fact to be noticed is that while the husband and the deceased were living in Madangir area, the sister of the husband was living with her husband at Rajpur Road and there is a considerable distance to be commuted from Rajpur Road to reach Madangir and it is not convenient to commute that distance very frequently. All the allegations against the present petitioners leveled by the mother and aunt are quite vague and do not give any date or the nature of any demand for dowry. The requirement of the provisions of law is that the deceased should have been subjected to such cruelty and harrassment for demand for dowry before her death and not a vague stray taunt for bringing less dowry. A taunt for not bringing dowry is quite distinct from demand for dowry. There is no mention of demand for dowry by the petitioners in the dying declaration. There is no material on record against the petitioners about demand for dowry. I am of the opinion that when there are two versions available, one is narration from the deceased on what

happened to her, and the other is the version of aunt and mother, which was recorded in the course of investigation subsequent to the death. The version contained in the dying declaration cannot be relegated to a place inferior to that of aunt and mother, at least at this early stage of the case. Cause for death is suicide admittedly and cause for suicide has been disclosed in the dying declaration, wherein only the husband Ganesh has been mentioned and there is no mention therein of any role having been played by the present petitioners. The death had taken place at the residence of the deceased's parents. The possibility of the mother and aunt exaggerating the facts in their version cannot be ruled out. Their version is vague and lacks any specific particulars. For these reasons, their version does not merit any preference over the dying declaration.

5. In the light of the above discussion, it is not possible to hold that there is any strong suspicion against the present petitioners much less the possibility of any conviction resulting on the basis of material on record if it is not rebutted. There is also no allegation on record against the present petitioners of their having demanded dowry.

6. In the case of *State of Karnataka v. L. Muniswamy* : 1977 CriLJ1125 , the Hon'ble Supreme Court had laid down 'In the exercise of the wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.' After certain discussion, the Hon'ble Supreme Court has further observed. 'These decisions show that for the purpose of determining whether there is sufficient ground for proceeding against an accused the court possesses a comparatively wider discretion in the exercise of which it can determine the question, whether the material on the record, if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible.' Applying the above tests, I am satisfied on both counts, i.e., powers of this Court to interfere in the circumstances referred above and that the material before the Court even if unrebutted, is not such on the basis of which a conviction can be said reasonable to be possible and that the continuance of the proceedings would only amount to an abuse of process of the Court and, therefore, the ends of justice require that the proceedings against the

present petitioners ought to be quashed. The result of the above discussion is that the impugned order in so far as it is applicable to the present petitioners, is quashed and the said petitioners are discharged.

7. Order accordingly.

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