

Ram Bilas and ors. Vs. State

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Court : Delhi

Decided On : Mar-22-1991

Reported in : 44(1991)DLT211; I(1991)DMC608

Judge : V.B. Bonsal, J.

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

Appeal No. : Criminal Revision Appeal No. 239 of 1990

Appellant : Ram Bilas and ors.

Respondent : State

Advocate for Def. : Shri. S.K. Bhatia

Advocate for Pet/Ap. : R.K. Naseem and; S.K. Bhatia, Advs

Judgement :

V.B. Bansal, J.

(1) By way of this revision the petitioners have challenged the order dated 20th November, 1990 holding that a prima facie case for the offence under Sec. 302 Indian Penal Code or in the alternative 304B Indian Penal Code against Shanti Devi and. offences under Ss. 304B and 498A Indian Penal Code against Mange Ram, Ram Bilas and Suresh Kumar and a case under Sec. 498A against Smt.

Shanti Devi has been made out. They have also challenged the charges actually framed against them on 14th December, 1990.

(2) It would be necessary to give some facts before dealing with the arguments advanced by learned Counsel for the parties.

(3) Trishla d/o Sita Ram r/o Tohana in Haryana was married to Ram Bilas on 10.3.88. Mange Ram and Smt. Shanti Devi are the parents while Suresh Kumar is the brother of aforesaid Ram Bilas. After her marriage Trishla Rani started residing with her in-laws. However, her in-laws including parents-in-law, husband, brother-in-law Suresh and sister-in-law Sunita were not happy with the dowry brought by her in the marriage. They used to give harassment to her and even taunted her by saying that such type of dowry is not being given even by sweepers. Ram Bilas and Suresh even used to give beatings to her. Suresh even' stopped her from using water from the fridge by saying that in case she wanted to have cold water she should bring a refrigerator from her parents. She was most unhappy on account of these incidents and even her husband was not meeting her for 23 days prior to 15.6.1988.

(4) On 15th June, 1988, Trishla was got admitted in Ram Manohar Lohia Hospital, New Delhi by Inderjeet brother of Ram Bilas with the alleged history of accidental burns while cooking on stove. Her statement was recorded by S.I. Azad Singh after she was declared to be fit for statement by the doctor. Apart from giving the facts already stated it was also claimed by her that on that day she poured kerosene oil on her and thereafter set herself on fire and wanted action to be taken against her parents-in-law, husband, brother- in-law Suresh and sister-in-law Sunita.

(5) Statement of Trishla Rani was recorded by Sdm on the same day in which she claimed having been harassed by her mother-in-law and there used to be a complaint of not bringing refrigerator. She also claimed that after pouring kerosene oil on her she was set on fire by her mother-in-law and that she was removed to the hospital after about one hour of the accident.

(6) Trishla died on 17th July, 1988. The 1.O. recorded the statements of the witnesses and came to the conclusion that offence under Secs. 302 and 498A Ipc was made out against Smt. Shanti Devi and offences under Section 498A read with Sec. 34 Indian Penal Code were made out against Mange Ram, Ram Bilas, Suresh Kumar and Sunita. Separate challan was filed against Sunita in children Court and the petitioners were challenged separately.

(7) I have heard Shri R.K.. Naseem learned Counsel for the petitioner and Shri S.K. Bhatia learned Counsel for the respondent. I have also carefully gone through the records.

(8) Learned Counsel for the petitioner has submitted that the investigation revealed commission of the offences under Ss. 302 and 498A Indian Penal Code by Shanti Devi and offences under Ss. 498A read with S. 34 Indian Penal Code by other accused. He has also submitted that according to the investigation there was no offence under Sec 304B Indian Penal Code and learned trial Court has committed a material illegality in making out a case under Sec. 304B IPC. He has, thus, submitted that it is not permissible for the Court to make out a case different from the one put forward by the prosecution. I have not been able to agree with this submission. There can possibly be no dispute that the 1.O. is required to collect material in support of the prosecution story and after coming to a prima facia view of the offences committed by the accused persons a challan has to be filed in Court by the Sho for trial. There is no requirement of law that the Court is to consider the offences which have been mentioned by the Sho in his report under Sec 173 of the Code of Criminal Procedure. It is the function of the Court holding trial to find out as to what offences are prima facia found to have been committed by the accused persons from the evidence relied upon by the prosecution. By doing so the Court does not commit any illegality nor is putting a story different from the one put forward by the prosecution. In fact, it is the duty of the Court to scrutinize the evidence after hearing the parties and if there is ground for presuming that the accused has committed an offence exclusively triable by Sessions Court to frame the charge in writing and then to proceed further with the trial. However, if the Judge considers that there is no sufficient ground for proceeding against the accused he is to be discharged for which reasons have to

be recorded in writing. Reference in this regard can be made to provisions contained in Ss. 227 and 228 Cr.P.C.

(9) Learned Counsel for the petitioner has submitted that as per the prosecution story the offence of murder of Smt. Trishla was punishable under Sec. 302 Indian Penal Code for which charge was framed against Smt. Shanti Devi. He has further submitted that as against this charge under Sec. 302 Indian Penal Code there could not be any charge under Sec. 304B Indian Penal Code in the alternative which, in fact, are contradictory to each other. He has further submitted that according to the report under Sec. 173 Cr.P.C. no such offence under Sec. 304B was committed by the accused and in this way learned trial Court has committed a material illegality in framing this alternative charge.

(10) The offence under Sec. 302 Indian Penal Code contemplates the murder by intentionally causing the death of the victim. Sec. 304-B Indian Penal Code is as under :-

'DOWRYdeath-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than 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 purposes 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.'

(11) A bare reading of Sec. 304B Indian Penal Code makes it abundantly clear that to attract this provision the prosecution has to prove

(i) death of a woman is caused by burns or bodily injury otherwise than under normal circumstances. (ii) death occurs within seven years of the marriage. (iii) the woman was subjected to cruelty or harassment by her husband or any relative of her husband.

(12) In the instant case as already stated Trishla was married on 10th March, 1988 and she died at the house of her in-laws on 17th June, 1988, i.e. in less than four months. Prosecution has placed reliance upon the statements of witnesses including those of the deceased Trishla, her father Sita Ram, brother Amar Chand Rameshwar Dass cousin brother. They all have stated about demand of dowry, causing of harassment to Trishla and even about giving of beatings to her by husband and brother-in-law. I have the evidence on record that Trishla sustained 90 per cent burns resulting in her death and smell of kerosene oil was found in her hair and partly burnt clothes. In these circumstances, it can safely be concluded that for the purposes of charge there was sufficient material available before learned trial Court to frame charge under Ss. 498A and 304B Ipc against accused persons.

(13) According to the prosecution story statement of Trishla Rani was recorded by Sdm on 15th June, 1988 in which she had specifically stated about the pouring of kerosene oil on her and thereafter setting her on fire by her mother-in-law Smt. Shanti. It is on the basis of this evidence that a charge under Sec. 302 Indian Penal Code has been framed by the learned trial Court against Smt. Shanti Devi.

(14) Learned Counsel for the petitioner has submitted that the alternative charge under Ss. 302 and 304B Indian Penal Code could not be framed and it was for the prosecution to decide as to on which evidence they are placing reliance. He has in support of his submission placed reliance upon judgment in case Minder Kumar v. State (Delhi Administration) 1990(2) DL 220. It was a case in which charges were framed under Sections 498A and 302 read with Sec. 34 Ipc or in the alternative under Sections 306 and 498A IPC. Relying upon Sec. 221 of the Code of Criminal Procedure it was held that ordinarily an alternative charge cannot be framed in respect of distinct offences and that the offence under Sec. 302 Indian Penal Code and the offence under Sec. 306 Indian Penal Code are distinct, the ingredients of the two provisions being altogether different. In these circumstances, the alternate charge under S. 304B Indian Penal Code was set aside. The facts of the said case, in my view, are distinguishable from the present case.

(15) The main grievance of learned counsel for the petitioner has been ' against the framing of the charge under Sec. 304B IPC. However, as already referred to there is sufficient material on record to proceed further against the accused persons for the offences under Sec. 304B read with Sec. 34 Ipc and 498A read with Sec. 34 IPC. A separate charge under Sec. 302 Indian Penal Code has been framed against Shanti Devi on the basis of the dying declaration stated to have been made by the deceased before the Sdm on 15th June, 1988. In these circumstances, I am clearly of the view that there is no scope for interference in this revision.

(16) As a result the revision petition stands dismissed.

(17) The trial Court file be sent back immediately so that the case is taken, up by the trial Court on 15th, 16th.and 18th April, 1991 fixed for recording of the prosecution evidence.

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