

Chander Pal Vs. State

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Court : Delhi

Decided On : May-08-1997

Reported in : 1997IIIAD(Delhi)1093; 67(1997)DLT571; II(1997)DMC155; 1997(42)DRJ113

Judge : J.K. Mehra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 4B

Appeal No. : Criminal Appeal No. 261 of 1996

Appellant : Chander Pal

Respondent : State

Advocate for Pet/Ap. : R.N. Mittal and; Santosh Kohli, Advs

Judgement :

J.K. Mehra, J.

(1) I have heard the parties. In this case, the prosecution was lodged against mother-in-law, father-in-law, brother-in-law and the husband of the deceased, who died of burns. It is a case where two brothers, i.e., husband of the deceased and brother of the said husband were both married to two real sisters on the same day, i.e., 23.7.1988. Sudesh was married to Chander Pal, present appellant while her younger sister Kamlesh was married to the younger brother of Chander Pal,

named Charan Singh, My attention has been drawn, to the dying declaration of Sudesh, who died of burns, translation whereof reads as under:-

'STATEMENT of Sudesh, wife of Chander Pal, R/o 127, Lado Sarai, New Delhi aged about 24 years.

STATED that I am resident of the above address. My mind did not work, I got burnt. My husband is a taxi driver. He is not going for work. I am saying again and again to give me water. My mind did not work. I got burnt. I poured kerosene oil, which was lying at house. I took matches kept under the Oven (Chullah). Only I poured kerosene oil on myself. For quite some time, he was not driving the vehicle. I was sleeping downstairs. My husband was sleeping upstairs. He used to trouble me often.'

The prosecution had examined, inter-alia, Kamlesh and father of the deceased. The allegations regarding demand of dowry made by father were of vague and non-specific nature and were accordingly disbelieved by the Trial Court in the case of mother-in-law, father-in-law and brother-in-law of the deceased. The testimony of Kamlesh was also ignored because her statement was different on each occasion and it was difficult to believe any of those statements. In my opinion, her testimony was rightly ignored by the Trial Court in the case of said three accused, i.e., mother-in-law and brother-in-law of the deceased, who were acquitted. But by strange logic, the Court who rightly disbelieved this witness, close to believe her in part when it came to the husband. He has also relied upon the testimony of father inspire of his finding that 'The statement of Meer Singh about the persons who made the demand of dowry is not specific towards particular accused.' After holding this and disbelieving him in respect of all other co-accused, it is difficult to see as to how the same statement could be held against the husband. Similarly statement of Kamlesh also lacks conviction on account of different version at different times as at one point of time, she stated that she was the eye-witness to burning of her sister and had seen the entire thing. On another occasion, she has stated that she was pushed violently by her husband, as a consequence whereof, she struck against the wall in her room and lost control over her senses and when she regained her senses, she found her sister was afire. In her statement to the

Sdm, she has stated that she has not present and is not aware as to how deceased caught fire. She has also not deposed to any demand of dowry being made by her own husband or the father-in-law from her. It is difficult to accept that when no demand for dowry is made in the case of younger sister, such demands shall be made by the in-laws from the elder sister and not from the younger one, particularly when both were married on the same day to two brothers and were having the same status in the family. The Trial Court has erred materially in placing any reliance on her testimony, which lacks conviction. No one has doubted the correctness of the dying declaration wherein there is not even a whisper or even a suggestion of any demand for dowry being made by anyone. The major grievance appears to be that the husband was an idler. Although he was a taxi driver, he had not been going and performing his duties as taxi driver and was wasting his time. A perusal of the dying declaration shows that it is a case of extreme incompatibility resulting from the husband wasting his time and not attending to his work, which was resulting in bickering in the family culminating finally in the deceased committing suicide. It has been stated that the appellant has already suffered enough. He has been in custody for about three and a half years. From the aforesaid facts, in my opinion, no case is made out under Sections 304-B or 498-A Ipc, which read as under:-

'304-B 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.

(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.

498-A 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.

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ExplanationN- For the purpose of this section, 'cruelty' means -

(A)any willful 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 top her to meet such demand.'

From the facts narrated hereinabove, it cannot be accepted that the deceased was subjected to cruelty or harassment by her husband or any relative in connection with any demand for dowry. It is for this reason that I hold that prosecution has failed to make out a case under Section 304-B. Coming to Section 498A also, the term cruelty has been explained under the Explanationn to the aforesaid section. The action which is likely to provoke a woman to commit suicide has to be of the nature of willful conduct towards her and not any inaction or not going to work which may cause annoyance, which by itself cannot qualify as cruelty. Cruelty would also not be covered under Explanationn (b) in view of what has been observed hereinabove with regard to demand for dowry. The net result of the above discussion is that the prosecution has failed to prove its case beyond - reasonable doubt and the appellant is entitled to benefit of doubt, which I hereby give and acquit him. He shall be released forthwith unless and until wanted in any other case. This appeal is disposed of in the above terms. Dasti.

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