

Dinesh Seth and ors. Vs. State

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Court : Delhi

Decided On : May-02-2003

Reported in : 2003VIAD(Delhi)146; 2003CriLJ4532; 111(2004)DLT830; II(2004)DMC53; 2003(70)DRJ556; 2004(1)JCC143

Judge : O.P. Dwivedi, J.

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

Appeal No. : Cri.A. 667/2002

Appellant : Dinesh Seth and ors.

Respondent : State

Advocate for Def. : A.K. Gupta, Adv.

Advocate for Pet/Ap. : K.B. Andley, Sr. Adv. and; M.L. Yadav, Adv

Disposition : Petition dismissed

Judgement :

O.P. Dwivedi, J.

1. This appeal is directed against the judgment dated 23.8.2002 and the order of sentence dated 24.8.2002 whereby learned Additional Sessions Judge has convicted the appellant under Sections 304B/34, IPC and sentenced them to

under go RI for seven years each.

2. Brief narrated facts leading to this case are that Smt. Rama (since deceased) was married to appellant Dinesh Seth on 2.12.84. After marriage, she started living in her matrimonial home with the appellant in house No. GH-14/736, Pashchim Vihar, Delhi. Appellant No. 1 Dinesh Seth is the husband; appellant No. 2 and 3 are brother-in-laws and appellant No. 4 is mother-in-law of the deceased. Rama gave birth to a son in October 1985 from this wedlock. On 22.11.86 an anonymous call/ information was received at the PCR to the effect that son of Kuldeep Seth has committed murder of his wife in his house Gali No. 8, Multani Dhandra, Paharganj. Information was conveyed to P.S. Navi Karim where DD NO. 19A was recorded and was marked to SI C.L. Yadav who reached the spot. The dead body of Rama was found lying in a room on the second floor of the house. One piece of printed cloth (Chunni) was found near the dead body and another piece was found tied with the ceiling fan. Naresh Tandon, brother-in-law of the deceased, was also found there. SI Yadav recorded his statement wherein he stated that harassment and torture was meted out to Rama at the hands of the accused persons for the dowry. The statement of the mother of deceased Rama was recorded by the SDM and on that basis case under Sections 304B/306/498A IPC was registered vide FIR No. 471/1986. On 23.11.86, post mortem examination was conducted by Dr. Bharat Singh who noticed a ligature mark around the neck. No other marks of the injury were found on the body. The cause of death was opined to be asphyxia resulting from hanging. The photographs of the dead body were taken from different angles. i.e prepared a site plan. Two pieces of ligature material seized in a sealed parcel. Some other articles namely ceiling fan, aluminum hanger, dadi etc, were seized from the room. The two portions of the ligature material chhuni were sent to the CFSL and on physical and microscopic examination it was found that two pieces formed part of a larger single piece of the same cloth. Viscera was also sent for analysis but it gave negative test for poison. After completing investigation, the police submitted challan under Sections 498A/306/304B/34 IPC because investigation revealed that Rama committed suicide because of torture, harassment caused to her by the appellants. After considering the submissions made by the learned counsel for appellants and learned APP, learned Additional Sessions Judge framed charge under Section

304B IPC only against all the four appellants to which they pleaded not guilty and claimed trial. In support of its case the prosecution examined Smt. Radha Mehra, PW-1; Naresh Tandon, PW-2; ASI Ram Sarup, PW-3; HC Bhim Singh, PW-4; Mahipal Singh, PW-5; Ms. Chita Mehtra, PW-6; Smt. Raj Rani Mehra, PW-7; Const. Mathu Ram, PW-8; Const. Ganga Ram, PW-9; Devinder Singh, PW-10; J.K. Dadoo, PW-11; HC Yogesh, PW-12; Ms.Sudarshan Grover, PW-13; Mr.Rakesh Malhotra, PW-14; ACP Bhagwant Singh, PW-15; ASI Attar Singh, PW-16; SI Bishan Sawroop, PW-17; Const. Tejbir Singh, PW-18; Rajesh, PW-10; C.L. Yadav, PW-20; Inspector C.L.Jatav, PW-20; Dr. Bharat Singh, PW-21; Retired ACP Harbans Singh, PW-22; Uma Shanker Retired HC, PW-23; Amit Grover, PW-24; Inspector J.L.Sahani, PW-25; Chaman Mehra, PW-26. In their statements under Section 313 Cr.P.C., the accused persons denied that they caused any harassment and torture to deceased Rama on account of dowry or for any other reason. They took the stand that Naresh Tandon who is husband of elder sister of Rama used to harass her and used to frequently visit her which was not liked by any One. He did not stop his visits despite being asked to do so and out of frustration Rama committed suicide. After considering the respective submissions made by the learned counsel for the appellants and learned APP in the light of material on record, the learned Additional Sessions Judge came to the conclusion that Rama committed suicide within seven years of her marriage because of torture, harassment on account of demand of money by the appellants. Thus offence under Section 304B stands proved against all appellants who were convicted and sentenced to go RI for seven years each. Feeling aggrieved, the appellants have preferred this appeal. The main argument of the learned counsel for the appellant in this appeal is that the evidence led by the prosecution in this case does not make out all the ingredient of Section.304B which read as under:-

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.

4. Thus in order to prove an offence under Section 304B, the following ingredients must be proved:- (1) death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances (2) such death must have occurred within seven years of her marriage (3) soon before her death, woman must have been subjected to cruelty by her husband (4) such cruelty or harassment must be for or in connection with the demand of dowry.

5. Learned counsel for the appellant contended that the first two ingredients are clearly made out in this case but the remaining two ingredients namely that Rama was treated with cruelty or harassment soon before her death and that such cruelty and harassment was for or in connection with the demand of dowry have not been proved.

6. It is, therefore, necessary to scrutinise the statements made by the near relations of the deceased namely, Radha Mehra, PW-1, Chitra Mehra, PW-6, both sisters of the deceased; Smt. Raj Rani Mehra PW-7 and Chaman Mehra, PW-26, mother and brother of the deceased. It may be pointed out here that Naresh Tandon, brother-in-law (elder sister's husband) of the deceased was also examined as PW-2. But it appears from the record that his cross examination was deferred on 19.4.2000 and thereafter he was not produced for cross examination. therefore, his statement as PW-2 has to be excluded from consideration. The case was registered on the basis of statement of Smt. Raj Rani Mehra, mother of the deceased which she made before the SDM. Perusal of her statement PW-1/A shows that at the time of marriage there was some demand namely sofa, scooter, non-vegetarian food etc. But there was no such demand after the marriage. Of course in the said statement made before the SDM Smt. Raj Rani Mehra complaint of harassment meted out to her daughter by appellant No. 1 Dinesh Seth, husband of the deceased who allegedly used to beat up Rama under the

influence of liquor and on asking Rama told that her husband and sister-in-law Malka keep on torturing her as she was not well educated and not fluent in English. According to the said statement of Smt. Raj Rani Mehra her younger daughters had visited the matrimonial home of Rama on 21.11.1986 that is the date before incident and both told her that Rama was unhappy as she was beaten up by her in-laws. On the date of incident also, according to the Smt. Raj Rani Mehra, Rama had called her on telephone. In the said statement Smt. Raj Rani Mehra, who is complainant no where alleged that there was a demand of dowry after the marriage. AH that she says in the said statement is that after marriage husband and in-laws used to harass, torture her because she was not fluent in English. In her court Statement Smt. Raj Rani Mehra, PW-7, made substantial improvement over her statement made before the SDM, PW-7 stated that Dinesh Seth and her sister used to taunted her for not bringing sufficient dowry and also because she was not well educated. She also stated that accused Dinesh Seth used to ask Rama to bring money from the parents. On one occasion Rama demanded Rs. 2 lac from her for purchasing house and when she expressed her helplessness, in the matter, he gave beating to Rama in her parental house. PW-7, Smt. Raj Rani Mehra, further stated that a day before her death i.e on 21.11.86 Rama visited her house and told her that on previous night she was badly beaten up by accused because she did not bring money from her parents. It will thus be seen that in her statement before SDM/ she no where stated that there was any demand of money after marriage or that Dinesh Seth demanded Rs. 2 lac from her and on her failing to do so appellant Dinesh Seth had beaten her up in her parental house. In Exhibit PW 7/A there is no reference whatsoever to the visit of Rama to her mother's house on 21, 11.86 and having told her that she had been beaten up on previous night by the accused person because she could not bring money from her parents. She was extensively confronted with her statement made before SDM and before Police where these facts were not recorded. Thus factual basis for prosecution under Section 304B IPC namely that the torture harassment was caused for on in connection with dowry has not been laid in any statement of Smt. Raj Rani Mehra, PW-7 except her statement before the Court. Patently these are deliberate improvements made by PW-7, therefore, they cannot be taken into consideration being after thought. PW-1 Smt. Radha Mehra, PW-6/ Chitra Mehra

are the two sisters of Rama who allegedly visited Rama's matrimonial home on 21.11.86. In their statement under Section 161 Cr.P.C made before the police they made identical statement to the effect that when they visited Rama's matrimonial home on 21.11.86 her eyes were red. It appeared that she had wept bitterly and when they asked Rama as to what happened the Rama simply told her that it appears that these people will not allow her to live and they came back and narrated the whole thing to their mother. From their statement to the police it does not appear that Rama had told her that she was beaten up by her husband and in-laws and that too in connection with dowry. However, in the court Statement they have gone much beyond what they stated before the police. Smt. Radha Mehra, PW-1, deposed that after her marriage Rama used to make complaint that she was being harassed and ill treated by her husband and in-laws. She was being taunted for her dark complexion and low education. She further stated that Rama use to say that she was harassed by the accused persons for dowry. Regarding her visit to Rama's matrimonial home on 21.11.86, she deposed that they found Rama weeping bitterly. Besides there was some bluefishmark on her fore head and also marks of fingers suggesting that she had been slapped on her face. She was extensively confronted with her statement under Section 161 Cr.P.C, where these facts were not recorded. The other sister PW-6, Smt. Chitra Mehra Stated that Rama used to complaint that her sister-in-laws, mother-in-law and brother-in-laws used to harass her because she was not smart and well educated. Regarding her visit to Rama's matrimonial house on 21.11.86, she deposed that she came to know that Rama had been beaten up but Rama did not disclose as to who had beaten her. In her examination in chief, she no where stated that there was any demand of dowry either at the time of marriage or thereafter. She did not even say that Rama was harassed or beaten up by her husband and in-laws for not fulfillingthe dowry demand. According to her Rama was harassed for not being smart and well educated and Rama told her that she was fed up with her life. It was suggested to her from the defense side that actually Naresh Tandon was quite intimate with Rama and the frequent visits of Naresh Tandon to Rama's matrimonial home were not liked by the accused persons and Rama herself. But this suggestion was denied by PW-6. These statements of two sisters namely Smt. Radha Mehra, PW-1 and Smt. Chitra Mehra, PW-6 do not lend support to the

prosecution case that there was any demand of dowry after the marriage or that Rama was harassed or tortured for not meeting their demands. Surprisingly, Smt, Raj Rani Mehra, PW-7, their mother does not say that PW-1 and 6 visited Rama's matrimonial home on 21.11.86. On the contrary in examination in chief she states that a day before her death Rama herself had visited her parental house and told her that she has been beaten up by the accused persons on the ground that she could not bring money from the parents. There was no averments to this effect in her statement PW-7/A which was made before SDM; Thus the statement of mother and two daughters are contradictory to each other in this regard. In her statement before SDM she states that she had received a telephone call from Rama on that very date i.e. 22.11.86 but in her court statement she does not say so. Statement of mother and two daughters are discrepant on many points which only indicate that story of the two sisters visiting the Rama's matrimonial home or Rama visiting her parental home on 21.11.86 has been introduced only to create evidence to the effect that Rama was treated with cruelty soon before her death.

7. Other two witnesses, should who have spoken about the treatment meted out to Rama are Rakesh Malhotra, PW14 a cousin and Chaman Sharma, PW-26, real brother of Rama. Of course they have made general statement to the effect that Rama was ill treated by the accused persons for the sake of dowry but they have not stated that she was tortured, beaten up on the date of incident or within few days before her death. Surprisingly, PW-26 who was real brother of Rama did not state anything about the visit of Radha Mehtra, PW-1 and Chitra Mehra PW-6 to the house of Rama on 21.11.86 or about the visit of Rama to her parents house on 21.11.86 or 22.11.86.

8. In order to make out offence under Section 304B IPC one of the essential ingredients required to be proved is that the deceased was treated with cruelty soon before her death for or in connection with dowry. In the present case there is evidence of harassment caused to Rama in the form of statements of her mother Raj Rani Mehra PW-7, brother Chaman Lal, PW-26 and cousin Rakesh Malhotra, PW-14 in the past but there is no convincing evidence to suggest that such cruelty was for or in connection with the dowry soon before her death. In the case of *Shyamla v. State of Haryana*, AIR 1997 SC 1893, it was found from the evidence

on record that the deceased was treated with cruelty in connection with dowry and the wife was sent back to the parents house but was taken back to the matrimonial home. This had happened about 10 to 15 days before. There was no evidence to prove that the deceased was treated with the cruelty or harassment in connection with the demand of dowry soon before her death. Under the circumstances apex court held that accused cannot be convicted under Section 304B IPC. Instead he was convicted under Section 498A IPC only. Similarly in the case of Sunil Bajaj v. State of M.P. 2000 CAR 561, the Apex Court held that offence of dowry death under Section 304B IPC was not made out because one of the essential ingredients of the offence namely that the deceased was subjected to cruelty or harassment soon before her death for or in connection with the demand of dowry was not proved. In the case of Pyare Lal v. State of Haryana, : AIR 1999 SC1563 and Satpal v. State of Haryana, : 1999 CriLJ596, the appellants were acquitted of the charge under Section 304B IPC because the fact that deceased was treated with cruelty soon before her death for or in connection with the dowry was not established from the evidence on record. The appellant was convicted under Section 498A IPC. In the present case evidence regarding the visit of PW-1 and PW-6 to the matrimonial home of Rama or regarding the visit of Rama to her parental home on 21/22.11.86 is quite shaky, discrepant and unworthy of credit. Learned Addl. Sessions Judge, recorded the finding of guilt without minutely examining the evidence on this specific issue namely whether Rama was treated with cruelty soon before her death. Since one of the essential ingredients of Section 304B IPC remains unproved in this case, the accused cannot be convicted under Section 304B IPC. Evidence on record (testimonies of PW 7/14/ and 24) clearly makes out an offence under Section 498A IPC against accused Dinesh Seth only for which he can be convicted although he was not specifically charged under Section 498A IPC. The ingredient of the Section 498A are included in the ingredient under Section 304B IPC. therefore, even if there is no specific charge under Section 498A IPC, the appellant Dinesh Seth can be convicted for the said offence.

9. In the result all the appellants are acquitted from the charge under Section 304B. Appellants Suresh Seth, Janak Seth and Naresh Seth are already on bail. Their bail bonds are cancelled and sureties discharged. The appellant Dinesh Seth

is convicted under Section 498A IPC and sentenced to undergo RI for three years. He is already in custody. He shall get the benefit of Section 428 IPC. If he has already completed the term he shall be released forthwith, if not required in any other case.

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