

Babu Vs. Padmanabhan

Babu Vs. Padmanabhan

SooperKanoon Citation : sooperkanoon.com/728178

Court : Kerala

Decided On : Jun-01-2004

Reported in : I(2005)DMC787; 2005(1)KLT141

Judge : K.A. Abdul Gafoor, J.

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

Appeal No. : Crl. A. No. 518/98

Appellant : Babu

Respondent : Padmanabhan

Advocate for Def. : Viju Thomas, Public Prosecutor,; V.B. Unniraj and; Bindh

Advocate for Pet/Ap. : P. Vijayabhanu and; S.R. Manoj, Adv.

Disposition : Appeal allowed

Judgement :

K.A. Abdul Gafoor, J.

1. There was a private complaint by PW.6 against accused No. 1 and his mother, accused No. 2, alleging commission of offence punishable Under Section 498A and Section 304B due to the death of daughter of PW.6 in the house of the accused, immediately within ten months of the marriage, alleged to be in

connection with a demand for dowry. Such a private complaint, Ext.P4 was happened to be filed before the Magistrate Court as the police referred the case registered as per Ext.P3 F.I.R. In connection with Ext.P3, based on the. F.I. Statement of PW.6 and the information from the police, PW.12 Tahsildar had conducted an inquest and drew up Ext.P7 report recording the statement of PW.1 and PW.2. On investigation, the police found that no offence had been made out. Accordingly, the case was referred. It was thereupon, Ext.P4 complaint was filed before the Magistrate. But only the offence Under Section 304B alone had been taken cognizance of and was tried by the Additional Sessions Judge, Alappuzha. Ext.P4 reveals that there was demand for dowry of two sovereigns which was promised at the time of marriage and in connection with that demand, there was cruelty towards the daughter of PW.6, the wife of accused No. 1 and that this resulted finally committing suicide by the wife of accused No. 1, Jayamma, consuming poison.

2. PWs.1 and 2 are the brothers of the deceased Jayamma, They have unanimously spoken before the Court below that there were occasions of accused No. 1 demanding two more sovereigns said to be promised at the time of marriage and for that purpose there was harassment towards their sister. The 1st accused had even snatched the Mangalya Suthra of their sister while in their house and she sustained minor injuries on her neck. They had also noticed accused No. 1 harassing and beating their sister even on the previous day of the incident on 26th October, 1994 while they were in the house of accused 1 and 2. PW.3, the brother-in-law of PW.1 has also spoken about the incident in that line in corroboration with the evidence given by PW. 1 and PW.2. PW.6, father of PW.1 and PW.2 also has spoken in that line. Relying on their evidence and the evidence given by the doctor who conducted post-mortem, and issued Ext.P1 post-mortem certificate, the Court below concluded that Jayamma died due to poisoning. This was in the house of the accused, on 27th October, 1994. Their marriage was solemnized on 31st January, 1994. The poisoning was due to the harassment towards the deceased because of the demand for two sovereigns promised at the time of marriage. The evidence also reveals that there was demand for 25 sovereigns even at the time of marriage and there was subsequent demand that cash shall be given instead of 5 sovereigns and that it was paid to accused No. 1.

It was disputed at the time of marriage that the chain presented to accused No. 1, weighing about two sovereign shall not be accounted to the promised dowry and it was agreed that it would be paid later. There was persistent demand for the same and consequent harassment towards Jayamma including on the previous day of the incident. Accordingly, the Court below convicted the 1st accused. The 2nd accused, the mother of the 1st accused found not guilty. He was also sentenced to undergo 10 years rigorous imprisonment Under Section 304B I.P.C. This is under appeal. The 2nd accused, the mother of the 1st accused found not guilty.

3. Counsel for the appellant submits that the case put forth in Ext.P4 complaint is yet different from the first information statement Ext.P3 given by PW.6 or the statements given by PW.1 and PW.2, when PW.12 prepared and drew up Ext.P7 inquest report. The entire case is now focused on demand of dowry in the form of 2 sovereigns as duly promised earlier and consequent harassment of deceased Jayamma. There was no such allegation by PW.1, PW.2 or PW.6 at the initial stage when they gave statement to PW.12 at the time of inquest or made Ext.P3 F.I. statement before police immediately after the occurrence. The case set up at the initial stage was that there was harassment and cruelty by accused No. 1 towards deceased Jayamma including snatching of Mangalya Suthra and that she refused to give ornaments for sale as demanded by accused No. 1. That will not constitute a demand for or in connection with dowry. Dowry is something which has been promised to be given at the time of marriage or which has been given at the time of marriage. That has already been given. Now it is the property available in the custody of the wife. If at all anything is proved, it was only a cruelty towards the wife which ultimately persuaded her to commit suicide by consuming poison. Therefore, on that count no charge Under Section 304B can be made out, it is submitted.

4. It is submitted by the Counsel appearing for the de facto complainant that there is evidence regarding the persistent cruelty spoken to by PW.1, PW.2, PW.3 and PW.6. It was because of that cruelty that the said Jayamma committed suicide. The suicide was just after such harassment and cruelty. Therefore the Court below was perfectly justified in convicting accused No. 1 for the offence punishable Under Section 304B I.P.C. The Public Prosecutor also urges the same contention.

5. In terms of Section 304B I.P.C. the death occurred shall be otherwise than under normal circumstances. In this case it was a suicide and therefore, it was not a death under the normal circumstances. To bring one within the fold of Section 304B I.P.C, the death shall occur within seven years of the marriage. In this case the marriage was on 31st January, 1994 and the unnatural death was on 27th October, 1994. Therefore that ingredient is also proved in this case. As spoken to by PW.1 and PW.2, they had witnessed even just on the previous day, the cruelty committed towards their sister, the deceased, by accused No. 1. The harassment towards her on an earlier occasion was also spoken to by them. PW.6, the father of the victim, PW.3, the brother-in-law of the victim and PW.4 the neighbour of PW.6 also speak in the same line. Therefore the harassment and cruelty by accused No. 1 towards the deceased was also proved.

6. But to bring the accused No. 1 within the fold of Section 304B I.P.C, all these ingredients proved are not sufficient, because the section further makes it clear that the harassment by husband shall be 'for or in connection with any demand for dowry'. Even though, PW.1, PW.2, PW.3 and PW.6 categorically deposed before the Court below that the accused No. 1 had consistently demanded for two sovereigns towards dowry and that their sister, deceased Jayamma had complained to them that she was being harassed in that regard, but no such case was made out in Ext.P3 F.I. statement given by PW.6, the father of the victim, to the police on the next day of the death, on 28th October, 1994. There was no case regarding the demand for two sovereigns which was promised as dowry earlier.

7. It was spoken to by PW.6 that there was a promise to give 25 sovereigns as dowry, out of which cash was demanded instead of 5 sovereigns. It was paid. Twenty sovereigns had been given at the time of marriage. It included the chain presented to accused No. 1, which has been objected to at the time of marriage itself by accused No. 1 that, that chain presented shall not be accounted towards the dowry promised and consequently there was an appeasement with a promise that the deficit two sovereigns would be given later and that there was persistent demand for the same and harassing Jayamma on that count. This is spoken to by PW.1 and 2, the brothers of the deceased and PW.3, the brother-in-law of the deceased.

8. But in this regard it has to be born in mind that when PW.6 made Ext.P3 F.I. Statement, there was no such case for him. What was stated in the F.I. Statement was that the accused had demanded the ornaments owned by the deceased for sale in connection with some ceremony in the house of the accused and this demand was resisted by the deceased and consequently the accused snatched the Mangalya Suthra and thereafter the said Jayamma committed suicide. Had there been any case for PW.6 with regard to the demand of dowry, necessarily that would have been the first thing to be divulged to the police, when he made Ext.P3 F.I. Statement. That was not done.

9. Added to this is the statement given by PW.1 and PW.2 to PW.12, the Tahsildar, who drew up Ext.P7 inquest report. At the time of inquest they were questioned by the Tahsildar. None of them had stated about the demand for two sovereigns as the dowry promised, now set up by them before the Court below. Their case was that there was harassment towards their sister demanding the ornaments owned by her for the purpose of sale in connection with a ceremony in his house and consequent quarrel which ultimately led to poisoning by herself.

10. The demand for ornaments worn by wife for the purpose of sale will not come within demand of dowry. Therefore, suicide by the bride consequent on demand of ornaments for the purpose of sale will not come within the offence punishable Under Section 304B I.P.C. Necessarily, the conviction on that score has to be set aside.

11. As rightly pointed out by the Counsel for the de facto complaint, an offence Under Section 498A is made out, as all the witnesses have spoken to about the harassment and cruelty towards deceased Jayamma demanding ornaments worn by her and even snatching away of Mangalya Suthra. But in this case there was no charge framed under that count enabling the accused to defend that accusation. Necessarily, merely based on the contention that there is evidence in that regard, unless there was an opportunity for the accused to rebut such allegation, this Court cannot convict the accused Under Section 498A.

Consequently appeal is allowed. Conviction Under Section 304B I.P.C. is set aside. He is found not guilty under the said provision. He is acquitted. The bail

bond executed by him is cancelled.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com