

inder Raj Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-14-1994

Reported in : 1996CriLJ924

Judge : B.R. Arora, J.

Acts : Evidence Act - Sections 113B; [Indian Penal Code \(IPC\), 1860](#) - Sections 304B, 406 and 498A; Code of Criminal Procedure (CrPC) - Sections 174

Appeal No. : Criminal Appeal No. 282 of 1992

Appellant : inder Raj

Respondent : State of Rajasthan

Advocate for Def. : B.S. Bhati, Public Prosecutor

Advocate for Pet/Ap. : H.S.S. Kharlia, Adv.

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated 11-6-92, passed by the Additional Sessions Judge, Raisinghnagar, by which the learned Additional Sessions Judge convicted the appellant for the offence under Sections 498A and 304B, I.P.C, and sentenced him to undergo three years' rigorous imprisonment

and a fine of Rs. 1000/- and in default of payment of fine further to undergo six months' rigorous imprisonment for the offence under Section 498, I.P.C, and seven years' rigorous imprisonment for the offence under Section 304B, I.P.C.

2. The accused-appellant was tried by the learned Additional Sessions Judge, Raigarh, for the offences under Sections 498A and 304B, I.P.C. The case of the prosecution is that on 9-7-91, at about 6.00 a.m. Smt. Savitri W/o accused Inder Raj, was found dead in a water-pond in village I- T. K. The information of this incident was given- by accused Inder Raj himself at Police Station. Muklawa, on the same day. He also, informed the parents of Smt. Savitri. The proceedings under Section 174, Cr. P. C. were initiated and during the course of inspection of site by the Police. Ram Kumar - the brother of deceased Savitri - reached there and lodged in F.I.R. at 8.00 p.m. According to him the marriage of Savitri was performed with accused Inder Raj five-six years before and after the marriage she came two or three times in her parental house and informed her mother and brother that she is being cruelly treated by her husband, Tapsi Ram (her brother-in-law) and Smt. Maina Devi - the Jethani of Savitri - for bringing more dowry. They used to give beatings to her. About five years before, she was brought to her parental house as she was being inhumanely treated by her in-laws and she remained at her parental house. About three days before the date of the incident when she was taken by her husband Inder Raj, at that time, also, Inder Raj asked his in-laws to make payment of Rs. 5000/- which he required and threatened that if the payment was not made within five-six days then it will result in severe consequences. On the basis of this report, a case under Sections 304B and 406, I.P.C, was registered against the accused-appellant. The prosecution, in support of its case, examined six witnesses and the learned Additional Sessions Judge, after trial, convicted and sentenced the accused-appellant as stated above.

3. It is contended by the learned counsel for the appellant that there is no evidence available on record to suggest that the appellant demanded dowry immediately before the death of Savitri and. therefore, the ingredients of Section 304B, I.P.C, have not been established and the appellant, therefore, deserves to be acquitted for this offence. It has, also, been contended by the learned counsel for the appellant that there is no evidence on record that Smt. Savitri was subjected to

cruelty by the appellant and the ingredients of Section 498A, I.P.C, are. also, not established and as such the accused-appellant deserves acquittal and the judgment passed by the learned lower Court deserves to be quashed and set-aside. The learned Public Prosecutor, on the other hand, has supported the judgment passed by the learned trial Court.

4. I have considered the submissions made by the learned counsel for the parties, gone through the record of the case and perused the judgment passed by the learned trial Court.

5. The nature of the evidence, produced by the prosecution, consists of the statements of PW 2, Ram Kumar - the brother of the deceased - and PW 3 Smt. Shanti - the mother of the deceased - who have stated regarding the cruel treatment of the accused-appellant with Smt. Savitri on the earlier occasions and the demand of dowry made by him; the statement of PW 1 Jagatpal Singh, Foot Constable, who took the samples for F.S.L. examination to the State Forensic Science Laboratory; PW 4 Davendra Singh - the Deputy Superintendent of Police, who conducted the investigation at the initial stage, recorded the statements of Shanti, Brij Lai, Ram Kumar, Sohan Lai, Krishna and Nand Lai and prepared the site plan and thereafter handed-over the investigation to Abdul Aziz, the Station House Officer, Police Station, Muklawa; PW 6 Mohan Lai, who was the Station House Officer at the Police Station on the relevant date, who registered the report (F.I.R. No. 3/91) lodged at the instance of accused Inder Raj under Section 174, Cr. P. C. and conducted the investigation and sent the same to the Sub-Divisional Magistrate, Raisinghnagar. He made the enquiry, prepared various Memos and recovered the articles of dowry. This witness, also, prepared the site plan and made certain recoveries etc. and then handed-over the investigation to Abdul Aziz on 8-8-91; PW 8 Abdul Aziz conducted the investigation after 8-8-91 after taking-over the charge and submitted the challan in the Court. He also, recovered the articles in the case. The accused examined DW I Hans Raj in support of his defence. His case in the defence was that the relations between the accused and deceased Savitri were cordial and Savitri was never cruelly treated by her husband Inder Raj nor was any demand for dowry made. This is the all evidence which has been produced by both the parties.

6. The first challenge to the Judgment by the learned counsel for the appellant, is regarding the validity of the conviction of the appellant under Section 304B, I.P.C. According to Section 304B, I.P.C, where the death of a woman occurs otherwise than in the normal circumstances within seven years of her marriage and it is shown that soon before the death she was subjected to cruelty or harassment by her husband in connection with any demand of dowry, such death will be called 'dowry death'. The 'dowry' means: any property or valuable security given or agreed to be given either directly or indirectly (a) by one party to marriage to the another party to the marriage; or (b) by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person; at or before or any time after the marriage, in connection with the marriage of the said parties. According to Section 304B, I.P.C, the demand of dowry should be made soon before her death and as per Section 113B of the Indian Evidence Act there is a presumption of a 'dowry death' by the person concerned if it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for or in connection with any demand for dowry. 'Cruelty' is an inhumane treatment and it is an act that causes mental sufferings and endangers to the life and health of the other. Thus, according to Section 304B. I.P.C, and Section 113B of the Indian Evidence Act, for the purpose of drawing a presumption as to the 'dowry death' it must be shown by the prosecution that soon before her death the woman was subjected by such person to cruelty or harassment for or in connection with any demand for dowry. In the present case, there is no evidence on record to establish that the appellant, soon before the death of Savitri, subjected her to cruelty or harassment in connection with any demand for dowry. As Smt. Savitri was not subjected to the cruelty by the husband soon before her death for demand of dowry, he has, therefore, wrongly been convicted and sentenced by the learned lower Court for the offence under Section 304B-B. I.P.C. and he deserves to be acquitted on this count.

7. Coming next to the conviction and sentence of the accused-appellant for the offence under Section 498A. I.P.C. A reading of Section 498A, I.P.C, shows that : whoever being the husband or the relative of the husband of a woman subject (s) such woman to such cruelty, shall be punished for imprisonment for a term which may extend to three years and shall, also, be liable for fine. The explanations (a)

and (b) to Section 498A, I.P.C, furnish an explanation for the word 'cruelty' which means any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or harassment of the woman where such harassment is with a view to forcing her or any person related to her to meet any demand or property or security or on account of failure to her or any person related to her to meet such demand. In the present case, there is ample evidence on record to show that repeated demands were made by accused Inder Raj for the articles of dowry and the money. There is, also, the evidence that Smt. Savitri made statement before PW 2 Ram Kumar and PW 3 Smt. Shanti right up to the time when she was taken by her father to her parental house and there she remained for a period of four to five years. When accused Inder Raj took-away Savitri three days before her death, he, at that time, also, asked his brother-in-law to pay Rs. 5000/- which he could not pay. PW 2 Ram Kumar, in his statement before the Court, has stated that two years after the marriage of Savitri, Smt. Savitri used to go to her in-laws' house and when his father went to see her, he was informed by Savitri that the accused and her in-laws used to harass her for bringing more dowry and, therefore, she was brought by her father to her parental house. When she was brought to her parent house, she informed them that she was being cruelly treated by her husband Inder Raj and brother-in-law. Similar is the statement of PW 3 Smt. Shanti - the mother of the deceased. Thus, from the evidence of these two witnesses it has, also, been proved that Smt. Savitri and her parents were harassed by the accused-appellant for money as well as for various dowry articles and the dowry articles, which were given by the parents of Savitri were recovered from the accused-appellant after the death of Savitri and were taken back by her parents from Inder Raj's house. These articles were admittedly given as dowry. From the evidence, produced by the prosecution, thus, the ingredients of Section 498A, I.P.C, have been established. I, therefore, confirm the conviction of the accused-appellant for the offence under Section 498A, I.P.C. The learned Additional Sessions Judge, while convicting the appellant, sentenced him to undergo three years rigorous imprisonment and a fine of Rs. 1000/- and in default of payment of fine further to undergo six months' rigorous imprisonment. The sentence, awarded by the learned lower Court, seems to be somewhat

excessive which deserves to be reduced.

8. In the result, the appeal filed by accused-appellant Inder Raj is partly allowed. The conviction and sentence of the accused-appellant for the offence under Section 304B, I.P.C, are set-aside but however, the conviction of the accused-appellant for the offence under Section 498A, I.P.C, is maintained. However, his substantive sentence for this offence is reduced from three years' rigorous imprisonment to two years' rigorous imprisonment and the amount of fine is also, reduced from Rs. 1000/- to Rs. 200/- and in default of payment of fine he shall further undergo one month's rigorous imprisonment.

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