

Suresh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-03-1999

Reported in : I(2000)DMC201; 1999(1)WLN234

Judge : V.G. Palshikar and; R.R. Yadav, JJ.

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

Appeal No. : Criminal Appeal No. 478 of 1997

Appellant : Suresh

Respondent : State of Rajasthan

Advocate for Def. : L.R. Upadhyaya, Adv.

Advocate for Pet/Ap. : P.N. Mohnani, Adv.

Disposition : Appeal dismissed

Judgement :

V.G. Palshikar, J.

1. Being aggrieved by the order passed by the learned Additional Sessions Judge, Abu Road in Sessions Case No. 8/93 the appellant has preferred this appeal on the grounds mentioned in the memo of appeal.

2. By the impugned order the learned Additional Sessions Judge has held the accused guilty of offence under Sections 304-B and 498-A of the Indian Penal Code. He has sentenced the accused to suffer imprisonment for life under Section 304-B and two years' rigorous imprisonment for the offence under Section 498-A. According to the accused this order of conviction and sentence is unsustainable in law. Hence this appeal.

3. The facts giving rise to the present appeal are that the accused was married to one Rekha who met unnatural death on 5.2.1993 within months of her marriage with the accused. It was claimed by the relatives of the victim that her unnatural death is caused by her husband, sister-in-law and mother-in-law as they used to persistently harass her claiming more dowry. All the three persons were, therefore, prosecuted in Sessions Trial No. 8/93. The prosecution has led evidence of 20 witnesses and several documents have been exhibited. The accused in his defence examined three witnesses and claimed reliance on certain documents on the basis of which it was urged that the accused persons are not guilty of any offence.

4. The learned Sessions Judge who conducted the trial on appreciation of oral and documents on record came to the conclusion that the death of Rekha was caused within months of her marriage and it was not in natural circumstances excepting the evidence on behalf of the prosecution that the accused persons were harassing the deceased for dowry only insofar as it was directed against the husband-Suresh and proceeded to acquit the mother-in-law and the sister-in-law. Consistent with the finding of guilt in relation to accused-Suresh sentence as referred to above was awarded by the learned Sessions Judge. It is this order which is impugned in this appeal on the grounds mentioned in the memo of appeal as also urged by the learned Counsel appearing for the accused at the time of hearing of this appeal.

5. With the assistance of the learned Counsel for the accused and the learned Public Prosecutor we have scrutinised the record and reappraised the evidence both oral and documentary and have heard the submissions at the Bar both by the learned Public Prosecutor and the learned Counsel for the accused.

6. It was urged by the learned Counsel for the accused that no case of any offence under Section 304-B is made out by the prosecution. According to the learned Counsel there is no evidence on record of the case showing that the death of the victim was otherwise than under normal circumstances. Heavy reliance was placed by the learned Counsel on the evidence of the doctor who conducted the post-mortem of the deceased-Rekha where the doctor has categorically admitted that from the examination of the dead body it cannot be said with certainty that the death was homicidal or suicidal or accidental. According to the learned Counsel, therefore, even if the evidence on record be demand of dowry and consequential harassment for the recovery of the same is accepted, no case for conviction under Section 304-B is made out. The learned Counsel urged that according to him, therefore, the learned Sessions Judge erred in recording the conviction as aforesaid.

7. We have reappreciated the evidence on record and we are in complete agreement with the finding of the learned Judge in relation to the offence being sufficient to prove beyond reasonable doubt that the accused harassed the deceased Rekha for bringing more dowry. P.W. 6 Bherumal is the father of the deceased-Rekha, P.W. 8 Nanak Ram is the maternal uncle of Rekha, P.W. 9 Daulat is brother of Rekha, P.W. 12 Ishwari Devi is mother of the deceased and P.W. 13 Dilip Kumar is other brother of deceased. All of them have deposed that the accused was harassing Rekha for dowry though on various occasions payments or gifts were given in the shape of dowry by the family of the deceased-Rekha. The scrutiny of the evidence of these witnesses has not disclosed anything which will discredit their testimony as untrustworthy. Evidence regarding demand, acceptance or insistence for getting dowry can come only from the members of the family. No person will publicly demand dowry or proclaim dowry harassment openly. Evidence of such harassment and such demand in normal circumstances has to come from within the family of the lady whose in-laws claim dowry because these are persons who will satisfy the demand of dowry. Consequently the testimony of such persons when it duly corroborates the material particulars cannot be rejected merely on the specious allegations that they are the near relations of the deceased and have a natural bias against the accused and their testimony is interesting nor it can be rejected on the ground that there is no

independent corroboration. It is not possible that a person will torture his wife for demand of dowry publicly or even demand dowry publicly. There cannot be, therefore, normally any independent evidence of such demand and torture in cases of dowry death. In view of the fact that we are confirming the finding of the learned Sessions Judge in relation to harassment of the wife by the accused-husband in the circumstances mentioned above we see no reason to capriciously repeat the evidence and our findings thereon for concurrence.

8. That takes us the legal contention regarding applicability of the provisions of Section 304-B to the proved facts of the case. Section 304-B of the Indian Penal Code read thus:

'304B. (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 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.'

It is, therefore, necessary for the prosecution to prove the following-

(i) that the death of woman is caused either by burns or by any bodily injury or occurrence otherwise than under normal circumstances;

(ii) that it is caused within 7 years of her marriage; and

(iii) it is shown that soon before her death she was subjected to cruelty or harassment by husband or any relatives of her husband for, or in. connection with, any demand for dowry.

9. If these things are proved then it is provided in the section that the death shall be called 'dowry death' and such husband and relatives shall be deemed to have caused her death. We have to see, therefore, whether the prosecution has proved these ingredients of Section 304-B. The fact that Rekha has met with death is not and cannot be disputed. From the evidence of the doctor P.W. 15 it is obvious that the death of Rekha is otherwise than in normal circumstances. It is true as contended by the learned Counsel that the death could be either homicidal or suicidal and there is no proof as to whether it is homicidal or suicidal. Yet it is true that there is no proof on record to hold the death as accidental because the death is caused by strangulation which cannot occur as an accident. It is either deliberately done by someone else and, therefore, is homicidal or is done by the person dying and is suicidal. In either case it is not a death under normal circumstances and, therefore, the prosecution has proved the first requirement of Section 304-B.

10. The evidence of P.Ws. 6, 8, 9, 12 and 13 proves that soon before her death Rekha was subjected to harassment by her husband and consequently death liable to be called 'dowry death'. The law presumes in such cases that the dowry death shall be deemed to have been caused by the husband or relatives. The offence is, therefore, deemed to have been committed by the accused if the other two requirements of Section 304-B are proved by the prosecution. It is consequently necessary that the prosecution is put to strict proof of both these ingredients before conviction under Section 304-B is awarded. In the present case it is obvious that the death of Rekha has occurred otherwise than in normal circumstances within 7 years of her marriage and she was subjected to harassment by her husband for dowry. The deeming provisions would, therefore, operate in the present case and the death shall be deemed to be a dowry death caused by the accused-appellant. In our opinion, therefore, there is no substance in this appeal.

11. In the result, the appeal fails and is dismissed.