

Manoj Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-21-2008

Reported in : RLW2008(3)Raj2027

Judge : G.S. Sarraf, J.

Appellant : Manoj Kumar

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

G.S. Sarraf, J.

1. The appellant Manoj Kumar has preferred this appeal against the judgment dated 6.5.2003 passed by Additional District & Sessions Judge (Fast Track) No. 1, Jaipur City, Jaipur in sessions case No. 148/2001 whereby the appellant has been convicted under Section 498A, 304B IPC and he has been sentenced to three years rigorous imprisonment and a fine of Rs. 500/- and in default of payment of the fine further imprisonment for three months under Section 498A IPC and to seven years rigorous imprisonment and a fine of Rs. 1,000/- and in default of payment of the fine further imprisonment for six months under Section 304B IPC.

2. The brief facts of the case are that on 8.4.99 one Ramesh Chand Soni lodged a report at the police station Sodala, Jaipur stating therein that his daughter Raj Kumari was married to the petitioner Manoj Kumar in May, 1997. Soon after the marriage her in-laws harassed her in connection with demand of Rs. 10,000/- as dowry. On 6.4.99, the appellant Manoj Kumar came to Agra and demanded Rs. 10,000/-. When he expressed his inability to give the above amount the appellant took Raj Kumari with him and on the very next day i.e. on 7.4.99 he received information that his daughter Raj Kumari was dead. It was alleged in the report that the appellant, his father, his mother and his brother killed Raj Kumari in pursuance of a conspiracy. On the basis of the above report the police station Sodala, Jaipur registered a case No. 108/99 and after usual investigation filed a charge sheet against the appellant and three others under Sections 498A, 304B IPC in the Court of Civil Judge (Junior Division) and Judicial Magistrate, First Class No. 11, Jaipur City, Jaipur who in turn committed the case to the Sessions Judge, Jaipur City. The case was ultimately transferred to the Court of Additional District and Sessions Judge (Fast Track) No. 1, Jaipur City/Jaipur. Learned Additional District & Sessions Judge (Fast Track) No. 1 framed charges against the appellant and three others under Sections 498A, 304B IPC. The appellant and the co-accused pleaded not guilty and claimed to be tried. The prosecution in order to establish its case examined 12 witnesses and exhibited documents from Ex. P1 to Ex. P3. The appellant and the co-accused examined four witnesses in defence. One of the accused Anar Devi, mother of the appellant, died during trial and, therefore, the case against her was dropped by order of the trial Court dated 19.5.2000. After hearing the parties learned trial Court by judgment dated 6.5.2003 acquitted the accused Tara Chand and Vikram but convicted the appellant under Sections 498A and 304B IPC and sentenced him in the manner as stated hereinabove. Aggrieved by the judgment the appellant has filed this appeal.

3. I have heard learned Counsel for the appellant and learned public prosecutor.

4. The postmortem examination on the body of the deceased Raj Kumari was conducted on 8.4.99 by a Medical Board consisting of two doctors. One of the members of the Medical Board Dr. H.L. Bairwa PW.9 has deposed that after considering FSL report Ex. P.5 and hysto-pathological report Ex. P6 the Medical

Board was of the opinion that the deceased Raj Kumari died due to asphyxia caused by anti-mortem hanging. Postmortem report is Ex. P.4 and the opinion of the Medical Board is Ex. P.7.

5. The case of the prosecution is that the deceased Raj Kumari died otherwise than under normal circumstances within seven years of her marriage and that soon before her death she was subjected to harassment by the appellant in connection with demand for dowry of Rs. 10,000/-.

6. The main witnesses regarding the alleged demand of money and also harassment and beating of the deceased are the father, mother and brother of the deceased. It is, therefore, necessary to briefly examine their evidence.

7. Kamla Devi PW. 2 is the mother of the deceased. She has deposed that the appellant and his parents and brother asked the deceased to bring Rs. 10,000/-. In cross-examination she has stated that she does not know as to why the accused wanted the deceased to bring Rs. 10,000/-. Ramesh Chand PW. 4 is the father and Ashok Kumar PW. 6 is the brother of the deceased. They have stated that on 6.4.99 the appellant came to Agra and made a demand of Rs. 10,000/- and when they expressed their inability to meet the demand the appellant took Raj Kumari with him and on the next date they received the information that Raj Kumari had expired, They have stated that whenever the deceased Raj Kumari came she told that the accused harassed her and beat her in connection with the demand of Rs. 10,000/-. (Ashok Kumar PW. 6 says that the demand was of Rs. 10,000-15,000). In cross examination both the witnesses have stated that the appellant demanded the above amount for some trade or business. Ramesh Chand PW. 4 has admitted that the accused did not make any demand at the time of marriage. Lalla Singh PW. 1 and Laxman Singh PW. 5 also refer to the demand of Rs. 10,000/-.

8. Kamla Devi PW. 6 the mother of the deceased does not know as to why the demand of Rs. 10,000/- was made and accepting the statements of the father Ramesh Chand PW. 4 and the brother Ashok Kumar PW. 6 on their face value, the utmost which can be held is that the appellant asked his wife Raj Kumari to bring Rs. 10,000/- for the purpose of some trade or business.

9. The one essential ingredient of Section 304B IPC, apart from others, is that the woman is 'subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry.' The explanation appended to sub-section CD of Section 304B IPC says that 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. Section 2 of the Dowry Prohibition Act reads as under:

2. Definition of 'Dowry' - in that Act 'dowry' means any property or, valuable security given or agreed to be given either directly or indirectly--

(a) by one party to a marriage to the other 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 at any time after the marriage in connection with the marriage of the said parties but does not include dower or mahr in the case of person to whom the Muslim Personal Law (Shariat) applies.

10. In view of the aforementioned definition of the word 'dowry' any property or valuable security should be given or agreed to be, given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. A demand for money in connection with some trade or business cannot be termed as a demand for dowry. The evidence adduced by the prosecution does not, therefore, show that any demand for 'dowry' as defined in Section 2 of the Dowry Prohibition Act was made by the appellant as what was allegedly asked for was an amount of Rs. 10,000/- for the purpose of trade or business. Since an essential ingredient of Section 304B IPC viz. demand for dowry is not established, the conviction of the appellant under Sections 304B IPC cannot be sustained. I am supported by 2007 II AD (SC) 417.

11. As regards the offence under Section 498A IPC the demand of Rs. 10,000/- made for the purpose of some trade or business cannot be termed as an unlawful demand. If the appellant wanted Rs. 10,000/- to set himself up in business it was nothing to do with dowry and it cannot be said that the appellant made an unlawful demand. Therefore, conviction under Section 498A IPC also seems to be far fetched and cannot be sustained. I may refer to 2006(1) Crimes 172.

Accordingly I allow the appeal and set aside the conviction of the appellant for offences punishable under Sections 304B and 498A IPC. The appellant shall be set at liberty if not required in any other case. The amount of fine, if paid, be refunded to the appellant.

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