

Suresh Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-18-2003

Reported in : II(2004)DMC350

Judge : Shiv Kumar Sharma and; Khem Chand Sharma, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304B, 306 and 498A; [Evidence Act, 1872](#) - Sections 113A and 113B

Appeal No. : Criminal Appeal No. 135 of 1998

Appellant : Suresh Kumar

Respondent : State of Rajasthan

Advocate for Def. : B.M. Sharma, Public Prosecutor

Advocate for Pet/Ap. : Arvind Kumar Gupta,; Alka Bhatnagar and; Ritika Bhadra

Judgement :

Shiv Kumar Sharma, J.

1. The appellant was placed on trial before the learned Additional Sessions Judge, Jhunjhunu in Sessions Case No. 9/96 (138/94) for having committed dowry death of his wife Suman. Learned Judge vide judgment dated January 1, 1998 convicted and sentenced the appellant as under:

Under Section 304B, I.P.C. : To suffer Imprisonment for life. Under Section 49-A, I.P.C. : To suffer three years Rigorous Imprisonment and fine of Rs. 2,500/- in default to further suffer six months' Simple Imprisonment.

Sentences were ordered to run concurrently.

2. The Police Station Kotwali, Jhunjhunu commenced the Investigation under Sections 498A and 304B, I.P.C. on the written report submitted on July 13, 1994 by Virendra Pratap Singh, the brother of deceased Suman. It was inter alia stated in the report that Suman, who was married to appellant in the month of April, 1992 used to be harassed and humiliated by the appellant. On July 13, 1994 she was admitted to the hospital. The informant found a letter kept by her in her blouse, according to which, Suman consumed poison because soon after her marriage she used to be tortured by the appellant. The letter was enclosed with the written report. The Investigating Officer arrested the appellant and after usual Investigation filed the charge-sheet. In due course the case came up for trial before the learned Additional Sessions Judge, Jhunjhunu. Charge under Sections 498-A and 304-B, I.P.C. was framed against the appellant, who denied the charge and claimed trial the prosecution in support of its case examined as many as 14 witnesses. In his explanation under Section 313, Cr.P.C. the appellant pleaded innocence and stated that Suman committed suicide because she failed twice or thrice in her B. A. examination. Two witnesses were examined in defence to establish that demand of dowry was never made by the appellant. Learned Trial Judge on hearing final submissions convicted and sentenced the appellant as indicated hereinabove.

3. Learned Counsel for the appellant vehemently criticised the impugned judgment and contended that it could not be established that soon before her death Suman was either treated with cruelty or harassed in connection with the demand of dowry. In absence of any such evidence it is not permissible to take recourse to the legal presumption envisaged in Section 113B of the Evidence Act, learned Counsel took us through the statements of prosecution witnesses and placed reliance on *Ratnesh Kumar v. State of Chhatisgarh*, VII (2001) SLT 356=IV (2001) CCR 177 (SC)=JT 2001(8) SC 599; *Swamy Prahaladdas v. State of M.P. and Anr.*

1999 Cr. L.R. (SC) 141; Mahendra Singh and Anr. Gayatribai v. State of M.P., I (2003) SLT 260 (SC)=I (2003) CCR 131 (SC)=1995 Supp. (3) SCC 731; Gurucharan Kumar and Anr. v. State of Rajasthan, 2003 SCC (Cri.) 675; Bhakhar Ram and Anr. v. State of Rajasthan, II (1995) CCR 729=1995 Cri. LJ. 1345.

4. Per contra, learned Public Prosecutor supported the impugned judgment and contended that the prosecution proved beyond reasonable doubt that Suman was treated with cruelty soon before her death in connection with the demand of dowry and as she died within 7 years of her marriage, the presumption under Section 113B of Evidence Act was rightly drawn.

5. For proper appreciation of the rival submissions it will be appropriate to consider the primary requirements for the offence under Section 304B, I.P.C. In order to find the accused guilty of the offence under Section 304B, I.P.C. the prosecution has to establish that woman died of unnatural death within 7 years of her marriage and that soon before her death she was subjected to cruelty or harassment for or in connection with the demand of dowry.

6. Section 113B of the Evidence Act provides that when the question is whether a person has committed the dowry death of woman and 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, the Court shall presume that such person had caused the dowry death.

7. Coming to the evidence of the instant case we find from testimony of the informant Virendra Pratap (P.W. 1), brother of Suman, that Suman was married to appellant on April 24, 1992 and as and when Suman after her marriage visited her 'Peehar' she used to make complaint against the appellant for his ill treatment with her in connection with the demand of dowry. The appellant, being unemployed used to demand money from her. On July 6, 1994 when he came to know that Suman was admitted to B.D. Hospital, Jhunjhunu he along with his mother and father rushed to the hospital, where he was informed by Dr. Karmaveer that Suman consumed Aldrine. At the hospital he noticed a letter half concealed in the blouse of Suman. He got the letter pocketed and handed it over to the Police with his written report on July 13, 1994.

8. Tara Singh (P.W. 2) deposed that on July 1, 1994 on seeing him Suman started weeping and told that her in-laws used to demand money and scooter from her. He then went to the house of in-laws of Suman and demanded explanation from them.

9. Dharampal Singh (P.W. 3), who is cousin of Suman, deposed that once Suman told him that her in-laws used to harass her in regard to demand of dowry. Sultan Singh (P.W. 4), father of Suman, stated that the appellant used to harass Suman in connection with the demand of scooter. He then went to the in-laws of Suman and persuaded them not to ill-treat her.

10. Dr. Satish Chandra Vyas (P.W. 7) conducted post-mortem on the dead body of Suman and as per Post Mortem Report (Ex. P-9), the cause of death was asphyxia due to respiratory failure. As per FSL report (Ex. P-10) chemical examination of viscera gave positive test for the presence of Dimethoate insecticide, (an organophosphorous insecticide).

11. Hulash Ram (P.W. 14), the Investigating Officer, got seized the document (Ex. P-4), which was in the handwriting of Suman, vide recovery memo (Ex. P-6) and it was sent along with the letter (Ex. P-1) to FSL for comparison. Vide the FSL report (Ex. P-19) letters (Ex. P-I) and (Ex. P-4) showed significant similarities but in absence of more fast speed no definite opinion about the handwriting of letter (Ex. P-I) was given.

12. Learned Counsel for the appellant persuaded us to discard the recovery of letter (Ex. P-I) and raised following objections to probabalise that it is a forged document, concocted by Virendra Pratap in order to falsely implicate the appellant:

(i) Neither the date was mentioned in the letter nor did it bear signatures of Suman.

(ii) Suman died on July 7, 1994, whereas the letter was submitted with the written report on July 13, 1994 and no explanation was put forth for this delay.

(iii) Testimony of informant Virendra Pratap that the letter was seen by him in the blouse of Suman and he got in pocketed quietly, is highly improbable and

unbelievable.

13. We find ourselves unable to agree with the submissions of learned Counsel because a close look at the letter (Ex. P-I) reveals such narrations that could be known to Suman and appellant. Such narrations could not have been scripted by a stranger. Moreover, the letter does not bear any reference in regard to demand of dowry. Had it been concocted by Virendra Pratap, the incident of harassment of Suman in connection with demand of dowry would have been incorporated in it. There may be exaggeration in the statement of Virendra Pratap about the manner of recovery of letter but for that reason only we cannot disbelieve the entire testimony of Virendra Pratap. The delay in lodging F.I.R. is not fatal in the facts and circumstances of the case. It appears from the record that Virendra Pratap intended to take action against the appellant but his father Sultan Singh being heart patient did not have any intention to proceed.

14. Their Lordships of Supreme Court in *State of U.P. v. M.K. Anthony*, AIR 1985 SC 48, indicated that while appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and Evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the Investigating Officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

15. The infirmities pointed out by learned Counsel for the appellant do not go to the root of the case. In view of the FSL report (Ex. P-19) and the narration incorporated we are satisfied that letter (Ex. P-I) was written by Suman and somehow Virendra Pratap could lay hand to it, but looking to fact that no incident about demand of dowry got incorporation in the letter it is difficult for us to believe that

Suman soon before her death was harassed or ill-treated in connection with demand of dowry. Even in the proceedings initiated under Section 174, Cr.P.C. no allegations for demand of dowry were levelled by Sultan Singh (P.W. 4) against the appellant. Therefore, we are of the view that although Suman died under abnormal circumstances within 7 years of her marriage, she soon before her death was not harassed by the appellant for or in connection with the demand of dowry. Thus no presumption under Section 113B of the Evidence Act can be drawn against the appellant and charge under Section 304B, I.P.C. is not established against the appellant.

16. But, from the available material on record we find ample evidence to establish that life of Suman was made intolerable by the appellant by ill-treating her and beating her frequently as her every action used to be closely watched and suspected. It was on account of physical and mental torture given by the appellant that Suman committed suicide within 7 years of her marriage.

17. Section 113A of the Evidence Act provides that when the question arises as to whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

As per explanation appended to Section 113A the word 'cruelty' shall have the same meaning as in Section 498A of the Indian Penal Code.

According to Section 498A, I.P.C. cruelty means:

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or

valuable security or is on account of failure by her or any person related to her to meet such demand.

18. The prosecution in the instant case is able to establish that it was the cruel conduct of the appellant that drove Suman to commit suicide. Section 306, I.P.C. which deals with abatement of suicide, provides that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. As the appellant abetted Suman to commit suicide we find him guilty under Section 306, I.P.C.

19. It is no doubt true that charge under Section 306, I.P.C. was not framed against the appellant but all facts and ingredients as mentioned in the statement of charges framed under Sections 498A and 304B, I.P.C cover the ingredients of Section 306, I.P.C and the appellant Suresh Kumar can be convicted under Section 306, I.P.C. In K. Prema S. Rao and Anr. v. Yadla Srinivas Rao and Ors. II (2002) DMC 776 (SC)=VI (2002) SLT 168=(2003) 1 SCC 217, Their Lordships of Supreme Court propounded thus:

'Mere omission or defect in framing charges does not disable the Criminal Court from convicting the accused for the offence which is found to have been proved on the evidence on record. The Code of Criminal Procedure has ample provisions to meet the situation like the one before us. From the statement of charge framed under Section 304B and in the alternative Section 498A, I.P.C. (as quoted above) it is clear that all facts and ingredients for framing charge for offence under Section 306, I.P.C. existed in the case. The mere omission on the part of the trial Judge to mention Section 306, I.P.C. with Section 498A, I.P.C. does not preclude the Court from convicting the accused for the said offence when found proved.'

In para 25 Their Lordships further observed as under:

'As provided in Section 21, Cr.P.C. omission to frame charge under Section 306, I.P.C. has not resulted in any failure of justice. We find no necessity to remit the matter to the Trial Court for framing charge under Section 306, I.P.C. and direct a retrial for that charge. The accused cannot legitimately complaint of any want of

opportunity to defend the charge under Section 306, I.P.C. and a consequent failure of justice, the same facts found in evidence, which justify conviction of the appellant under Section 498A for cruel treatment of his wife, make out a case against him under Section 306, I.P.C. of having abetted Commission of suicide by the wife. The appellant was charged for an offence of higher degree causing 'dowry death' under Section 304B which is punishable with minimum sentence of seven years rigorous imprisonment and maximum for life. Presumption under Section 113A of the Evidence Act could also be raised against him on same facts constituting offence of cruelty under Section 498A, I.P.C. No further opportunity of defence is required to be granted to the appellant when he had ample opportunity to meet charge under Section 498A, I.P.C.'

20. Ratio indicated in K. Prema S. Rao's case has further been approved in Him Lal v. State (Govt. of NCT) Delhi, II (2003) DMC 206 (SC)=II (2003) CCR 160 (SC)=AIR 2003 SC 2865. It was indicated by Their Lordships in para 11 thus:

'It may be noted that though no charge was framed under Section 306, I.P.C., that is inconsequential in view of what has been stated by a three Judges Bench of this Court in K. Prema S. Rao and Anr. v. Yadla Srinivas Rao and Anr. (2003 (1) SCC 217.'

21. As a result of the foregoing discussion we dispose of the instant appeal as under:

(i) We partly allow the appeal of appellant Suresh Kumar. His conviction under Section 304B, I.P.C. stands set aside, instead we convict him under Section 306, I.P.C. As the appellant has already remained in custody for a period of more than five years and six months, the ends of justice would be met in sentencing him to the period already undergone by him in confinement.

(ii) We confirm the conviction of the appellant under Section 498A, I.P.C. and order both the sentences to run concurrently. As the sentence awarded under Section 498A, I.P.C. has already been suffered by the appellant, he shall set at liberty forthwith if not required in any other case.

(iii) The impugned judgment of the learned trial Judge stands modified as indicated above.

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