

Veero Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-08-2005

Reported in : II(2006)DMC81; 2006(1)WLC630

Judge : Narendra Kumar Jain, J.

Acts : [Evidence Act, 1872](#) - Sections 113B and 114; [Indian Penal Code \(IPC\), 1860](#) - Sections 201, 304B, 306 and 498A; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : Criminal Appeal No. 1077 of 2002

Appellant : Veero

Respondent : State of Rajasthan

Advocate for Def. : B.K. Sharma, P.P.

Advocate for Pet/Ap. : Tripurari Sharma, Adv.

Judgement :

Narendra Kumar Jain, J.

1. The accused appellant Veero s/o Mojaram has been convicted and sentenced by the Additional Sessions Judge (FT) No. 1, Dholpur vide judgment and order dated 13.8.2002 under Section 304B, I.P.C. to 7 years' R.I. and a fine of Rs. 200,

in default of payment of fine to further undergo 1 month's S.I. and under Section 498A, I.P.C. to 2 years' R.I. and a fine of Rs. 200, in default of payment of fine to further undergo 1 month's S.I. Both the sentences were ordered to run concurrently. Being aggrieved with the same, the present appeal has been filed before this Court.

2. P.W. 8 Roopesh, the brother of deceased Suman lodged a typed report before the Superintendent of Police, Dholpur on 4.6.2001 about death of her sister Suman on 1.6.2001 in village Nidera, P.S. Kaulari, District Dholpur. The said report was directed to SHO, who registered FIR No. 94/2001 on 5.6.2001 at 1.40 p.m. at P.S. Kaulari under Sections 304B and 201, I.P.C. In the report, it was alleged that marriage of his sister Suman took place on 12.3.1996 with Veero s/o Mojaram. Since after her marriage, there was continuous demand of one scooter, gold ring and colour T. V. from her in-laws. They use to harass and give beating to his sister. On 1.6.2001, two persons came and told him that his sister Suman is seriously ill and he has been called. He reached village Nidera at about 5 p.m. and saw that his sister had already died. He saw that number of injuries were there on the person of deceased. He wanted to go at Police Station but 10-12 persons tied his hands from the back and dead body was cremated. The police investigated the matter and filed a charge-sheet against 6 accused persons including appellant. The case was committed for trial to the Court of Sessions Judge, Dholpur who transferred the same for disposal of the Court of Additional Sessions Judge No. 1 (FT), Dholpur.

3. The Trial Court framed charge against the appellant and other two accused persons namely Mojaram his father and Mst. Ramkatori, his mother under Sections 304B, 498A and 201, I.P.C. and against other co-accused persons namely Bhagwan Singh, Bobby and Jairam under Section 201, I.P.C. The accused persons denied the charge and claimed to be tried. The prosecution examined 16 witnesses P.W. 1 to P.W. 16 and produced documentary evidence Ex. P. 1 to Ex. P. 10. Thereafter statements of the accused persons were recorded under Section 313, Cr. P.C. who stated that Suman died due to severe fever. In defence statement of D.W. 1 Ram Babu was recorded.

4. The learned Trial Court after hearing arguments from both the sides acquitted all other accused persons from all the charges levelled against them. The accused appellant was also acquitted from the charge under Section 201, I.P.C. However, appellant was convicted and sentenced under Sections 304B and 498A, I.P.C. as mentioned above.

5. The learned Counsel for the appellant contended that learned Trial Court has committed an illegality in convicting the accused appellant for the above offence. He submitted that prosecution failed to prove beyond any reasonable doubt that death of Smt. Suman was caused by any burns or bodily injury or occurs otherwise than under normal circumstances and further that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of his husband for or in connection with any demand of dowry. He referred the statement of prosecution witnesses and on that basis submitted that there was no cruelty or harassment with deceased for demand of dowry by her in-laws including appellant much less soon before her death and in absence of such type of evidence, the conviction of the appellant is bad in law and deserves to be set aside by this Court. He further contended that the independent witnesses who were neighbourers were declared hostile and conviction is based on interested and relatives witnesses. He also contended that the incident took place on 1.6.2001 and complainant was very much present during cremation of dead body but no immediate report was lodged and no explanation has been given for the delay of 4 days in lodging the FIR. He, therefore, contended that the appellant has wrongly been convicted for the above offence and he may be acquitted. Mr. T.P. Sharma, learned Counsel for the appellant placed reliance upon *Kaliyaperumal and Anr. v. State of TamilNadu III* (2003) CCR 168 (SC) : 2003 Cri. LJ (SC) 4321 and *Satpal v. State of Haryana* 1998 Cr. L.R. (SC) 668.

6. The learned P.P. submitted that delay in lodging the FIR has been explained by complainant P.W. 8 in his statement before the Court. He also contended that deceased was subjected to cruelty and harassment soon before her death is proved from the statement of the father of the deceased namely BabuLal P.W. 9. He, therefore, contended that learned Trial Court was justified in convicting the accused appellant.

7. I have considered the submissions of the learned Counsel for the appellant as well as the learned P.P. and examined the impugned judgment as well as the record of the Trial Court.

8. In *Kaliyaperumal and Anr. v. State of Tamil Nadu* (supra) the Hon'ble Supreme Court after considering the provisions of Section 304B, I.P.C. and Section 113B of the Evidence Act held as under:

A conjoint reading of Section 113B of the Evidence Act and Section 304B, I.P.C. shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The expression 'soon before' is very relevant where Section 113B of the Evidence Act and Section 304B, I.P.C. are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304B, I.P.C. and Section 113B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression 'soon before' used in Section 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods 'soon after the theft' is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There

must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

9. In *Satpal v. State of Haryana* (supra) after considering the provisions of Sections 304B, 498A and 306, I.P.C. and the evidence of that particular case the Hon'ble Supreme Court held as under:

Disputing the said contention of the learned Counsel for the appellant, Mr. Prem Malhotra, the learned Counsel appearing for the respondent, has submitted that the death had taken place within seven years of marriage and the brother of the deceased had deposed about the demand of dowry and the humiliation of the deceased on account of such dowry demand. He has also submitted that aluminium phosphate is not expected to be consumed by the deceased inadvertently, if the convincing evidence for which conviction under Section 304B, I.P.C. of the appellant have been made in the absence of sufficient evidence. We, therefore, set aside such convictions and sentences passed against the appellant. But so far as the conviction of the appellant under Section 498A, I.P.C. is concerned, it appears to us that there is direct and convincing evidence that the deceased (sic) been humiliated and treated with cruelty on some occasions by the (sic) appellant and also the co-accused who had died before the trial. Therefore, (sic) conviction under Section 498A, I.P.C. is justified in the facts and (sic) instances of the case and there is no occasion to interfere with such (sic) conviction and sentence passed against the appellant. The appellant is (sic) stated to have already served out the sentence for the conviction under (sic) Section 498A, I.P.C, his bail bond should stand discharged. The appeal is disposed of accordingly.

10. The essential components of Section 304B, I.P.C. are: (i) a death of a woman occurring otherwise than under normal circumstances within 7 years of marriage, (ii) before her death she should have been subjected to cruelty and harassment in connection with any demand of dowry. When the above ingredients are fulfilled the husband or his relatives, who subjected her to such cruelty or harassment can be

presumed to be guilty of offence under Section 304B. The prosecution is expected to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution.

11. So far as first ingredient of Section 304B, I.P.C. is concerned, it is borne out from the record that the marriage of Suman took place on 12.3.1996 and she died on 1.6.2001, therefore, she died within 7 years from marriage. However, the question remains for decision as to whether her death occurred by any burns or any bodily injury or otherwise than under normal circumstances and further 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 of dowry. There are two sets of prosecution witnesses in the present case. One set belongs to independent witnesses who are residents of village Nidera Khurd where Suman died and they are neighbored of in-laws house of Suman. The other set of prosecution witnesses belongs to relatives of deceased Suman. So far as first set of prosecution witnesses are concerned, the same were declared hostile by the prosecution during their statements recorded before the Trial Court. P.W. 1 Pooran, P.W. 2 Kangliya, P.W. 3 Charni, P.W. 5 Smt. Guddi and P.W. 6 Rambabu were declared hostile. So far as other set of prosecution witnesses are concerned P.W.

8 Mukesh, the brother of deceased, P.W. 9 Babulal, father of the deceased, P.W. 10 Smt.puspa sister-in-law of the deceased, P.W. 11 Bobby another brother of deceased, P.W. 12 Mahendra Singh, uncle, P.W. 13 Ratan Singh, another uncle, stated that marriage of Suman took place on 12.3.1996 and about Rs. 75,000 were spent in the marriage. Subsequently her husband and his relatives used to demand scooter and harass her for the same.

12. P.W. 8 her brother stated that on the date of incident one person Gabbar came and informed him that his sister is seriously ill and admitted in hospital at Mania. He reached there but she was not there. Thereafter Gabbar told him that his sister has died, then he reached at Nidera where he saw that his sister had already died. When he saw her face then he came to know that there was injury on her skull at

right side. However, he admitted that her dead body was cremated subsequently. There is no dispute that no report was immediately lodged and as such no postmortem was conducted in the matter. The cause of death is not known from the documentary evidence. He stated that he reached at about 5 p.m. in village Nidera and thereafter about two hours the cremation took place. He came back to his village on the second day. He was confronted with his statement recorded under Section 161, Cr. P.C. There was no reference of injuries on the person of Suman in Ex. D. 2. He admitted that he was not confined in any room. He was not tied up with any tree. No report was lodged at any point of time about beating by her husband for demand of dowry.

13. P.W. 9 Babulal, father stated that two persons came from in-laws of Suman including one Gabbar and told them that Suman is seriously ill and is admitted in hospital at Mania. Thereafter he sent his son Mukesh along with those persons. Mukesh came back after two days and told them that he saw dead body of Suman and there was one injury on her head. He resisted for cremation but her hands were tied up and he was allowed to go after two days. He was also confronted with his statement recorded under Section 161, Cr. P.C. and he stated that in Ex. D. 1 that there is no reference of any cruelty with deceased in connection with or for demand of dowry. There is no reference in Ex. D. 1 that Mukesh was not allowed to go for about 2 days by her in-laws from their village. There is no reference in Ex. D. 1 that Mukesh his son told him that there was any head injury on the dead of deceased.

14. P.W. 10 Smt. Pushpa, the sister-in-law stated that Suman was admitted in hospital and thereafter her husband went at Nidera and came on second day and told him that Suman has died. She admitted in her cross-examination that as and when Suman was called to come at their village, her in-laws never refused to send her. She admitted that her husband Mukesh, brother-in-law and father-in-law Babulal went Nidera on same day. They informed that Suman has died.

15. P.W. 11 Bobby another brother of deceased stated that he did not go to village Nidera even after receipt of message of her illness and death. Mahendra Singh P.W. 12, uncle of deceased admitted that he, Babu Lai, Ratan Singh, Bobby and

2-4 other persons reached Nidera on the date of incident itself at about 2-3 p.m. They came back to their village on second day. P.W. 13 Ratan Singh, another uncle of the deceased also admitted that he went Nidera on the second day and he saw the parents of the deceased and her brother there.

16. From the discussion of above prosecution statements it becomes clear that an information about seriousness of Suman was given by her in-laws and her brother Mukesh reached there and subsequently parents, uncle and another brother also reached. However, their explanation is that Mukesh saw the dead body but other persons reached after cremation of dead body, but it appears that they all reached at village Nidera. The dead body was cremated after reaching of Mukesh. Mukesh was not in wrongful confinement there. No immediate report was lodged by him. The post-mortem of the dead body was not conducted.

17. So far as harassment and cruelty soon before her death is concerned, there is no evidence except the statement of father P.W. 9 Babulal who stated that about 14-15 days ago he had gone to meet his daughter Suman at Nidera and he stayed there in night. Her husband and parents-in-law were quarreling with her on the demand of dowry and she was beaten also but he did not try to rescue her. However, the said fact was not mentioned in his statement Ex. D. 1 before Investigating Officer under Section 161, Cr. P.C. and it is not corroborated by statement of his son Mukesh P.W. 8 and daughter-in-law Smt. Pushpa P.W. 10, P.W. 11 Bobby and Mahendra Singh P.W. 12 and Ratan Singh P.W. 13. So far as neighbours of her in-laws, who were independent witnesses, are concerned they were examined by prosecution but they all turned to hostile and as such prosecution has failed to prove that there was harassment or cruelty soon before her death for or in connection with any demand of dowry.

18. So far as cause of death of Suman is concerned her post-mortem was not conducted, therefore, medical report in this regard is not available. However, prosecution examined P.W. 16 Dr. Sangeeta Gupta, Medical Officer, Primary Health Centre, Mania, who stated that she saw one patient who was suffering with severe fever and she was immediately advised to take her to the hospital, Dholpur. She has stated that she did not see any external injury on her person. The

prosecution has not declared P.W. 16 as hostile. From statement of P.W. 16 it appears that her statement was also recorded under Section 161, Cr. P.C. (Ex. D. 7) wherein she stated that she saw the deceased Suman and after seeing her she advised to take her to the hospital. In cross-examination she has stated that how much degree temperature she was having is not known to her. D.W. 1 Rambabu resident of village Nidera was examined and he has stated that wife of Veero was suffering with severe fever and thereafter they got her admitted at Mania Hospital but doctor told that she is having 106 degree temperature and they should take her to Dholpur Hospital. When they were going to Dholpur Hospital she died on the way itself, therefore, they brought her to back. So far as oral testimony is concerned, there is no evidence except P.W. 8, who stated that he saw one scalp injury on the dead body of Suman. So far as other witnesses like father, uncle and sister-in-law are concerned they did not saw the dead body and they came to know about it as per statement of P.W. 8 Mukesh. Further the statement of P.W. 8 has not been corroborated by the prosecution witness i.e., P.W. 16, but from their statements it is not clear as to whether she died because of head injury or severe fever.

19. So far as Ex. P. 1 to Ex. P. 3 are concerned, it reveals that she fell down in her in-laws house and became unconscious and sustained one injury on her head and she was taken to hospital immediately. Now whether there was any injury on the head of the deceased or even if it is presumed that injury was there but whether it was due to this fact that she fell down or whether she was given any beating by the appellant is not clear from the prosecution evidence. From the prosecution witness itself it reveals that there was no external injury on the person of deceased. The report was not immediately lodged by P.W. 8 Mukesh and no post-mortem was conducted. The explanation of P.W. 8 that his hands were tied up and he was now allowed to go is not corroborated with the statements of any other prosecution witnesses. Although his sole testimony is not believable but even on second day when, as per his own statement, he was allowed to go, then also he did not lodge the report on 2.6.2001 and till 4.6.2001 no report was lodged. From the same of father and uncle also it reveals that they reached at village Nidera on the same day but they did not lodge any report of the incident when they came to know about the so called injury from Mukesh. They have not given any explanation

for not lodging the FJR immediately.

20. In these circumstances it becomes clear that neither any explanation for not lodging the report immediately has been given by the prosecution nor it is clear that so called injury on the scalp of deceased Suman, which is not corroborated, was due to beating by the appellant or whether it was because she fell down as mentioned in Ex. P. 1 to Ex. P. 3.

21. It is also clear that even if her death is presumed to have been occurred otherwise than under normal circumstances then still the prosecution case is lacking 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 of dowry.

22. In these circumstances find that there is no sufficient evidence much less cogent evidence to believe the persecution case and as such the charge under Section 304B, I.P.C. is not proved. The Trial Court has not considered the above aspect of the matter in its judgment and has wrongly convicted and sentenced the accused appellant, therefore, his conviction under Section 304B, I. P.C. is liable to be set aside. So far as offence under Section 498A, I.P.C. is concerned, I find that there is evidence of P.W. 8 to P.W. 13 about demand of one scoter by the appellant and harassment in connection with it, therefore, offence under Section 498A I.P.C. is proved.

23. In the result, the appeal is partly allowed. The conviction of the appellant under Section 304B, I.P.C. is set aside but conviction and sentence under Section 498A, I.P.C. is maintained. The appellant has already undergone sentence of imprisonment for about 3 years 4 months, therefore, the appellant be released forthwith, if he is not required in any other case.