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Vijendra Kumar Vs. State

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Court : Rajasthan

Decided On : Sep-22-2005

Reported in : 2(2006)DMC568

Judge : Satya Prakash Pathak, J.

Acts : Code of Criminal Procedure (CrPC) , - Sections 174, 313, 374(2) and 428; Evidence Act, 1872 - Sections 113B; Dowry Prohibition Act, 1961 - Sections 2, 3 and 4; Dowry Prohibition Act, 1984 - Sections 63; Indian Penal Code (IPC), 1860 - Sections 304B and 498A

Appeal No. : Criminal Appeal No. 793 of 2003

Appellant : Vijendra Kumar

Respondent : State

Advocate for Def. : N. Moolchandani, Public Prosecutor

Advocate for Pet/Ap. : Shambhoo Singh, Adv.

Disposition : Appeal dismissed

Judgement :

Satya Prakash Pathak, J.

1. Appellant Vijendra Kumar has filed this appeal under Section 374, Cr.P.C. against the judgment of conviction and order of sentence dated 21.7.2003 passed by learned Addl. District & Sessions Judge (Fast Track) No.1, Doongarpur in Sessions Case No. 26/2002, whereby the appellant has been convicted and sentenced as under:

Under Punishment

Section

498A, IPC Three years' simple imprisonment and fine of Rs. 500, in

default of payment to further undergo three months' simple

imprisonment.

304B, IPC Seven years' simple imprisonment and fine of Rs. 1000 in

default of payment to further undergo six months' simple

imprisonment.

Both the sentences were ordered to run concurrently and the accused-appellant was allowed benefit of set-off under Section 428, Cr.P.C.

2. Briefly stated, the facts of the case are that an application Ex. P/1 was filed by P.W.1 Bhagwatilal, father of deceased Neetu, before the SDM, Doongarpur, stating therein that he had married his daughter Neetu with accused Vijendrakumar about three months back in village Bankoda as per the traditions of their casts on 1.6.2001 and out of the said period of three months she along with her husband stayed at his house for a week's time and after about one month of the marriage demand of Rs. 50,000 as dowry was made giving time of one month. It was further stated by said applicant P.W.I Bhagwatilal in the application that as he was a low paid employee he could not fulfil that demand and due to that his daughter was given beatings by accused after taking heavy liquor and she was tortured. His daughter told him many times about this on phone. The accused also threatened him on telephone of one neighbour Gulab Singh that if he (applicant) in

his absence went to accused's house, he would break the legs of applicant and his daughter would be killed. Before three-four days of the incident, the accused, his mother and Neetu came to Motagaon and told his wife that they will shift to Ahmedabad and took away the jewellery of his daughter and after four days of that his daughter was burnt by pouring kerosene on her. That day was his mother's 'Chha Mahi Day' (an occasion that comes after six months of someone's death) and the accused had phoned him that he would see that his daughter meets with the applicant at 4 o'clock and at about 5 o'clock he burnt her after pouring kerosene on her.

3. On that information, case No. 126/2001 was registered and investigation started and after investigation, challan was filed against accused-appellant under Section 498A and 304B, IPC.

4. After hearing the parties on framing of charge on 4.3.2002, the charges under Sections 498A and 304B, IPC were framed and read over to him. The accused denied the charges and claimed trial.

5. During trial, the prosecution in support of its case examined 24 witnesses and tendered 22 documents in evidence. After close of prosecution evidence, the accused in his statement recorded under Section 313, Cr.P.C. denied the prosecution story and stated that he had reached at his house from Sagwara and was washing his hands and feet, at that time his wife Neetu was cooking food on a stove and when she stood to take a container, her Sari caught fire. He further stated that he had tried to save her and in the process sustained injuries. He claimed himself to be innocent but did not produce anyone in defence. He, however, got exhibited documents Exs. D/1 to D/7.

6. The learned Addl. Sessions Judge, after hearing the parties, came to the conclusion that offence under Sections 498A and 304B of the IPC is made out against the accused-appellant and vide his judgment of conviction and order of sentence dated 21.7.2003 has convicted and sentenced the accused-appellant as indicated above.

7. I have heard learned Counsel for the parties and carefully perused the material available on record.

8. Before examining the contentions raised by learned Counsel for the parties, it would be appropriate to give a brief resume of the evidence led by the prosecution.

9. P.W.1 Bhagwatilal is the father of the deceased Neetu. In his statement, he has stated that the marriage of his daughter with the accused took place on 1st of June, 2001 and the accused after one month of the marriage made a demand of Rs. 50,000 as told by his daughter to him whenever she used to visit his house. His daughter told him that if he did not fulfil the demand made by the accused within a month, the accused could do anything. He has further stated that he being a low paid employee, it was not possible for him to fulfil the demand. He has also stated that his daughter after staying at his house for 4 days again went to her husband's house and from there she telephoned that the accused was insisting to fulfil his demand and was beating and maltreating her after consuming liquor. He has stated further that after two and a half months of the marriage, his daughter was either set on fire by the accused or she burnt herself. He has further stated that accused intimated him on telephone about the incident and informed that his daughter was got admitted in Govt. Hospital, Doongarpur. He thereafter reached at the hospital and found there his daughter burnt. The information regarding the incident given to police is Ex. P/1 and same bears his signature. A regular FIR was chalked out on the basis of information Ex. P/1, the police prepared inspection note of the site Ex. P/4. The witness has proved the marriage invitation card Ex. P/5 of his daughter. The ornaments given in the marriage find mentioned in Ex. P/7. In the cross-examination, the witness has stated that at the time of engagement which took place about four months before the incident, there was no demand of dowry. It was further stated that the demand of Rs. 50,000 was made through his daughter by the accused but for what purpose the demand was made, he was not made aware of that. He has further stated that his daughter had told him that her husband would kill her. He has further stated that on Raksha Bandhan his daughter had come to his house and after Raksha Bandhan she went to her in-laws' house weeping. He has also stated that he was not in talking terms

with his son-in-law as he was beating and maltreating his daughter. He has stated further that he tried to persuade Neetu not to go to her in-laws' house but she said her life would pass only in her in-laws' house. On suggestion put by the defence, he has stated that he does not know as to whether she was set on fire by some one or she burnt herself. On further cross-examination, he has stated that regarding beating given by the accused to his daughter and maltreatment for dowry, he made complaint to the mother of the accused. The suggestion has been denied that the deceased used to pressurise the accused to live separately with her, as the family of the accused was a joint family. He has further stated that at the time of incident the mother-in-law and brother-in-law of her daughter were not at home and as such their names were got deleted from the complaint. He has denied the suggestions put by the defence that the deceased has committed suicide for the reason that she wanted to live separately and accused was not prepared for that.

10. P.W. 14 Smt. Indira is the mother of the deceased. She has stated that her daughter Neetu was married with the accused and after her marriage once she came to her house alone and once with her husband and mother-in-law. She has stated further that when she came along with her husband, she stayed there for 3-4 days and when she came with her mother-in-law, she stayed in the house for two days. She has also stated that her daughter used to complaint against accused about harassment and demand of Rs. 50,000. This witness has turned hostile. The reason is not clear as to why she was declared hostile. In the cross-examination conducted by the Public Prosecutor, she has stated that she does not know as to whether portion marked 'A' to 'B' in the police statement regarding purchase of motor car by the accused was stated by her or not as she does not remember. She has also stated that before Rakhi, when her daughter came, she had conveyed the demand made by the accused. In the cross-examination, she has stated that her daughter came before Raksha Bandhan and went after Raksha Bandhan and died after 25 days of her last visit. She has also stated that while her daughter was in Doongarpur Hospital she had also visited the hospital and at that time she was kept in mortuary. It has been admitted that the accused lived in a joint family with his brothers and sisters. She denied the suggestion that at the time of engagement and marriage accused and his family members made demand

of dowry and the accused quarrelled.

11. P.W.2 Smt. Shanta Devi is maternal aunt of the deceased. She has stated that whenever Neetu came to meet her she would tell her that her husband used to beat and maltreated her and used to make demand of Rs. 50,000. She has also stated that Neetu died after two and a half months of her marriage. She does not know as to whether Neetu was set on fire by some one or burnt herself. In the cross-examination, she has stated that she does not remember the date and day when Neetu came to her house, She has further stated that once the deceased had come to her house but why, in her police statement this fact has not been mentioned she does not know. She has denied the suggestion that the deceased had told her that accused used to beat her, which resulted in bleeding many a time. She has also denied the suggestion put to her that the relations between Neetu's father and mother were not cordial. She has stated that the deceased did not tell as to for what purpose the demand of Rs. 50,000 was made.

12. P.W.3 is Chandra Veer Singh. He has stated that Neetu died in Doongarpur Hospital where she was admitted in burnt condition. He has also stated that after one month of her marriage she came to his house and stated that her husband used to beat and maltreat her after taking liquor. He has further stated that when he asked her as to why the accused used to maltreate her, she replied that accused was demanding a sum of Rs. 50,000 and whereupon he assured her that he would manage the amount upto Diwali. He has also stated that Neetu came at her parents' house on Raksha Bandhan and after 8 days of Raksha Bandhan she died. In the cross-examination, he has stated that in police statement Ex. D/2 it has not been mentioned that Neetu had come to his house and told him about the demand made by the accused. He has denied the suggestion that at the time of marriage a quarrel spurt in relation to dowry. He has further stated that for what purpose the demand was made by the accused he does not know. He has also stated that P.W. 1 Bhagwatilal is also a driver. He has denied the suggestion that a false case was lodged against the accused.

13. P.W.4 is Ajay Pal. Neetu was his niece. He has stated that after her marriage for 7-8 days the relations between husband and wife remained cordial. He has

also stated that after one month of the marriage, Neetu told him on telephone that the accused was demanding Rs. 50,000. He received the phone in the house of Gulab Singh, who was his neighbour. He has further stated that after two and a half months, she died because of burns. He does not know as to whether she committed suicide or was set on fire. He has stated that the accused did not make any demand of Rs. 50,000 from him directly but he was informed about the demand by Neetu on telephone. In the cross-examination, he has stated that he does not remember the time and date of telephone call of the deceased received by him. He further stated that the telephone was first received by the wife of Gulab Singh. It was also stated that after marriage, Neetu telephoned five times but on all occasions he had not talked. He has also stated that Neetu had come a day before Raksha Bandhan and after one or two days of Raksha Bandhan she went to her in-laws' house. When he was confronted with portion 'A' to 'B' of his police statement Ex. D/3, he stated that he had stated in his police statement that after one month of the marriage of the deceased, the husband of Neetu started beating her and this was stated to him by the deceased on telephone.

14. P.W.5 is Smt. Shakuntala. She has stated that Neetu was her sister and was married with the accused on 1.6.2001. After one month of marriage, Neetu came to her father's house on Rakhi and told her that her husband was demanding Rs. 50,000 for the purpose of vehicle (Gadi). She has also stated she was told by her sister that she was being beaten by her husband after consuming liquor. In the cross-examination, she has stated that at the time of conversation with her sister Neetu, her younger sister Santosh was also there. She has also stated that Neetu had told her that she should not convey the talks to their father and mother because it would hurt them. She further stated that after Rakhi she did not meet Neetu. After 8 days of Rakhi, Neetu died. The suggestion put to the witness was admitted that the accused was doing the work of a driver. She has also stated that she does not know that the accused was employed as driver on a video coach.

15. P.W.6 is Vijay Lal, in whose house the accused was living as tenant. He has stated that the police prepared a site plan of the place of incident Ex. P/4. He has also stated that he was living in the upper storey of the house while the accused along with his brothers and mother was living on the ground floor. In the cross-

examination, the suggestion has been accepted by him that had there been any torture to the deceased by the accused, he would have known about it.

16. P.W.7 Natwarlal is the Mausa (maternal uncle) of the deceased and he states that his house is in front of the house of the accused. He has also stated that the dead body of deceased was handed over to the accused through memo Ex. P/ 9 Supardginama Lash. He has further stated that Neetu died within three months of her marriage. He has stated further that Neetu and her husband were not quarrelling with each other. He has also stated that when he asked from the accused as to how Neetu caught fire, the accused told him that while he was in bathroom, Neetu's Sari caught fire in kitchen by a stove while preparing meals. In the cross-examination, he has stated that Neetu never told him about the demand of dowry made by the accused and also about the ill-treatment given to her by the accused. He has also stated that had there been any demand of dowry and tense relations between husband and wife, he would have come to know about that.

17. P.W.12 Prakash and P.W.17 Rajendra have stated that on the day of incident at about 5 p.m., while they were playing in the playground they heard that Vijay's wife (deceased) caught fire from the flames of the stove, as such they reached at the spot and accompanied her upto General Hospital, Doongarpur. They have also stated that she told them that when she was preparing meals, she stood to take some container and in that process her sari caught flames of the stove which resulted in burns on whole of her body.

18. P.W.I3 Smt. Suraj Kanwar is wife of Gulab Singh, a neighbour of deceased's father. She has stated that her house was near to the house of Neetu's father. She has also stated that the husband of Neetu used to call her on her telephone number and Neetu used to talk with her husband. She has also stated that once Neetu was weeping on phone and she had asked her about the reason then in turn she gave the receiver to her and she asked her husband as to why they were quarrelling with each other. She has also stated that she reprimanded the accused why he was giving threats to Neetu but Neetu did not say anything to her.

19. P.W.23 is Dhireshwar. He has stated that the day of incident was 'Chha Mahi' of his father and the mother-in-law and brother-in-law of Neetu had also come

there as the mother-in-law of Neetu is his real maternal aunt. He has also stated that at about 7 p.m. in the evening, P.W.I Bhagwatilal came from village Motagaon and told that a telephone message was received by him that Neetu had burnt and was admitted in Doongarpur hospital. He has also stated that thereafter he along with Bhagwatilal, Smt. Indira and Smt. Kamla started for Doongarpur and reached there. He has also stated that the dead body of Neetu was found completely burnt. The body had burnt by kerosene oil. He has also stated that he does not know who had poured kerosene oil on her. He has also stated that he does not know as to whether any demand of dowry was made by the in-laws of the deceased. The witness has been declared hostile and has not supported the case either way.

20. P.W.15 Rakesh is the photographer, who has taken photos Exs. P/12 to P/17 and proved negative Ex. P/18.

21. P.W.8 Jaitain, P.W.9 Surendra Kumar, P.W.10 Fateh Singh and P.W.I 1 Nihal Chand are the formal witnesses of memos.

22. P.W.16 Himmat Singh Barhat is SDM, Doongarpur, who has stated that Ex. P/1 was submitted before him and he in turn sent it for necessary action to the SHO, Ganeshpur. He has also stated that he conducted investigation under Section 174 of the Cr.P.C. and prepared Panchayatnama Ex. P/3. He has further stated that after post-mortem the dead body was handed over to the heirs of the deceased for cremation vide memo Ex. P/9. In the cross-examination, he has admitted that in the requisition sent by him to the medical jurist it was mentioned that the deceased died because of burns.

23. P.W.18 Dr. Subhra Sharma has stated that on 26.8.2001, while she was posted as medical officer in General Hospital, Doongarpur, post-mortem of the dead body of deceased was conducted, She has also stated that she was one of the members of the board. She has further stated that 94% of the body had burnt and the deceased died due to shock and ante mortem burn injuries. She has proved postmortem report Ex. P/19. In the cross-examination, she has stated that the pregnancy of deceased could be one or two weeks more than 11 to 12 weeks.

24. P.W.19 Dr. B.P. Verma was also the medical officer and a member of the Board constituted for post-mortem of the dead body of the deceased and has proved Ex. P/19 the post-mortem report.

25. P.W.20 Shantilal has stated that on 28.8.2001 he was posted as SHO, Police Station Ganeshpur and on that day P.W.I Bhagwatilal submitted a written report before the SDM, Doongarpur. On the written report Ex. P/1, an endorsement was made by him and the same was given to Constable Kami Singh. He has further stated that Ex. P/1 contains his signatures at place 'G' to 'H'. He has also stated that Panchayatnama Ex. P/3 of the dead body was prepared by him in the hospital. In the cross-examination, he has stated that it is correct to say that in Ex. P/1 it has not been mentioned that for what purpose the demand of Rs. 50,000 was made. He has admitted the suggestion put by the defence that when the accused tried to extinguish fire, he also sustained burn injuries. He has stated in his cross-examination that hairs of the deceased had not burnt.

26. P.W.21 is Bhanwar Singh. He has stated that on 18.9.2001 he was posted as ASI, Police Station Ganeshpur and on that day when he was discharging the functions of the SHO, he received a file pertaining to the present case through post. He has also stated that the charge-sheet was submitted later on in the Court.

27. P.W.22 is Amar Singh. He has stated that on 26.8.2001 he was posted as SHO, Ganeshpur. He has also stated that on the basis of report Ex. 1 regular FIR Ex. P/2 was challenged out, which contains his signatures.

28. P.W.24 is Jagram. He has stated that on 26.8.2001 he was posted as Dy. Superintendent of Police in Doongarpur. He has also stated that he conducted investigation in the matter and prepared site-plan and other memos and also seized stove, match-box, etc. He has stated that the accused was arrested through memo Ex. P/22. After conducting investigation. He has further stated that the file of the case was handed over to SHO, Ganeshpur, who submitted challan in the matter. He has admitted the suggestion that accused sustained burn injuries while he was trying to extinguish the fire. He has further stated that he recorded the statements of witnesses and recorded whatever the witnesses stated. He has further admitted the suggestion that the FIR does not mention the purpose for

which the demand of Rs. 50,000 was made but stated that in the statement of witnesses it has come that accused wanted to purchase a transport vehicle and for that the demand was raised.

29. After carefully examining the evidence led by the prosecution, now I propose to deal with the contentions raised by the learned Counsel for the parties.

30. The learned Counsel for the accused-appellant contended that there are material contradictions in the statements of the witnesses. It was also contended that it has not been brought on record by the prosecution as to for what purpose the demand was made by the accused. The learned Counsel pointed out that P.W.4 Ajay Pal, who is the uncle of deceased, has stated that Neetu's mother had told him about the demand made by the accused for purchase of a conveyance whereas P.W.14 Smt. Indira, the mother of the deceased, says that she does not remember as to whether the fact that accused wanted to buy a vehicle was stated by her in the police statement. In the last, he contended that it is not a dowry death and provision of Section 113B of the Evidence Act are not applicable in this case.

31. The learned Public Prosecutor has submitted that by the evidence led it has been proved that there was demand by the accused and the accused used to beat and maltreat the deceased.

32. Before examining the contentions, it is to be seen as to what are the requirements of Section 304B of the IPC as well as Section 113B of the Evidence Act to raise presumption in such matters. For the sake of convenience, the sections are reproduced hereunder:

304B. Dowry death-(1) Where the death of a women 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 relatives 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 bee deemed to have caused her death.

113B. Presumption as to dowry death.-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has 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.

33. At a first glance, from reading of Section 304B it appears that if the death of a women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances and is within seven years of the marriage and it is shown that it is because of dowry related harassment soon before her death, it can be said to be a dowry death. Section 304B is titled 'dowry death' suggesting that there must be a clear nexus between the demand for dowry and the death and the words of this section suggest that in order to attract the provisions of Section 304B, the death must be as a consequence of dowry related cruelty or harassment soon before the death of a woman. This is clear from the use of word 'and' between the clauses describing the manner of death and the clauses describing the manner and requirement of dowry related harassment. But, in Section 304B of the Indian Penal code it appears that in view of Section 113B of the Indian Evidence Act, when a question is raised as to whether a woman was subject to dowry death and the prosecution case is that soon before her death such woman had been subjected to cruelty or harassment for, or in connection with demand of dowry, the Court will presume that such person had caused the dowry death.

34. In the case of Satvir Singh v. State of Punjab : 2001 CriLJ4625 , the Hon'ble Apex Court at Para 22 has observed as under:

It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304B is to be invoked. But it should have happened soon before her death. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words soon before her death is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty

or harassment. In other words, there should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the Court would be in a position to gauge that in all probabilities the death would not have been the immediate cause of her death. It is hence for the Court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept 'soon before her death'.

35. In the case of Balwant Singh v. State of Punjab 2005 WLC (SC) Cri. 87 the Hon'ble Apex Court after considering the cases of Satvir (supra) and Hira Lal v. State (Govt. of NCT) III (203) CCR 41 (SC) : 105 (2003) DLT 807 (SC), Delhi has observed as under:

These decisions and other decisions of this Court do lay down the proximity test. It has been reiterated in several decisions of this Court that 'soon before' is an expression which permits of elasticity and, therefore, the proximity test has to be applied keeping in view the facts and circumstances of each case. The facts must show the existence of a proximate live link between the effect of cruelty based on dowry demand and the death of victim. The ingredients of offence under Section 113B is that such cruelty should have been meted out to the deceased soon before her death, it is for the prosecution to establish affirmatively that the victim was subjected to cruelty and harassment based on dowry demand soon before her death.

36. In the case of Satvir Singh v. State of Punjab (supra), the Hon'ble Apex Court has also interpreted the word 'dowry' appearing in Dowry Prohibition Act and has observed as under:

The word dowry in Section 113B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1961. That definition reads thus:

In this Act, 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 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 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 persons to whom the Muslim Personal Law (Shariat) applies.

Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is at any time after the marriage. The third occasion may appear to be an unending period. But the crucial words are in connection with the marriage of the said parties. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of dowry.

37. Further in the case of Pawan Kumar v. State of Haryana : 1998 CriLJ1144 , the Apex Court made the following observations:

The offence alleged against the appellants is under Section 304B, IPC which makes 'demand of dowry' itself punishable. Demand neither conceives nor would conceive of any agreement. If for convicting any offender, agreement for dowry is to be proved, hardly any offenders would come under the clutches of law. When Section 304B refers to 'demand of dowry', it refers to the demand of property or valuable security as referred to in the definition of 'dowry' under the 1961 Act. It was argued on behalf of the appellants that mere demand of scooter or fridge would not be a demand for dowry. We find from the evidence on record that within a few days after the marriage, the deceased was tortured, maltreated and harassed for not bringing the aforesaid articles in marriage. Hence the demand is in connection with marriage. The argument that there is no demand of dowry, in the present case, has no force. In cases of dowry deaths and suicides, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence. That could be either direct or indirect. It is significant that Section 4 of the 1961 Act, was also amended by means of Act 63 of 1984,

under which it is an offence to demand dowry directly or indirectly from the parents or other relatives or guardian of a bride. The word 'agreement' referred to in Section 2 has to be inferred on the facts and circumstances of each case. The interpretation that the appellant seeks, that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. 'Dowry' definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or taking dowry and Section 4 which deals with penalty for demanding dowry, under the 1961 Act and the Indian Penal Code. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. This leads to the inference, when persistent demands for TV and scooter are made from the bride after marriage or from her parents, it would constitute to be in connection with the marriage and it would be a case of demand of dowry within the meaning of Section 304B, IPC. It is not always necessary that there be any agreement for dowry.

38. From a careful reading or Section 304B, IPC read with Section 113B of the Indian Evidence Act and the observations made by the Hon'ble Apex Court, it appears that the necessary ingredients which are required to be proved by the prosecution in relation to Section 304B are (1) the death of women occurs in other than normal circumstances within seven years of her marriage, and (2) soon before her death she should have been subjected to cruelty or harassment in connection with any demand of dowry. If the above ingredients are satisfactorily proved by the prosecution then a presumption can be raised against the accused.

39. Now it is to be seen as to whether the appellant can be convicted under Section 304B, IPC?

40. In the instant case, it is not in dispute that the deceased died within three months of her marriage. It is also not in dispute that she has died on account of burns. What is disputed is that she caught fire while she was cooking meals. The evidence which has come on record is suggestive of the fact that at the time of incident the accused (husband of the deceased), was present and he has stated in his statement under Section 313, Cr.P.C. that on the day of incident he had come from Sagwara and while he was washing his hands and face, Neetu was preparing

meals on stove and while standing for taking some container her Sari suddenly caught fire and on account of that she sustained burns. He has also stated that he too tried to save her and while he was trying to extinguish the fire he also received burn injuries. Thus, it is clear that the accused was there in the house when incident took place. However, there is no evidence available on record to show that it was the accused who was responsible for the incident or she suddenly caught fire as stated by him in his statement under Section 313, Cr.P.C. It is also not known as to whether she had committed suicide.

41. In the above background, after perusing the statements of P.W.I 8 Dr. Subhra Sharma and P.W.19 Dr. B.P. Verma, it appears that deceased died because of burn injuries and 94% of her body was burnt. The injuries were ante mortem in nature and sufficient to cause death in the ordinary course of nature. It also appears that the deceased was pregnant though the cross-examination of the witnesses suggest some doubt about pregnancy period as the time of conceiving appears from the cross-examination to be of before the marriage.

42. Be that as it may, from perusal of the statements of witnesses and perusal of post-mortem report Ex. P/1 9, it is established that she did not die a natural death but it was a homicidal death because of the ante mortem burn injuries. The first ingredient of Section 304B is that the death must have taken place within 7 years of marriage and in view of the facts stated hereinabove, it is not in dispute that she died within three months of her marriage. Thus, the first ingredient of Section 304B, IPC stands proved.

43. Now the second ingredient of Section 304B, which says that there should be a demand of dowry soon before death. As the Hon'ble Apex Court in the case of Balwant Singh (supra) has clearly observed that the phrase 'soon before her death' is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it but the proximity to her death is the pivot indicated by that expression. In the present case, P.W.I Bhagwatilal, who is father of the deceased, has stated that the accused demanded a sum of Rs. 50,000 after one month of the marriage. He has also stated that the demand was made from him through the deceased. P.W.2 Smt. Shanti Devi, who

is maternal aunt of the deceased, has also stated that after one month of marriage, Neetu had come to her house and she narrated about the cruel behaviour and maltreatment meted out to her by the accused. She has also stated about the demand of Rs. 50,000 made by the accused. P.W.3 Chandraveer Singh, P.W.4 Ajay Pal, P.W.5 Smt. Shakuntala and P.W.14 Smt. Indira have also stated about making of demand by the accused after one month of the marriage. The marriage took place on 1.6.2001 whereas the death has take place on 25.8.2001 and within a very short span of this time she died. It is correct that some of the witnesses have said something different about the incident amongst whom one is P.W.6 Vijay Pal, in whose house the accused was tenant. He has shown his ignorance about giving any maltreatment by the accused to his wife and the demand of dowry. He is a landlord and he is not supposed to know about the internal life of a married couple. P.W.7 Natwarlal, who is in relation to the deceased and he is residing just opposite the house of the accused, has also stated that no demand was made by the accused from his in laws. P.W.12 Prakash and P.W.17 Rajendra have stated that they had seen the deceased while she was being taken to the hospital and it was disclosed by her that she caught fire herself by the flames of the stove.

44. It is relevant to mention here that while the deceased was taken to hospital in a jeep, P.W.7 Natwarlal was also with the deceased, who is said to be the Mausa of the deceased. This witness does not say that Neetu had stated that she caught fire herself. Had the factum been correct that the deceased had told the manner in which the incident took place to P.W.12 Prakash and P.W.17 Rajendra then there was no reason why P.W.7 would have been ignorant on this fact. Thus, it appears that these two witnesses are not knowing the truth.

45. It is correct that at the time of marriage there was no demand of dowry but in view of the statement of the witnesses discussed hereinabove, particularly of P.W.I Bhagwatilal, P.W.2 Shanta Devi, P.W.3 Chandraveer Singh, P.W.4 Ajay Pal, P.W.5 Smt. Shakuntala and P.W.14 Smt. Indira, it has been amply proved that accused started maltreating the deceased after a month of marriage and also a demand was made of Rs. 50,000. The minor contradictions pointed out in relation to the evidence does not change the complexion of the case. The demand

appears to have been made soon before her death because the death took place only within three months of marriage. This itself is a very short period and minusing the one month's period in which no demand was made, there remains only two months and during that period of two months the demand made has been stated by the witnesses, as has been stated hereinabove. The photograph Exs. P/12 to P/17 indicate that the incident had not taken place in a simple manner as disclosed by the accused in his statement under Section 313, Cr.P.C. Photographs show every thing in the room disturbed and in fact is suggestive of suspicious circumstances that quarrel might have taken place at that point of time.

46. Be that as it may, as has come in evidence and it is not known as to whether she had committed suicide or accused was responsible for her death but this is certain that at the time of incident accused was there as he has stated that he too sustained some injuries. The injuries sustained by him are described in Ex. D/7, which are as under:

Burn (superficial to deep) 1/2' x 1/2' deep to dermis.-Tip of Nose -simple

2. Burn superficial - 1/2' x 1/2' x deep to epidermis - Right Maxillary region - simple.

3. Burn (superficial to deep) -1' x 1' x deep to dermis - right pinna -simple

4. Burn 1' x 1' deep to epidermis - right shoulder, simple.

A perusal of the injuries indicates that had the accused really tried to save the deceased, the injuries sustained by him would have been different than as enumerated in Ex. D/7. The palms and hands have remained absolutely untouched and safe and the injuries are superfluous of negligible nature. Thus, it stands proved on the basis of evidence led by the prosecution that within a short period of three months after marriage the deceased died. It also stands proved that she was maltreated by the accused and was burnt. It further stands proved that soon before her death the demands were made as stated by the witnesses. It is correct that for what specific purpose for which the demands were made is not available in report Ex. P/1 and regular FIR Ex. P/2 but in the statements of the

witnesses it has come that the demand was in relation to purchase of a conveyance as the accused was a driver. The non-mentioning of specific purpose for demanding the sum will not make any change in the prosecution case so as to disbelieve the version. Thus, it appears that the deceased died within a period of three months whereas the requirement of Section 304B is upto 7 years. It has also been established by the prosecution that soon before her death she was subjected to cruelty and harassment in connection with the demand of dowry made for Rs. 50,000 and it also stands proved that the husband of deceased used to beat and maltreated her and in such circumstances a presumption is liable to be raised that he was responsible for the death as she died not in normal circumstances but died because of burn injuries.

47. As discussed above, when it also appears from the statements of the above witnesses that the deceased was maltreated and the accused made demands for more dowry and for that he used to threaten his wife on telephone, as has come in the prosecution evidence, in my opinion, the learned Trial Court has correctly appreciated the evidence in relation to Section 304B, IPC and also under Section 498A of the IPC. The conviction and sentence passed against the accused being based on cogent reasons deserves to be upheld.

48. In the result, I do not find any merit in this appeal and the same deserves to be dismissed after confirming judgment and order dated 21.7.2003 passed by learned Addl. District & Sessions Judge (Fast Track) No. 1, Doongarpur in Sessions Case No. 26/2002.

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