

Chandra Devi and anr. (Smt.) Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Oct-09-2001

Reported in : 2002CriLJ1075; RLW2003(3)Raj1985; 2002(1)WLC685

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

Acts : Indian Penal Code (IPC) - Sections 304B and 498A; Evidence Act - Sections 113B; Rajasthan Police Rules, 1965 - Rule 6.22

Appeal No. : D.B. Criminal Appeal No. 383 of 1996

Appellant : Chandra Devi and anr. (Smt.)

Respondent : State of Rajasthan

Advocate for Def. : Rajendra Yadav, Public Prosecutor

Advocate for Pet/Ap. : A.K. Gupta and; Vishal Bansal, Advs.

Disposition : Appeal allowed

Judgement :

S.K. Sharma, J.

1. The appellants Chandra Devi and Jai Singh were indicted before the learned Additional Sessions Judge No. 1 Jaipur City in Sessions Case No. 102/94. They were convicted, and sentenced vide judgment dated June 3, 1996 under Sections

304B and 498A IPC to suffer imprisonment for life and also 3 years imprisonment with fine of Rs. 100/- and in default to further suffer imprisonment for 15 days. The sentences were directed to run concurrently. Against this Judgment of conviction and sentence that the action for filing the present appeal has been resorted to by the appellants.

2. In brief the prosecution case is that Gopi Singh, (PW. 12). SHO Police Station Jhotwara recorded the Parcha Bayan (Ex.P.3) of Smt. Geeta Devi (since deceased) on August 6, 1994. Smt. Geeta Devi deposed in the Parcha Bayan that her marriage took place with Jai Singh some three years ago and she was issueless. After marriage Jai Singh and his younger brother Gajraj and mother in-law Chandra Devi used to harass and beat her in connection with dowry that included demand of scooter. On the day of the incident her mother-in-law addressed her as sweeper and asked her to clean latrine. When she declined her husband Jai Singh and his brother Gajraj sprinkled kerosene oil on her body and set her ablaze by igniting match stick. It was Arun who extinguished the fire by water. On the basis of Parcha Bayan FIR No. 334/94 was registered at Police Station Jhotwara for the offences under Sections 498A & 307 IPC and investigation commenced. After the death of Geeta the case was converted u/Section 304B IPC. Autopsy on the dead body of Geeta Devi was conducted. Statements under Section 161 Cr.P.C. of the witnesses were recorded. Site was inspected and the accused were arrested. On completion of the investigation charge sheet was filed against Chandra Devi and Jai Singh in the Court of Chief Judicial Magistrate Jaipur whereas charge sheet against accused Gajraj Singh was filed before the Juvenile Court Jaipur.

In due course the case came up for trial before the learned trial Judge. Charges under Sections 304B and 498A IPC were framed. The accused denied the charges and claimed trial. The prosecution examined as many as 15 witnesses in support of its case. In their statements under Section 313 Cr.P.C. the accused claimed innocence. As many as three defence witnesses were produced by the accused. The learned trial Judge on hearing the final submissions convicted and sentenced the appellants as indicated hereinabove.

Gajraj Singh was however acquitted by the judgment dated December 7, 1998 by the Juvenile Court Jaipur from the charges under Sections 498A and 304B IPC.

3. We have heard the submissions of the learned counsel and with their assistance scrutinised the material on record.

4. The primary requirements for finding the appellants guilty of the offence under Section 304B IPC are that death of the deceased was caused by burns within seven years of her marriage and that 'soon before her death' she was subjected to cruelty or harassment by the appellants for or in connection with the demand for dowry.

5. From the statements of Smt. Manju (PW. 11), Rati Ram (PW. 8), Ashok Kumar (PW.7) and Phool Chand (PW. 3) it is evident that marriage of deceased Geeta Devi took place on April 24, 1992. Dr. Dharmendra Kumar Sharma (PW. 15) who conducted the autopsy on the deadbody of Geeta testified that the death was caused by burns on August 6, 1994. Thus it is established that the death of Geeta Devi took place within seven years of her marriage by burns.

6. In order to establish that 'soon before her death Geeta Devi was subjected to cruelty or harassment for or in connection with demand for dowry', an argument is raised by learned Public Prosecutor to resort to the legal presumption envisaged in Section 113B of the Evidence Act. It provides thus:

'113-B. 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 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. Learned counsel appearing for the appellants contends that there is no evidence on record to show that soon before her death Geeta Devi was either treated with cruelty or harassed with the demand of dowry and in the absence of any such evidence it is not permissible to take recourse to the legal presumption envisaged in Section 113-B of the Evidence Act. Reliance is placed on Sham Lal

v. State of Haryana (1).

8. Let us now analyse the prosecution evidence in order to adjudge as to whether it is established that soon before her death Geeta Devi was wither treated with cruelty or harassed with the demand of dowry.

9. Phool Chand (PW. 3) who was the mediator in arranging the marriage of Geeta Devi with appellant jai Singh, stated in his cross examination that no demand of dowry was made at the time of marriage and in-laws of Geeta Devi gifted ornaments to her. In March 1993 Geeta Devi came to her parents house and remained there about fifteen months. She came back to her 'Sasural' (in- laws house) in the months of July 1994. From March 93, till July 1994 he did not meet her. In March 93 when she came to his house she did not tell him about demand of dowry every made by the appellants. Tasveer (PW. 4) deposed that after her marriage Geeta came to her and told her that she was being harassed by her mother in law and husband in connection with the demand of scooter. Geeta after her marriage did reside with her in her house for a period of one and quarter year. In her cross examination Tasveer stated that Geeta came back to her parents house only after fifteen days of her marriage and she had refused to go back to her Sasural (in laws house). Ashok Kumar Jatiwal (PW-7) is the brother of Geeta. In his deposition hesitated that Geeta came back to his house in 1993 and she was sent back to her in laws house on July 8, 1994. During the period when she was residing with them she did not tell them that if scooter is not arranged, her inlaws would kill her. He further stated that after cremating Geeta, he, his father Rati Ram together with Chhotelal and Ramjilal went to Phool Chand's house and after arriving at some decision they gave statements to police next day. Rati Ram (PW .8) who is the father of Geeta Devi, admitted in his cross- examination that in the letter which was written by him no reference of demand for dowry and scooter was made, Ramjilal Bhatia (PM. 10) in his cross examination stated that he had gone to meet Geeta in Feb. 1994. She left her inlaws house on December 10, 1992. She left her inlaws house on December 10, 1992 and came back in July 1994. Appellant jai Singh was having a scooter and he did not know when it was purchased by him. Manju (PW. 11) is the sister of deceased Geeta. She deposed in her cross examination that after marriage of Geeta no demand of scooter was

ever made. Geeta was brought back to her parents house in December 1992 and her brother in law took her back to her inlaws house in July 1994.

10. From the evidence of the aforequoted witnesses it is established that the deceased Geeta came to her in-laws house in July 1994. Therefore it is to be seen whether she was subjected to cruelty or harassment in connection with dowry since July 1994 to August 6, 1994 when she met with unnatural death caused by burns. Thakurdas (PW.6) was residing at the time of death of Geeta near her house. He stated that on August 6, 1994 crowd surrounded the house of Ram Kishan (father inlaw of deceased Geeta). House of Ram Kishan was bolted and Gajja son of Ram Kishan was making attempt to break open door with the help of stone. After the door was opened he along with 5-7 persons entered inside, there he found a girl having burns on her body. She was crying for water and after some time she kept mum. In his cross examination he stated that the appellant Jai Singh was possessing a scooter. Gopi Singh (PW. 12) who was SHO Police Station Jhotwara deposed that on receiving information he had gone to Alpana Colony where he found Geeta Devi in half burnt position. He recorded her Parcha Bayan (Ex.P.3). Geeta Devi put her thumb impression over Parcha Bayan. In his cross examination he stated that at the time of recording her Parcha Bayan he did not associate any other person present at the site as a witness. He also did not state in Parcha Bayan as to what was her physical and mental condition. He further deposed that on his written request Additional Chief Judicial Magistrate No. 3 was deputed for recording the dying declaration of Geeta Devi. The Magistrate had gone to the SMS Hospital Jaipur but could not record the statement as the doctor certified that Geeta was not in a position to give statement. He further stated that in the memo of site plan Ex.P.2 he did not narrate as to what was the position the door of the room and whether it was bolted from inside or not. He further stated that he did not record the statement of Thakur Das and Rajesh Kumar on August 6, 1994 because their mental balance was not normal. Although neighbours were present at the site but he did not record their statements. Dr. Y.N. Verma (PW. 13) examined injuries sustained by Geeta at 2.00 p.m. In his cross examination he stated that there were 90 per cent burns on her body and her mental state was such that she was not in a position to give statement. Dr. Dharmendra Kumar Sharma (PW. 15) conducted autopsy on the body of the deceased, he also

deposed that there were 90 per cent burns on her body.

11. Mohan Lal Sharma (DW.1) is the next door neighbour of the appellant Jai Singh. In his deposition he stated that Geeta resided with her in-laws only for 2-3 months. She did not want to reside in her in-laws house. The appellant never demanded dowry and scooter from her. On August 6, 1994 finding Geeta burnt he informed Police Station Jholwara on telephone. When Police reached, Geeta became unconscious and she did not give any statement to police. Thereafter the police took her to Hospital. He also had gone to the Hospital. Her husband and mother-in-law were not in the house at the time of the incident and only Arun was present at the site. Parcha Bayan Ex.P.3 was not recorded by the Police and Geeta did not put her thumb impression over it as she was unconscious. Mohan Kumar (DW. 2) was also running a Parchuni Shop near the house of the appellant at the time of incident. He stated that the behaviour of the appellants was cordial with Geeta and they never demanded dowry or scooter from her. Geeta used to say that she did not want to reside in the in-laws house. She was never ill-treated by her in-laws. He was also present when the incident had taken place. When Geeta was burnt her brother-in-law extinguished the fire and Geeta was unconscious. The police came at the spot after 12 O'clock. Thereafter she was removed from the house and was taken to the Hospital.

12. A look at the Parcha Bayan Ex. P 3 alleged to have been given by Geeta Devi demonstrates that it was recorded on August 6, 1994 at 12.15 p.m. by SHO Gopi Singh (PW. 32). The incident had taken place at 10 a.m. Geeta Devi sustained 90 percent burns on her body and as per Dr. Y.N. Verma (PW.13) her mental state was not such so as to allow her to give statement. Gopi Singh (PW.12) himself in his cross examination stated that when Magistrate had gone to record the statement of Geeta Devi to the Hospital he was told by the doctor that she was not in a fit condition to give statement. Admittedly at the time of recording the Parcha Bayan of Geeta Devi no independent person was associated by Gopi Singh (PW.12).

13. Rule 6.22 of the Rajasthan Police Rules, 1965 provides thus-

'6.22. - Dying declaration.- (1) A dying declaration shall, whenever possible, be recorded by a Magistrate.

2 The person making the declaration shall, if possible, be examined by a medical officer with a view of ascertaining that he sufficiently in possession his reason to make a lucid statement.

3 If no Magistrate can be obtained, the declaration shall, when a gazetted police officer is not present, be recorded in the presence of two or more reliable witnesses unconnected with the police department and with the parties concerned in the case.

4 If no such witnesses can be obtained without risk of the injured person dying before his statement can be recorded, it shall be recorded in the presence of two or more police officers.

5 A dying declaration made to a police officer should, under Section 102, Code of Criminal Procedure be signed by the person making it.'

14. So far as Parcha Bayan (Ex.P.3) made by Geeta Devi before Gopi Singh (PW. 12) Investigating Officer is concerned, it is in fact a statement recorded under Section 161 Cr.P.C. It is said to have been recorded at about 12.15 p.m. We have already considered earlier that Geeta Devi was not conscious to make the said statement, more so such a detailed statement. It appears that Gopi Singh (PW. 12) did not record Ex.P.3 as dying declaration and if he had done so it was necessary for him to comply with Rule 6.22 of the Rajasthan Police Rules, 1965. We are of the view that alleged dying declaration Ex. P.3 of Geeta Devi does not inspire confidence and we cannot accept it as the truthful statement of Geeta Devi. The reasons are that Gopi Singh (PW. 12) SHO did not certify on the dying declaration that Geeta Devi was in a fit condition to make such statement despite 90 per cent burns on her body. No independent persons were associated with the dying declaration and Geeta Devi allegedly gave minute details in her statement and such document cannot be accepted as true dying declaration.

15. In *Paramjit Singh and Ors. v. State of Punjab and Ors.* (2), their Lordships of the Supreme Court were considering a case where the deceased injured sustained pellet injury on his spinal cord. Having regard to the medical evidence and the ocular evidence it was held that the injured was not in fit condition to make the dying declaration. Moreover looking to the contents and the manner in which all minor details were given by the injured in his dying declaration it was observed that the said document cannot be accepted as a true dying declaration of the injured and it was a concocted document.

16. In *Sham Lal v. State of Haryana* (*supra*) it was indicated by their Lordships of The Supreme Court that it is imperative for invoking the presumption under Section 113B of the Evidence Act that 'soon before her death' bride was subjected to such cruelty or harassment. In that case what the prosecution achieved in proving at the most was that there was persisting dispute between the two sides regarding the dowry paid or to be paid, both in kind and in cash and on account of the failure to meet the demand for dowry, the bride was taken by her parents to their house about one and half years before her death. Further evidence was that an attempt was made to patch up between the two sides for which a panchayat was held in which it was resolved that she would go back to the nuptial home pursuant to which she was taken by the husband to his house. This happened about ten to fifteen days prior to the occurrence. There was nothing on record to show that she was either treated with cruelty or harassed with the demand for dowry during the period between her having been taken in the parental home and her tragic end. It was therefore held that in the absence of any such evidence it was not permissible to take recourse to the legal presumption envisaged in Section 113B of the Evidence Act. Rule of evidence is prescribed in law to obviate the prosecution of the difficulty to further prove that the offence was perpetrated by the husband, as then it would be the burden of the accused to rebut the presumption.

17. In the instant case as already noticed Geeta Devi came back to her in-laws house on July 8, 1994 and till her death on August 6, 1994 there was no evidence on record to suggest that either she was treated with cruelty or harassed for demand of dowry. We have gone through the letters placed on record by the

prosecution and we find no allegations against the appellants that Geeta was ever harassed by them in connection of demand of dowry. We are satisfied that though the death of the deceased was caused by the burns within seven years of marriage yet soon before her death she was not subjected to cruelty or harassed by the appellants for or in connection with the demand of dowry. Thus we are unable to draw any presumption under Section 113B of the Evidence Act against the appellants. The alleged dying declaration Ex.P.3 in our considered opinion cannot be said to be genuine document and looking to 90 per cent burns sustained by Geeta Devi on her body as well as the statement of Dr. Y.N. Verma (PW. 13) that she was not in a fit condition to give the statement, we are of the view that Geeta Devi was unconscious and unable to put thumb impression over Ex.P.3. The act of SHO Gopi Singh in not associating the independent witnesses at the time of recording the statement of Geeta Devi is highly suspicious. The lady who sustained 90 per cent burns in our considered opinion, cannot be in a position to give statement after two hours and 15 minutes of the in Ex.P.3 Even from the testimony of relations of Geeta Devi, namely, Ratiram (PW. 8), Ashok Kumar (PW.7), Smt. Manju (PW.11) and Phool Chand (PW.3), it has not been established beyond reasonable doubt that demand of dowry was ever made by the appellants. On the contrary it has been proved that the appellants gifted ornaments to Geeta Devi at the time of her marriage. The learned court has not properly appreciated the material on record and we find the impugned finding arrived at by the learned court below as wholly erroneous.

18. Coming to the charge under Section 498A IPC we may recapitulate that Section 498A IPC provides punishment to the husband and/or the relatives of the husband of a woman who was subjected to cruelty by them. What is meant by 'cruelty' as per this section has been explained in Explanation to the section as '(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.'

19. As already noticed that the deceased Geeta Devi after her marriage herself went to the parents house in March 1993 and only came back to her in-laws house in July 1994 where she died on August 6, 1994. The evidence that we discussed hereinabove does not establish beyond doubt that Geeta Devi was treated with cruelty in a manner covered by Section 498A IPC or that the cruel treatment with her was such as led her to commit suicide. The charge under Section 498A IPC therefore remains not proved.

20. Resultantly we allow the appeal of the appellants and set aside their conviction under Sections 304B and 498A IPC and acquit them from the said charge. The appellant Jai Singh is in Jail, he shall be released forthwith if not required in any other case. The appellant Chandra Devi is on bail, she need not surrender, and her bail bonds stands cancelled.

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