

Manian Vs. State

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Court : Chennai

Decided On : Sep-06-2001

Reported in : II(2002)DMC672

Judge : M. Karpagavinayagam, J.

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

Appeal No. : Criminal Appeal No. 371 of 1993

Appellant : Manian

Respondent : State

Advocate for Def. : A.N. Thambidurai, Govt. Adv.

Advocate for Pet/Ap. : V. Gopinathan, S.C. for ;K. Selvarangan, Adv.

Disposition : Appeal dismissed

Judgement :

M. Karpagavinayagam, J.

1. Manian, the appellant herein, was convicted for the offence under Sections 304-B and 498-A, I.P.C, and sentenced to undergo R.I. for 7 years and to pay a fine of Rs. 5,000/- for the offence under Section 304-B and to undergo R.I. for two years

for the offence under Section 498-A, I.P.C. and ordered the sentence to run concurrently.

2. Though the appellant was charged originally for the offences under Sections 498-A and 306, I.P.C, the charges were framed by the Trial Court for the offences under Sections 304-B and 498-A, I.P.C. and, accordingly, the appellant was tried and convicted thereunder. Challenging the same, the present appeal has been filed.

3. The facts leading to the conviction of the appellant are as follows :

'(a) The appellant was working as a Constable in Coonoor Traffic Police Station. The deceased Pushpa got married to the appellant on 1.11.1987 and they were living in Coonoor in a separate house. After a period of 11 months, a son by name Vinodh was born to them. Vijaya (P.W. 1) is the daughter of one Rani, who is the sister of the deceased Pushpa. In order to take care of the child, P.W. 1 was sent to Pushpa's house by her parents.

(b) The appellant/accused and the deceased used to quarrel daily. The appellant invariably beat the deceased with lathi and belt and insisted her that she should get cash and jewels from her parents.

(c) On 10.5.1989 P.W. 2 Mathiammal and P.W. 3 Muthaiah, the parents of the deceased, came to the house of the appellant to see the child. When the deceased was weeping on seeing them, she was asked about the reason and for that, she told them that the appellant beat her demanding money, gas cylinder and stove. P.Ws. 2 and 3 asked her to wait for two months. Then, P.Ws. 2 and 3 gave her Rs. 25/- and left for their home.

(d) The fateful occurrence took place on 13.5.1989. At about 7.30 a.m., the appellant asked P.W. 1 to go to the market and purchase rice in his account. Accordingly, P.W. 1 went to the market and purchased rice and came back to the house. At that time, the appellant beat the deceased with his hands, while she was carrying her baby in arm. When P.W. 1 asked the appellant as to why he beat the deceased often, the appellant told her that she had no business to ask for that.

Then, the appellant went for his duty.

(e) Thereafter, the deceased asked P.W. 1 to go to the neighbouring house and see television. Saroja, the owner of the neighbouring house, found that the door of the house of Pushpa was locking. There was no response despite tapping of the door. P.W. 1 also came and tapped the door. But, it was not open. So, P.W. 1 informed this to the appellant over phone. Immediately, the appellant came to his house, broke the door and went inside. Both his wife Pushpa and his child Vinodh were found dead with burn injuries all over the body.

(f) Thereafter, P.W. 1 gave a complaint to P.W. 8 Head Constable. He received the complaint and registered the same under Section 174, Cr.P.C. and Ex. P-I is the complaint.

(g) On receipt of information, P.W. 2, the mother and P.W. 3 father of the deceased came to the scene and found Pushpa and her child dead with burn injuries.

(h) On getting the F.I.R. copy, P.W. 10 Revenue Divisional Officer of the area came to the scene of occurrence, conducted inquest on the dead bodies of Pushpa and her child Vinodh and prepared Exs. P-15 and P-16 inquest reports. He also examined P.Ws. 1, 2, 3 and 4 and the appellant/accused and obtained their statements. Thereafter, he sent Ex. P-18 report to P.W. 11 Deputy Superintendent of Police for further investigation.

(i) P.W. 11 Deputy Superintendent of Police, while conducting further, investigation, altered the F.I.R. into Section 306, I.P.C. After examining other witnesses and collecting the materials, he filed the charge-sheet against the appellant on 28.2.1990.

(j) During the course of trial, P.Ws. 1 to 11 were examined, Exs. P-I to P-20 were filed and M.Os. 1 to 6 were marked.

(k) When the appellant/accused was questioned under Section 313, Cr.P.C, he stated that the deceased did not like to live with him and she always inclined to go and live with her parents and on the date of occurrence, when he was on duty, he

was informed that the condition of his wife was serious and immediately thereafter, the appellant came and saw that his wife Pushpa along with his child died with burn injuries and, as such, he did not commit any offence.

(l) On appreciation of the evidence adduced during the course of trial, it was concluded by the Trial Court that the appellant/accused was liable to be convicted for the offence under Sections 304-B and 498-A, I.P.C. and, accordingly, he was convicted.'

4. The learned Counsel for the appellant, while assailing the judgment of the Trial Court, would make the following contentions :

'The Trial Court ought not to have convicted the appellant for the offences under Sections 304-B and 498-A, I.P.C. especially, when the ingredients of the said offences has not been made out. Originally, the charge was framed only for the offences under Sections 498-A and 306, I.P.C. In the absence of any evidence regarding dowry torture, the appellant ought not to have convicted for the offence under Section 304-B, I.P.C. Furthermore, P.W. 10 Revenue Divisional Officer gave opinion in Ex. P-18 report that there is no dowry torture. Moreover, the evidence of P.Ws. 1 to 3 cannot be relied upon in regard to dowry torture, as they have not stated anything about dowry torture during the course of investigation. Therefore, the appellant is entitled to be acquitted.'

5. In regard to the aspect that no conviction can be based on Section 304-B, I.P.C. in the absence of any evidence regarding the demand of dowry, the learned Counsel for the appellant would cite the following decisions :

(1) Ranganathan v. Veerapandian, ;

(2) Meka Ramaswamy v. Dasari Mohan and Ors. I (1998) DMC 550=II (1998) SLT 218=1998 SCC 604;

(3) Lokendra Singh v. State of M.P. 1999 SCC 371;

(4) Sangaraboina Sreenu v. State of A.P., 1997 Cri. LJ 3955; and

(5) Bhagwan Sahai v. Raju .

6. I have heard Mr. Thambidurai, the learned Government Advocate appearing for the respondent.

7. According to the prosecution, prior to the occurrence, the deceased wife was used to be beaten by the appellant demanding cash and other properties and without bearing the torture, the deceased poured kerosene over herself and her baby in arm and set ablaze themselves and consequently, they died.

8. In order to prove this, P.Ws. 1 to 3 were examined. Regarding the cause of death, P.W. 6 Doctor, who conducted post-mortem on the child Vinodh, an eight months' old baby and P.W. 7 Doctor, who conducted post-mortem on the deceased Pushpa, had given evidence through Exs. P-10 and P-12 post-mortem reports that the deceased Pushpa and her child Vinodh died due to burn injuries.

9. Even according to the appellant, when he was informed about the incident, he immediately came to the house and broke open the door and went inside and saw both the deceased died with burn injuries. Therefore, there is no difficulty to hold that the deceased Pushpa committed suicide by pouring kerosene on herself and on her child and finished their lives.

10. The main thrust of the attack by the learned Counsel for the appellant is that the story of the prosecution with regard to dowry torture is not true and the same is belatedly introduced in order to punish the appellant/accused for a major offence, namely, under Section 304-B, I.P.C.

11. Section 304-B, I.P.C. provides punishment for the offence of dowry death. In order to prove the offence under Section 304-B, I.P.C, the following four ingredients had to be established :

(1) The death should have been caused within seven years of marriage of the deceased.

(2) The death of woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances.

(3) The deceased should have been subjected to cruelty or harassment by her husband or any relative of her husband soon before her death. (4) The cruelty and harassment so subjected shall be for, or in connection with any demand of dowry.

12. Section 113-B of the Evidence Act provides a presumption as to dowry death. When it is shown that soon before the death of a woman, 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.

13. So, in the light of Section 304-B, I.P.C. and the proviso under Section 113-B of the Evidence Act raising presumption, let us now consider as to whether any material is available on record to show that the deceased was subjected to torture with regard to dowry demand.

14. Among three witnesses, who speak about dowry demand, the evidence of P.W. 1 Vijaya, who was aged about 14 years at the time of occurrence, is quite significant. Though P.Ws. 2 and 3 would speak about the demand of dowry, they were not present at the time of occurrence in the house. But, P.W. 1 Vijaya was admittedly in the house on the date of occurrence. The appellant/accused also would admit in Ex. P-17 statement given by him to P.W. 10 Revenue Divisional Officer that P.W. 1 was with them and only on her information given to him through phone, he came to the house where the deceased committed suicide.

15. In the light of the said admission, the evidence of P.W. 1 assumes importance. Furthermore, she is the person who gave F.I.R. in this case. The occurrence took place at about 12.00 noon, Ex. P-1 complaint was given by her at about 1.00 p.m. She was also examined by P.W. 10 R.D.O. on the very same day. The statement given to P.W. 10 R.D.O. by P.W. 1 was marked as Ex. P-2.

16. On perusal of the deposition given by P.W. 1, it is clear that there are details with reference to the demand of money, jewels, etc., and due to which, the deceased was severely beaten by the appellant frequently.

17. According to P.W. 1, on the date of occurrence, when she came back from the market after purchasing rice, she saw that the appellant beat the deceased wife indiscriminately. She also questioned the said act of beating. Even then, the appellant continued to beat his deceased wife by slapping on her face. After the appellant left for his duty, the deceased asked P.W. 1 to go and spend time in the neighbouring house by seeing television. Accordingly, she went there, there, at 12.00 noon, when the door of the house of the deceased was found closed, the neighbour came and tapped the door and there was no response. Suspecting that something had happened, P.W. 1 informed the same immediately to the appellant through phone. Both in Ex. P-2 and in her deposition, he would refer about the demand of money. Under those circumstances, it cannot be said that there is no evidence regarding dowry torture.

18. Furthermore, the said evidence of P.W. 1 has been clearly corroborated by P.Ws. 2 and 3, the parents of the deceased. According to P.Ws. 2 and 3, they came to the house of the deceased to see the child on 10.5.1989, just three days prior to the occurrence. At that time, the deceased told them that she was beaten by the appellant severely that she must get the gas cylinder and stove. Both P.Ws. 2 and 3 gave statement to P.W. 10 R.D.O. referring about the demand of dowry also. The statement of P.W. 3 made before P.W. 10 R.D.O. was marked as Ex. P-4.

19. That apart, Ex. P3 settlement deed, which was executed by P.W. 3 in favour of her deceased daughter on 14.12.1988, and the evidence of P.Ws. 2 and 3 would clearly show that P.W. 3 was compelled to execute the said settlement deed by the appellant in favour of the deceased.

20. Under those circumstances, there is no point in contending that there is no material regarding dowry demand.

21. So, as mentioned above, once there are materials to show that there are dowry torture and the deceased committed suicide within 7 years of marriage, then the presumption as provided under Section 113-B of the Evidence Act would automatically arise.

22. In this case, as indicated above, the initial burden was on the prosecution to prove that the deceased soon before her death was subjected to cruelty in connection with the demand of dowry has been discharged, as Section 113-B of the Evidence Act would automatically press into service to raise a presumption that such a person caused the dowry death.

23. But, there is no attempt made by the appellant/accused to rebut the said presumption. Therefore, the materials placed on record through P.Ws. 1 to 3 would clearly prove that the appellant committed the offence under Section 304-B, I.P.C. and consequently, he is liable to be convicted for the offence under Section 498-A, I.P.C. also.

24. In regard to sentence, the punishment of R.I. for 7 years for the offence under Section 304-B, I.P.C. and to pay a fine of Rs. 5,000/- cannot be said to be excessive in the light of the facts and circumstances of the case.

25. This is a case where, as stated by P.W. 1, the appellant/accused used to beat the deceased often, while she was carrying her child in arm, despite certain property was settled in her favour by P.W. 3 on the compulsion of the appellant and, as such, the sentence imposed upon the appellant is justified.

26. Therefore, the appeal is liable to be dismissed as devoid of merits.

27. In the result, the appeal is dismissed. The conviction and sentence imposed upon the appellant by the Trial Court for the offences under Sections 304-B and 498-A, I.P.C. are confirmed. The Trial Court is directed to take steps to secure the custody of the appellant to undergo the remaining period of sentence.