

Kamaladass Vs. State

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Court : Chennai

Decided On : Aug-31-1998

Reported in : 1999CriLJ1395

Judge : M. Karpagavinayagam, J.

Acts : Evidence Act - Sections 113B; [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304B; Code of Criminal Procedure (CrPC) - Sections 221(2) and 222

Appeal No. : Crl. Appeal No. 767 of 1991

Appellant : Kamaladass

Respondent : State

Advocate for Def. : C.M. Gunasekaran, Govt. Adv.

Advocate for Pet/Ap. : K. Govi Ganesan, Adv.

Disposition : Appeal dismissed

Judgement :

M. Karpagavinayagam, J.

1. This appeal by the appellant is directed against the judgment convicting the appellant under Section 304-B, I.P.C. and sentencing him to undergo R.I. for 7 years.

2. The short point which arises for consideration by this Court is this. The charge under Section 302, I.P.C. was framed against the appellant for having caused the death of the deceased, wife of the appellant, by pouring acid into her mouth. After trial, on taking into consideration of the materials, particularly the evidence of PW-2, who speaks about the dowry demand, the trial Court concluded that the appellant was liable to be convicted for the offence under Section 304-B, I.P.C. and not under Section 302, I.P.C.

3. Mr. Gove Ganesan, the counsel for the appellant, would submit that when the charge under Section 304-B, I.P.C. was not framed against the appellant, the conviction under the said section cannot be sustained and therefore, the matter could be remitted back to the trial Court for framing the charge under Section 304-B, I.P.C. and to give opportunity to the appellant to rebut the presumption enshrined in Section 304-B, I.P.C.

4. It is provided under Section 222, Cr. P.C. that when a person is charged with major offence, he may be convicted of the minor offence, though he was not charged with it. Therefore, the question may arise as to whether, the offence under Section 304-B, I.P.C. is a minor offence for the major offence, namely, under Section 302, I.P.C. The reading of both the sections would show that the causing of death of the deceased is that main ingredient. Therefore, it cannot be stated that the ingredients of both the offences are entirely different.

5. The learned Government Advocate would cite the following decisions:-

1) Vemuri Venkateswara Rao v. State of AP 1992 Cri LJ 563;

2) Venugopal v. State of Karnataka : 1999 CriLJ29 ; and

3) Bhoora Singh v. State (1993) Cri LJ 2636 : 1993 All LJ 920.

6. In, Venugopal v. State of Karnataka (supra), the accused was originally charged under Section 302, I.P.C. The High Court in the appeal acquitted the accused for the offence under Section 302, I.P.C. and instead, convicted him under Section 304-B I.P.C. even without the said charge framed. While dealing with the said question, the Apex Court would hold in the above decision that even in the

absence of the said charge, the accused could be convicted for the said offence. By observing that, the Apex Court would confirm the conviction imposed by the Karnataka High Court under Section 304-B, I.P.C.

7. In the instant case also, against the appellant, the charge was framed under Section 302, I.P.C. Ultimately, the trial Court though acquitted the accused in respect of the offence under Section 302, I.P.C, convicted him under Section 304-B, I.P.C. According to the prosecution, there was harassment for the payment of dowry. The unnatural death occurred admittedly within 7 years of her marriage. Therefore, the presumption of dowry death is inherent under Section 113-B of the Evidence Act.

8. The following are the three ingredients which are essential for establishing the offence punishable under Section 304-B, I.P.C. : (1) There is a demand for dowry and harassment by the accused; (2) the deceased died within 7 years of her marriage; (3) the death is under unnatural circumstances.

9. Once these three things are proved, the offence under Section 304-B, I.P.C. is established. Once there is a demand for dowry and harassment against the deceased and the death occurred within 7 years of her marriage, the other things automatically follow due to the statutory presumption contemplated under Section 113-B of the Evidence Act.

10. Therefore, I am unable to agree with the contention of the learned counsel appearing for the appellant that in the absence of the charge framed under Section 304-B, I.P.C. the appellant cannot be convicted thereunder. The offence under Section 300, I.P.C, which is punishable under Section 302, I.P.C is major when compared to the offence under Section 304-B, I.P.C.

11. Section 221(2), Cr. P.C. provides that if in a case, the accused was charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of Sub-section (1) he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

12. So, in the light of the above provisions and the rulings of the High Courts as well as the Apex Court, I am of the view that the conviction imposed upon the appellant for the offence under Section 304-B, I.P.C. is perfectly valid and unassailable.

13. Therefore, I do not find any infirmity in the judgment of the trial Court and so, this appeal fails.

14. In the result, the appeal is dismissed.

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