

Pawan Kumar and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-12-2010

Judge : R.S. Chauhan, J.

Appellant : Pawan Kumar and ors.

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

R. S. Chauhan, J.

1. Charged with the offences under Sections 498-A, 304B and 306 IPC, framed vide order dated 27-8-2009, by the Special Judge (Women Atrocities and Dowry Cases) Jaipur City, Jaipur, the petitioners have challenged the said charge order before this Court.

2. In a nutshell, the facts of the case are that on 6-1-1998 the complainant, Phool Chand Gupta filed a complaint before the Judicial Magistrate No. 9, Jaipur City, Jaipur against Pawan Kumar, Gordhan, Ku. Veena, Ku. Kamlesh, and Smt. Munni Devi for the offences under Sections 498-A, 406, 306 read with 120B IPC. The learned Magistrate sent the said complaint for investigation to Police Station Gandhi Nagar, Jaipur. After a thorough investigation the police submitted a charge sheet against the present petitioners namely, Pawan Kumar, Ku. Veena, and Smt.

Munni Devi, for the offences under Sections 498-A, 304B and 306 IPC. It did not file any charge sheet against Gordhan and Ku. Kamlesh. The case was committed to the court of Special Judge (Women Atrocities and Dowry Cases) Jaipur City, Jaipur. Vide order dated 6-6-2000, the learned Judge discharged the petitioners from the offences under Sections 304B and 306 IPC, but framed a charge under Section 498A IPC. Since the case was triable by Magistrate, the case was sent back to the Chief Judicial Magistrate.

Since the complainant was aggrieved by the order dated 6-6-2000, he filed a revision petition before this Court, which was registered as S.B. Cr. Revision Petition No. 289/2000. Vide order dated 6-4-2009, this Court quashed and set aside the order dated 6-6-2000 and remanded the case back to the Special Judge, and directed the learned Judge to re-frame the charges after hearing both the parties. Consequently, as mentioned above, vide order dated 27-8-2009, the learned Judge framed charges against the present petitioners. Hence, this petition before this Court.

3. Mr. Kanta Prasad Sharma, the learned Counsel for the petitioner has raised the following contentions: firstly, entire story has been cooked up by the complainant. Therefore, the petitioners are being falsely implicated in the case.

Secondly, the petitioner No. 1, Pawan Kumar, was married to Asha on 6-12-1994. She stayed in the matrimonial home from 6-12-1994 to 29-1-1996. She left her matrimonial home on 29-1-1996. Till her death on 30-12-1997, she lived at her parental home. Thus, for the last twenty-three months of her life, she was living in her parental home and not in her matrimonial home. During this period, there was no demand for dowry. Hence, 'soon before her death' no cruelty was inflicted upon the deceased with regard to demand for dowry. Hence, an integral ingredient for offence under Section 304 B IPC is conspicuously missing. Therefore, the learned Judge is not justified in framing the charge under Section 304 B IPC.

Thirdly, in order to frame a charge for an offence under Section 306 IPC intentional abatement for commission of suicide has to be made out by the prosecution. According to statement of the driver and the conductor of the bus from which Asha allegedly jumped out and committed suicide, there is no evidence

to show that she jumped out of a running bus and committed suicide. Therefore, it cannot be said that her death was suicidal in nature. Moreover, there is no evidence to show that the petitioners compelled the deceased to commit suicide. Therefore, the essential ingredients of Section 306 IPC are missing. Hence, the learned Judge is unjustified in framing the charge under Section 306 IPC.

Lastly, before a charge can be framed, the learned trial court should be convinced that eventually the trial would lead to conviction and not to acquittal. Because of the weakness in the case of prosecution, it is highly unlikely that petitioners would be convicted for the offences under Sections 304 B and 306 IPC. Therefore, the charge under Section 304 B and 306 should be quashed and set aside.

4. On the other hand, Mrs. Alka Bhatnagar, the learned Public Prosecutor, has vehemently contended that the complainant and his witnesses have not cooked up a false case against the petitioners. The statement of complainant, Phool Chand, clearly establishes that the deceased was subjected to dowry demands and to physical and mental cruelty from the very beginning of her married life. According to the complainant, she was subjected to physical assaults by the petitioner, as long as she stayed at the matrimonial home. According to the information given by the deceased to her parents, her husband, Pawan Kumar, had not only assaulted her physically, but also refused to have any physical relationship with her till the dowry demand of Rs. 1 lakh was fulfilled. According to the complainant, on two occasions when she was brutally assaulted, the petitioners did not seek any medical help for her. Moreover, she was thrown out of her matrimonial home for dowry demand. The petitioners made it amply clear that she would not be taken back until and unless the complainant fulfilled their dowry demand of Rs. 1 lakh. From January 1996 till December 1997, she was abandoned by the petitioners. According to Mrs. Bhatnagar, demand need not be expressed, but can also be implied. Likewise cruelty need not only be physical, but can also be mental. The petitioners had abandoned the deceased till their dowry demand of Rs. 1 lakh was met. According to the complainant, despite his several requests for reconciliation, the petitioners rejected his requests till the demand of Rs. 1 lakh was fulfilled. Thus, there was an implied dowry demand. Furthermore, the abandoning of wife by the husband is an act of cruelty inflicted by the husband. Therefore, even

during the intervening period of January, 1996 till December, 1997 mental cruelty for dowry demand was constantly inflicted. Hence, 'soon before the death' of deceased, she was subjected to cruelty for dowry demand. Hence, offence under Section 304 B IPC is clearly made out.

Mrs. Bhatnagar has further contended that in order to constitute offence under Section 306 IPC it is not essential that there should be abatement only in the form of an action; even omission which creates such circumstances as to force a person to commit suicide would amount to 'abatement'. Thus, abatement need not be through action, but can also be through omission. According to the learned Counsel, a holistic view has to be taken of the case to see if such circumstances were created which compel a person to commit suicide or not. Considering the plight of an abandoned wife in Indian society circumstances did exist for the deceased to commit suicide. Moreover, the deceased was caught in a vicious circle-living in her parental home would invite snide comments of the society, but to return to her matrimonial home would expose her to physical and mental cruelty. Caught between the devil and the deep blue sea, the deceased thought it proper to instead commit suicide. Therefore, these circumstances were created by, none other than, the petitioners themselves. Thus, they have abated her suicide. Hence, a strong suspicion does exist for framing the charge of offence under Section 306 IPC.

Lastly, at the stage of framing of the charge, the court is concerned with merely the existence of strong suspicion about commission of the crime. At this stage, the court cannot be concerned with the possibility or impossibility of conviction. For, whether an accused should be convicted or acquitted can only be adjudged after all the evidence has been led by the prosecution and by the defence. Therefore at the initial stage of framing charge, the court is not in a position to weigh the likelihood or unlikelihood of conviction of the accused. In the present case ample evidence does exist, both oral and documentary-in the form of letters written by deceased prior to her death-to point a needle of suspicion towards the petitioners. Hence, the learned Public Prosecutor has supported the impugned order.

5. Heard the learned Counsel for the parties, considered the material available on record, and examined the impugned order.

6. The purpose of criminal justice system is to protect the society from those persons who violate the law and pose a threat to the society at large. The protection of the society from offenders is the *raison d'être* (reason to be) for the criminal courts. Therefore, if there is sufficient evidence against a person, the trial court would be justified in proceeding against such a person.

Criminal Justice System has been considered by the Apex Court in the case of *Rajendra Singh v. State of U.P.* (2007) 3 SCC (Cri) 375 wherein it observed as under:

One of the aims and purpose of the criminal justice system is to maintain social order. It is necessary in that context to ensure that no one who appears to be guilty escapes a proper trial in relation to that guilt. There is also a duty to render justice to the victim of the offence.

7. In a heinous crime against woman, the court has to be more sensitive to the plight of the victim and to the suffering of the victim's family. Dowry demand is not merely an attack on the stability and tranquility of the society, but most importantly, it is a betrayal of human values, of human relationship which are held to be sacred in nature. Amongst the Hindus, marriage is not a contract, but is a sacrament. Thus, a sacred, moral and legal duty is imposed upon the husband to look after the welfare-the physical and the psychological, the economic and the emotional requirements-of a wife. Now a days, a woman can neither be treated as a chattel, nor as a toy to be used and abused by the husband and his family members. Indian civilization has always bestowed a sacred position to the wife. For, she is not only an anchor for the stability of the family, but she is also a protector, promoter and provider for the next generation. Thus, women have always been seen-as wife or mother-as a stabilizing factor for the society at large. Considering their enormous contribution to the family and society, women have been considered as part of divinity. Indian civilization has always bestowed and has conceived woman as feminine divine. However, in the world of crash commercialism, in the world of greed and other cardinal sins, this sacred and

practical vision of women is sometimes blurred, and often lost. Driven by the demonic force of greed and material consumption, the sacred bond of husband and wife, of daughter-in-law and in-laws family is shattered.

The judiciary is not only bound to uphold the rule of law, but it is also supposed to usher in a socio-economic revolution. This duty of being a social and economic reformer, is a duty bestowed upon the judiciary by the Constitution of India itself. Thus, the judiciary is bound to preserve the family bonding and, to protect the position of women within the family, and to promote their interest and rights within the society. If the judiciary were not to undertake a pro-active role, it would be failing in its constitutional duty. The judiciary, like any other organ of the State, is accountable to the people. Since crime is an action which shocks the conscious of the people, the judiciary cannot afford to be pedantic, pedagogic, myopic, or hyper-technical while dealing with crime against women. It has to be firm and practical in order to deal with the sky-rocketing crime against women.

8. While dealing with the difference in application of mind at the stage of framing of charge and at the stage of taking cognizance, this Court in the case of Vishwa Kumar Sharma v. State of Rajasthan 2006 (2) W.L.C. (Raj.) 268 observed as under:

There are differences between 'taking of cognizance' and 'framing of charge'. Of course, both the acts require the application of judicious mind. However, the former is done without hearing both the parties. Cognizance is taken without the accused being heard. The latter is done after hearing both the parties. In the former, the Judge examines the evidence to see if an offence has been committed. In the latter, the Judge examines the commission of the alleged crime by the accused. In the former, 'mere suspicion about the commission of an offence' is enough for taking of the cognizance. In the latter, 'grave suspicion about the commission of the crime by the accused' should exist before a charge can be framed. In the former, the Judge is not supposed to sift through the evidence. In the latter, a limited sifting of the evidence is permissible. Therefore, when the phrase 'prima facie evidence' is used, it is used for two different sets of examinations at two different stages of the criminal process. One has to realize

that the trial progresses through different stages. Hence, appreciation of evidence has to be of different quality. While at the stage of cognizance it is mere 'suspicion', at the stage of framing of charge it is 'grave suspicion', and at the end of trial, it is 'a critical analysis and a meticulous examination of the entire evidence produced by the prosecution and the accused'. Therefore, the appreciation of evidence at the stage of framing of charges is at micro level; at the end of the trial it is at macro level. Hence, the mental level of appreciation changes at every stage of the criminal process: from a cursory appreciation to a critical one.

9. At the stage of framing charge, obviously all the evidence which would be marshalled out during the course of trial is not laid out before the court. At this stage, merely a bird's eye-view of the evidence is presented by the prosecution, and at times, by the defence, before the court. Therefore, it is too early for the court to decide whether the evidence would eventually lead to a conviction or to an acquittal of the accused. Hence, to claim that the court should consider whether the evidence leads to a possible conviction is not proper. Obviously, the cart cannot be placed before the horse. Therefore, the trial court is merely concerned with the issue whether strong suspicion is created that the offender is the person who may have committed the crime or not? In case, strong suspicion points to the accused, the court would be justified in framing the charge. Since a limited evidence has come before the court, the court is not permitted to critically analyse the evidence which is supposed to be produced during the course of trial. Therefore, the trial court cannot meticulously and critically examine the evidence. It can only sift through the evidence for adjudging the existence of strong prima facie case. Hence, the contention that probability of conviction has to be considered by the trial court while framing the charge is unacceptable.

10. The learned Counsel for the petitioners has emphasised the fact that the deceased was living in her parental house for last twenty-three months prior to her death; during this period there was no cruelty for dowry demand which was inflicted upon her by the petitioners. Therefore, 'soon before her death' she was not subjected to any cruelty by the petitioners. This contention is unacceptable for the following reasons:

Section 304-B IPC reads as under:

304B. Dowry death.--(1) Where the death of a woman 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 relative 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 be deemed to have caused her death.

Explanation.-For the purposes of this Sub-section, 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

11. The aforesaid provision uses the words 'cruelty', and 'demand'. Cruelty need not be physical, it can be mental in nature. Moreover, cruelty need not be inflicted through any action, at times, it can also be inflicted through omission, e.g. refusal to consummate a marriage comes under the class of 'mental cruelty'. But such a cruelty is inflicted through omission. Therefore, cruelty can certainly be inflicted through omission and through refusal to perform one's marital duty. Of course, the duty may be social or legal.

12. Similarly, there is no requirement in law that a demand has to be expressed or has to be explicit in nature; a demand can also be implied through one's conduct. In the present case the complainant and his witnesses have stated that the deceased was thrown out of her matrimonial house till she brings Rs. 1 lakh with her. Thus, there was clearly a demand for money. This demand was made after the marriage. It was made only because the parties were married. Moreover, it was made for no other legitimate reason, such as loan for establishing a business or for going abroad. It was, thus, made 'in connection with the marriage'. Hence, the demand was for 'dowry' as defined under Section 2 of the Dowry Prohibition Act, 1961.

13. During the period from January 1996 till December 1997, despite several requests of the complainant and his family members for reconciliation, the deceased was not taken back by her husband or in-laws. According to the complainant and his witnesses, the petitioners were adamant that they will not take Asha back, until and unless Rs. 1 lakh is given by the complainant and his family members. Therefore, the deceased was abandoned for no other reason, except for 'dowry demand'. Although the demand may not be explicit, but the petitioners' conduct was loud and clear that 'dowry demand' was being made. Thus, by their omission in taking Asha back to her matrimonial house, they had not only inflicted mental cruelty upon Asha, but they had also made their demand for dowry amply explicit. Since, the omission continued from January, 1996 to December, 1997, obviously there was 'cruelty for dowry demand' 'soon before death' of the deceased. Therefore, the three ingredients required under Section 304-B IPC namely, (i) cruelty for dowry demand, (ii) soon before death, (iii) death in unnatural circumstances, do exist in the present case. Further, since the ingredients prima facie do exist, the presumption under Section 113-B of the Evidence Act can be drawn safely against the petitioners. Hence, the learned Judge was certainly justified in framing the charge under Section 304-B IPC.

14. Abatement need not only be active, but can also be passive. In order to abate a person to commit suicide, it is not essential that words be spoken to force the person to commit suicide. Circumstances can be created through commission or omission, which would compel a person to commit suicide. If the persons are able to create such circumstances, they too would be liable for having abated commission of suicide. In case the word 'abatement' were not interpreted in this wider scope, an escape route would be left for unscrupulous people to create such circumstances which would force a person to commit suicide and yet such culprits would be permitted to go scott free. The law cannot permit such diabolical persons to escape from the net of criminal justice system. Therefore, time has come to take a wider view of the word 'abatement'.

15. In this wider view, the circumstances of the case need to be explored and adjudged. While appreciating these circumstances the court should be sensitive to the social, religious, and economic milieu, and to the harsh realities of life. In the

present case the deceased, a married woman, was abandoned by her husband and her in-laws, for no fault of her own. Her only sin was that she belonged to a family that could not fulfill the alleged greed of the petitioners for Rs. 1 lakh. The position of a married woman who is abandoned by her husband is not a comfortable one, to say the least, in the Indian society. She becomes the target of curiosity, of ridicule, of aspersions and of exploitation. She becomes an object of pity. The traditional view of Indian society is that a daughter, once she is married and leaves her father's house, her only refuge and haven is her matrimonial home. Cast out from her matrimonial home, she may find a refuge in her parental home. But she may be kept in an animated suspension even in her parental home. Therefore, the life of an abandoned married woman is like an autumn leaf which falls from a branch of a tree, is blown by the wind, and is yet to rest on mother earth. Groping in the darkness of her life, struggling against the insecurities of her existence, an abandoned married woman may find life too burdensome for her to live. These circumstances are certainly not of her own creation. For, it is not she who has abandoned the duties of her married life, and has broken the matrimonial home. Instead, these horrifying nightmarish circumstances have been created by the husband and the in-laws who have forgotten their duties towards the wife and the daughter-in-law. They have placed the woman in such circumstances wherein the woman finds death as an easy solution to the tough life that she is compelled to lead. Viewing the circumstance from such a social-economic angle, and keeping in mind that law has to be sensitive to the condition of the society at large, this Court is of the opinion that learned Judge was certainly justified in framing the charge under Section 306 IPC.

16. Learned Counsel for the petitioner has contended that except for the statement of the mother, the conductor and the bus driver clearly state that no one had jumped from the running bus. This fact has not been considered by the learned trial judge. Veracity and creditworthiness of witnesses can only be examined and adjudged during the course of trial. It would be too early to consider these facts at the stage of framing of the charge. According to the Conductor, Asha had gotten down at the bus-stand. Yet her body was found on a road far away from the bus-stand. Thus, this aspect of the case, as to how the body reached the place where it was discovered, and the site plan was prepared, has to be examined by the trial

court. Therefore, merely on the stray statements of two witnesses, it cannot be held that the story narrated by the complainant and his witnesses is concocted. Hence, the learned trial judge was justified in framing the charge against the petitioners.

17. Although this petition is being dismissed, but it is clarified that none of the observations made by this Court should ever influence the decision of the trial court. The Trial court should apply its judicious mind independently and should meticulously appreciate each and every evidence in accordance with law.

18. For the reasons, mentioned above, the revision petition is devoid of merit. It is, hereby, dismissed.

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