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Court : Delhi

Decided On : Apr-30-2012

Judge : The Honourable Ms. Justice Mukta Gupta

Appeal No. : CRL.REV.P. 681 OF 2009

Appellant : Mohan Singh and Others

Respondent : State Nct of Delhi

Judgement :

1. By the present petition the Petitioners, who are father-in-law, mother-in-law, brother-in-law and wife of brother-in-law of the deceased, challenge the order dated 23rd October, 2009 directing framing of charge for offence under Section 304-B/ 34 IPC against the Petitioners. The grievance of the Petitioners is limited to the extent that though the charge under Section 498-A IPC is prima facie made out against the Petitioners, however no charge under Section 304-B IPC is made out. The Petitioners were in fact discharged for the offence under Section 304-B IPC and a charge under Section 498-A IPC was framed against them on 22nd February, 2007 and the husband of the deceased was charged for offence under Section 498-A/306 IPC. However, in a revision filed before this Court by the State vide order dated 26th March, 2009 this Court directed the Learned Trial Court to examine the matter in the light of the statements of the witnesses, who had been examined by that time and directed re-hearing to the parties. After hearing the parties, the Learned Trial Court vide the impugned order dated 23rd October, 2009

directed and framed charge under Section 304-B/ 34 IPC against all the accused including the Petitioners herein besides the charges under Section 498-A/34 IPC.

2. Learned counsel for the Petitioners states that even on the basis of the statements that have been recorded during the trial, no case for charge under Section 304-B IPC is made out against the Petitioners, as there is no allegation that soon before the death, the Petitioners harassed and tortured the deceased for demand of dowry. There are three instances of harassment and the last incident of May, 2006 relates only to the husband, that too for demand of Rs. 1 lakh for business and to buy a land which does not amount to demand of dowry, as held in a catena of decisions. Reliance in this regard is placed on Harjit Singh Vs. State of Punjab I (2006) DMC 11 (SC); Appasaheb and Anr. Vs. State of Maharashtra (2007) 9 SCC 721 and KansRaj Vs. State of Punjab and Ors. 2000 CrI.L.J. 2993 (SC).

3. Learned APP on the other hand contends that on an examination of the evidence, which has come on record, the impugned order is justified in law. In Ashok Kumar Vs. State of Haryana 2010 (12) SCC 350 and Kans Raj v. State of Punjab and Others, 2000 CrI.L.J. 2993 the Hon'ble Supreme Court has defined what is a proximate and live link. Further in Bachni Devi and Anr. Vs. State of Haryana (2011) 4 SCC 427 the Hon'ble Supreme Court has held that if the demand for property or valuable security, directly or indirectly has a nexus with marriage, such demand would constitute "demand for dowry". Each case has to be looked into on its own facts. Since there is prima facie evidence against the Petitioners, at this stage the impugned order on charge is justified and it would be in the realm of appreciation of evidence to see whether the charge has been proved beyond reasonable doubt by the prosecution, taking into account the statutory presumption available.

4. I have heard learned counsel for the parties. Briefly the facts of the case are that FIR No. 641/2006 was registered on 26th August, 2006 against the Petitioners and Harinder Singh on the complaint of one Paramjeet Singh who alleged that his daughter Gurpreet Kaur was married to Harinder Singh on 3rd October, 2003. After the marriage Gurpreet Kaur came to the parental house and stated to him

and his wife Surender Kaur that her mother-in-law i.e. Petitioner No.3 herein was harassing her by saying that her father had given only some gold ornaments at the time of her marriage and she should bring more ornaments and her husband used to give her beatings. When she complained to her husband regarding this, he along with his mother used to give her beatings. When she complained to her father-in-law Mohan Singh and brother-in-law Varinder Singh, they did not pay any heed and rather threatened her that Harinder Singh was well-educated and asked her to bring money from her father for the business of computers of Harinder Singh. The complainant stated that he had given a sum of Rs. 40,000/- to Mohan Singh the Petitioner No.1 herein in September, 2004. On 18th August, 2004 Gurpreet Kaur was blessed with a child and the Petitioner No.3 put forth a demand of 4 gold bangles. It is alleged that two months prior to the death of his daughter, her in-laws gave her beatings. When they talked on the phone, Gurpreet was weeping bitterly and called them to save her. However, her phone was disconnected. On the occasion of Raksha Bandhan festival Harinder Singh raised a demand of Rs. 1 lakh to run his business. On the complainant showing his inability, Harinder Singh in anger remarked that his daughter was of no use as her father could not pay a sum of Rs. 1 lakh and he would kill her. On 25th August, 2006 at about 8.30 PM he received a phone call whereby he was informed that her daughter had taken crocin tablets. When he went there, he found his daughter lying on the bed and there were ligature marks on her neck. He prayed that action be taken against the Petitioners and Harinder Singh the husband of the deceased.

5. After investigation the charge-sheet for offences under Section 304-B/498-A/34 IPC was filed against the Petitioners and Harinder Singh. However vide order dated 20th February, 2007 the Learned Trial Court framed charge under Section 498-A against the Petitioners which was challenged before this Court. This Court remanded the matter back vide order dated 26th March, 2009 for considering the statements of the witnesses also recorded during the trial.

6. During the trial PW-9 Paramjeet Singh, the complainant reiterated his allegations made in the FIR and stated that 10/12 days after the marriage, his daughter came to the parental house and told that the Petitioners No. 1 to 3 used to whisper to each other that insufficient dowry was given at the time of marriage.

The Petitioner No.3 said that insufficient jewellery was given. Two days prior to the first Lohri in the year 2004, his daughter informed that the Petitioner No. 1 and 3 stated that the refrigerator was not amongst the articles given in the marriage. However, he showed his helplessness to his daughter to give a refrigerator. When the complainant and his wife went to see their daughter and the newly born baby, the Petitioner No.3 stated that since they had come to see the newly born baby, they could have brought 4 gold bangles. It is further alleged that in the last days of September, 2004 the Petitioner No.1 telephonically contacted him and asked him to foot the bill regarding medical expenses incurred at the time of delivery. PW-9 arranged for Rs. 40,000/- and gave the same to the Petitioner No.1. Since the surgery was to be performed on his daughter, she was sent to the house of the complainant and prior to Deepawali she went back to her matrimonial home. Two months prior to 25th August, 2006 when the daughter of the complainant died he received a call on his mobile from the mobile of Harinder Singh. He heard his daughter Gurpreet Kaur raising hue and cry saying that he should save her. However, the phone was disconnected. When PW-9 and PW-10 reached the matrimonial home they were sent back by Petitioner No.3 saying that it was their internal matter. On the day of Raksha Bandhan the deceased came to the house of PW-9 and told him that her husband was demanding a sum of Rs. 1 lakh from her for his business and has threatened her with death in case his demand of Rs. 1 lakh was not met with. It is further stated that the deceased used to tell PW-9 and 10 that she was given beatings by her husband and when she used to tell the Petitioner No.1 and 3 about the beatings, they used to ask her to bring money for the business of her husband.

7. Statement of PW-10 Surender Kaur, the mother of the deceased has also been recorded. She alleged that after the marriage, Petitioner No.3 demanded more jewellery items saying that the jewellery items given at the time of marriage were insufficient. She further stated that the deceased told her that Petitioner No. 1 and 2 asked her to bring money from her parents as her husband was well-educated. The deceased further stated that the husband used to give her beatings when she brought to his notice that his mother used to complaint of insufficient jewellery brought by her. When they went to visit the matrimonial home of her daughter with gift on account of birth of the newly born grand-daughter, the Petitioner No. 3 and

4 remarked that they had come with silver cadas instead of gold cadas. The Petitioner No.3 further remarked that she had asked for gold bangles and that PW-10 did not intend to settle her daughter at the matrimonial home. It is further stated that in May, 2006 the Petitioners gave beatings to her daughter. The husband of the deceased switched on his mobile phone and asked her to talk to PW-10. PW-9 attended the call and enquired from his daughter as to why she was weeping when she told that she was beaten by the above-named persons. His daughter further telephonically informed PW-9 that Petitioner No.3 was saying that they would kill her. On 9th August, 2006 on the day of Raksha Bandhan when the deceased came to their house she told that her husband Harinder Singh was demanding Rs. 1 lakh from her to run his business and to buy the land.

8. In Ashok Kumar (supra), it was held-

“22. The cruelty and harassment by the husband or any relative could be directly relatable to or in connection with, any demand for dowry. The expression “demand for dowry” will have to be construed ejusdem generis to the word immediately preceding this expression. Similarly, “in connection with the marriage” is an expression which has to be given a wider connotation. It is of some significance that these expressions should be given appropriate meaning to avoid undue harassment or advantage to either of the parties. These are penal provisions but ultimately these are the social legislations, intended to control offences relating to the society as a whole. Dowry is something which existed in our country for a considerable time and the legislature in its wisdom considered it appropriate to enact the law relating to dowry prohibition so as to ensure that any party to the marriage is not harassed or treated with cruelty for satisfaction of demands in consideration and for subsistence of the marriage.

23. The Court cannot ignore one of the cardinal principles of criminal jurisprudence that a suspect in the Indian law is entitled to the protection of Article 20 of the Constitution of India as well as has a presumption of innocence in his favour. In other words, the rule of law requires a person to be innocent till proved guilty. The concept of deeming fiction is hardly applicable to the criminal jurisprudence. In contradistinction to this aspect, the legislature has applied the concept of deeming

fiction to the provisions of Section 304-B. Where other ingredients of Section 304-B are satisfied, in that event, the husband or all relatives shall be deemed to have caused her death. In other words, the offence shall be deemed to have been committed by fiction of law. Once the prosecution proves its case with regard to the basic ingredients of Section 304-B, the Court will presume by deemed fiction of law that the husband or the relatives complained of, has caused her death. Such a presumption can be drawn by the Court keeping in view the evidence produced by the prosecution in support of the substantive charge under Section 304-B of the Code.

24. Of course, deemed fiction would introduce a rebuttable presumption and the husband and his relatives may, by leading their defence and proving that the ingredients of Section 304-B were not satisfied, rebut the same. While referring to raising of presumption under Section 304-B of the Code, this Court, in *Kaliyaperumal v. State of T.N.* (2004) 9 SCC 157, stated the following ingredients which should be satisfied: (SCC p. 162, para 4)

“(1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC).

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death.”

25. In the light of the above essential ingredients, for constituting an offence under Section 304-B of the Code, the Court has to attach specific significance to the time of alleged cruelty and harassment to which the victim was subjected to and the time of her death, as well as whether the alleged demand of dowry was in connection with the marriage. Once these ingredients are satisfied, it would be called the “dowry death” and then, by deemed fiction of law, the husband or the

relatives would be deemed to have committed that offence.”

9. Their Lordships in Ashok Kumar (supra) also considered the meaning of “soon before death” and it was held that the concept of reasonable time is the best criteria to be applied for appreciation and examination of such cases. In other words “there should be a reasonable, if not direct nexus between her death and the dowry related cruelty or harassment inflicted upon”

10. In Appasaheb (supra) their Lordships held that the giving or taking of the property or valuable security must have some connection with the marriage of the parties. However, a demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand of dowry, as the word is normally understood. In Bachni Devi (supra) while distinguishing Appasaheb it was held that if demand for property or valuable security directly or indirectly has a nexus with the marriage, such demand would constitute demand for dowry. Hence a demand for money to establish a business was covered under demand for dowry. It was held:-

“18. The above observations of this Court in Appasaheb case, (2007) 9 SCC 721 must be understood in the context of the case. That was a case wherein the prosecution evidence did not show “any demand for dowry” as defined in Section 2 of the 1961 Act. The allegation to the effect that the deceased was asked to bring money for domestic expenses and for purchasing manure in the facts of the case was not found sufficient to be covered by the “demand for dowry”. Appasaheb (2007) 9 SCC 721 cannot be read to be laying down an absolute proposition that a demand for money or some property or valuable security on account of some business or financial requirement could not be termed as “demand for dowry”. It was in the facts of the case that it was held so. If a demand for property or valuable security, directly or indirectly, has a nexus with marriage, in our opinion, such demand would constitute “demand for dowry”; the cause or reason for such demand being immaterial.

11. A perusal of the evidence on record shows that though prima facie there is evidence of continuous harassment for dowry by Petitioner Nos. 1 and 3 and Harinder Singh followed by beating and demand for Rs. 1 lakh which was not

stated to be as loan, I find no infirmity in the order of the Learned Additional Sessions Judge directing framing charges against the Petitioner No. 1 and 3 under Section 304-B/34 IPC. However, a perusal of the evidence on record does not show any act of harassment in relation to the demand of dowry soon before the death on behalf of the Petitioner No.2 and 4. As regards Petitioner No.4, the only allegation made against her relates to the time when the baby was born in the year 2004, and the allegation made against Petitioner No.2 relates to the initial demands raised after marriage. Hence the impugned order is set aside to the extent it directs framing charge under Section 304-B/34 IPC against the Petitioners No. 2 and 4.

12. Petition is disposed of accordingly. Trial Court Record be sent back.

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