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Court : Delhi

Decided On : Apr-24-2012

Judge : S. Ravindra Bhat &Amp; S.P. Garg

Appeal No. : CRL.A. 59 OF 2012 & CRL.M. (BAIL) 109 OF 2012

Appellant : Laxmi NaraIn @ Rajesh

Respondent : State

Judgement :

S. RAVINDRA BHAT

1. The Appellant impugns a judgment and order dated 20.12.2011 in S.C. No. 50/05/10 by which he was convicted for the offence punishable under Section 498-A and 304-B IPC. He was sentenced to undergo Rigorous Imprisonment for 3 years and to pay a fine of `1,000/- under section 498-A IPC and under section 304- B IPC he was sentenced to undergo life imprisonment and to pay a fine of ` 1,000/-. Although the present appeal was filed in February, 2012, the Court took it up for final hearing, with consent of counsel for the parties, since the incident occurred on 11.03.2005, and the Appellant was in custody for over seven years, at the time of the hearing.

2. The prosecution’s case is that the Appellant Laxmi Narain got married to the deceased Kamlesh on 21.01.2005. On 11.03.200,5 the deceased was found lying near the TV set in her house. The Appellant rushed the deceased to AIIMS

hospital in the car of Bhim Raj (PW-2). She was, however declared brought dead; (the MLC was placed on record as Ex.PW-13/A). The brother of the accused, Hukum Chand, informed the deceased's parents that she had died due to an electrical shock. The SDM (PW-5) was called and he recorded the statement of PW-1 Phool Chand (father of the deceased) and PW-3 Ram Niwas (uncle of the deceased); Ex.PW-1/C and Ex.PW-3/DA. On 18.03.2005 the SDM recorded two more statements, Ex.PW-1/A (of the father) and Ex.PW-4/A of the brother of the deceased. The police also recorded the statements of PW-1 and 4. In these two statements, for the first time, those two relatives alleged that the deceased used to be routinely harassed and treated cruelly for dowry, and that having regard to these allegations, the accused were responsible for her unnatural death.

3. An FIR bearing No. 244 of 2005 was registered under section 498-A/304-B IPC with PS Malviya Nagar on 21.03.2005. The police completed the investigation and filed a charge sheet. Both the accused, i.e Laxmi Narain and his brother Hukum Chand (now acquitted) were charged under section 498-A/304-B IPC. They pleaded not guilty and claimed trial. The Trial Court by its impugned judgment, acquitted Hukum Chand but convicted Laxmi Narain and sentenced him to undergo imprisonment and pay fine, as noticed previously in this judgment.

4. The Appellant's counsel submitted that the prosecution failed to prove its case beyond reasonable doubt. The counsel pointed out that the FIR was registered on 21.03.2005 i.e. after a delay of 10 days. The fact that the case was registered against the accused after such a long delay showed that the complainants had, by an afterthought, implicated the accused. Furthermore PW-1 in his first statement before the SDM on the date of the incident i.e. 11.03.2005 has nowhere mentioned of any harassment by the accused; he was not suspicious about the accused's involvement in the death of his daughter. PW-1 deposed that his son (PW-4) told him that the deceased had been murdered and not electrocuted on 14.03.2005 however he kept silent about the same till 18.03.2005. This behavior seems highly unlikely. The counsel for the accused submitted that PW-1 changed his statement on 18.03.2005 and implicated the accused as an afterthought. Further, submitted the counsel, PW-1 deposed that he got his statement recorded before the SDM again on 18.03.2005 because, after going through the medical

report he came to the conclusion that his daughter had been caused death by her in-laws; he stated that his daughter did not suffer an electrical shock but was in fact poisoned by the accused and his family. The report pertaining to viscera was received only on 12.03.2006 from the FSL. Therefore it was not possible that the medical report that PW-1 is referring to would have mentioned anything about poisoning.

5. The counsel for the Appellant pointed out that PW-1 deposed in the Court that the statement Ex.PW-1/C signed by him on 11.03.2005 was not read out to him and only his signatures were obtained on it. He further stated that his statement dated 11.03.2005 was not written by the SDM and his signatures were obtained in the absence of the SDM. However the SDM, PW-5 deposed that the statements were recorded in his presence and the same were read over and explained to the persons. PW-5 also clarified that he satisfied himself before recording the statements about there not being any pressure or duress.

6. It was further submitted that PW-1 made no less than four separate statements during investigation, and gave differing versions. However, he conveniently forgot whether he had made any such statements, or what he had mentioned. It was submitted that he clearly admitted, as did the deceased's brother PW-4 that the SDM was not present when the statement was recorded by them implicating the accused. Counsel stressed the fact that in the earliest statement, recorded by PW-1, the father, he did not mention anything about dowry demands. Similarly, PW-4's credibility was severely undermined, because even though the deceased was his sister, he admitted to not attending her funeral ceremonies, such as the terahwi or thirteenth day ceremony. Neither of them were clear about any specific demands made on account of dowry, nor the type of cruelty or the regularity of such behaviour**,** or even the approximate time when it was inflicted on the deceased.

7. It was submitted that the prosecution failed to prove that there had been any demand of dowry. There were contradictions in the statements of the prosecution witnesses; they made improvements on the statements recorded. PW-1 and PW-3 had appeared before the SDM, PW-5 on 11.03.2005; their statements Ex. PW 1/C and Ex.PW 3/DA were recorded. They were made voluntarily. These did not

contain any allegations against the accused. These allegations were made for the first time, after the postmortem had established the cause of death. Counsel stressed that the Trial Court's reasoning that the conduct of the witnesses was natural is not sound or convincing. Learned counsel also argued that the testimony of PW-4 was that his sister had told him on 09.03.2005 that dowry demands were being made, on the telephone. If this were indeed correct, nothing prevented him from apprising of this fact at the earliest point of time. Similarly, the allegations about dowry demands were vague; even if the deceased's parents had no cause to suspect her unnatural death, they at least would have mentioned if there was cruelty on account of dowry or any kind of harassment.

8. It was submitted that the Trial Court was swayed unduly by the cause of death, and the fact that the deceased's in-laws had told her parents that she died on account of electrocution. It was submitted that vital aspects such as PW-1's admission that he did not mention anything regarding dowry demand, or cruelty, were completely overlooked. Counsel also argued that even though PW-9 stated that the cause of death probably was zinc phosphate poisoning, he admitted that no opinion regarding electrocution in fact was given, even though it was sought, and the opinion given was that till viscera report was made available, no opinion regarding electrocution could be given, as stated in Ex. PW-9/B. It was submitted that PW-10 admitted that zinc phosphide is available in the market, and commonly sold where seeds etc. are sold. Counsel argued that similarly, PW-16 admitted that zince phosphide is easily available in the market, and used to control rodents. According to him, it smells like garlic; he also admitted that if someone takes or consumes it, he would not vomit immediately.

9. Counsel submitted that the Trial Court could not have assumed that the suicide or unnatural death, within seven years of the marriage of the deceased, in this case, falls under Sections 498-A read with Section 304 IPC. It was necessary to prove that soon before the death, the deceased had been treated with cruelty, and that such cruelty was in connection with dowry demands. In this case, there was insufficient evidence even to prove the crime of cruelty - either mental or physical; the testimonies of PW-1, PW-4 and PW-14 were sketchy and vague. Furthermore, the Court could not have proceeded with the alternative charge under Section 306

IPC. Stressing that the material has to be cumulative in nature, for the prosecution to rely on the presumption under Section 113-A, of the Evidence Act, counsel argued that the material neither pointed to cruelty, nor cruelty soon before death, nor was the prosecution able to establish dowry harassment as the reason for cruelty.

10. The Learned APP submitted that the prosecution was able to prove the guilt of the accused beyond reasonable doubt. The APP urged that the testimony of PW-1 and PW-4 clearly mentions of there being a dowry demand for a car which they were not able to fulfill. It was also submitted that the death of the deceased took place within two months of her marriage i.e. within seven years of their marriage. The Learned APP further submitted that the opinion of Dr. Arvind Kumar Ex.PW-9/C dated 29.05.2006 clearly stated that the cause of death is zinc phosphide poisoning and therefore it is clear that she was not electrocuted. The accused had no answer to it; he merely banked on his story that the cause of death was electrocution. Being the one present at the time of death, the accused owed a duty to explain to the court the special or peculiar circumstances under which it occurred. His silence was not only conspicuous, but highly incriminating. The impugned judgment, therefore, correctly convicted him for the offenses he was charged with.

11. The prosecution, for proving its case examined 16 witnesses but relied heavily on the testimony of PW-1 and PW-4.

12. PW-1 Phool Chand, father of the deceased deposed that on 11.03.2005 he received a telephone call from Hukum Chand informing him that his daughter had suffered an electrical shock and was admitted in AIIMS hospital; he found that his daughter was dead when he reached the hospital. He further deposed that Hukum Chand made him sign some papers on the pretext that the dead body would not be delivered for the next three days as there were holidays; he signed whatever the police wrote. He further deposed that on 18.01.2005 he along with some persons came to Delhi, collected the medical report and thereafter met the SDM and got his statement Ex.PW-1/C recorded. He stated that after going through the medical report he came to the conclusion that his daughter had been caused

death by her in in-laws. He testified to telling the SDM that whatever he had been told by the inlaws of the deceased was false and that his daughter did not suffer an electrical shock but was in fact poisoned by the accused and his family. His statement was recorded by the SDM on 11.03.2005 (Ex.PW-1/C) and 18.03.2005 (Ex.PW-1/A). He further stated that the accused persons used to demand a car and used to harass his daughter.

13. In his cross-examination the witness stated that his statement dated 18.03.2005 before the SDM was made after he went through the medical report where it was mentioned that it was a case of suspected poisoning; the medical report was collected by them from AIIMS. PW-1 then changed his statement and said that the report was given to them by the SDM and they had seen it after taking it from the SDM. He also deposed that they had gone to the SDM as his son had told him that his daughter had not died due to electrocution but had infact been murdered. His son told him about the fact on 14.03.2005 but they did not go to the SDM till 18.03.2005 as they were in shock. He stated that he could not remember if the last rites were performed before or after his statement to the SDM; he could not remember if the last rites were on 17.03.2005. He further deposed that the statement of 11.03.2005 was not read over to him and only his signatures were obtained on it. He further stated that his statement dated 11.03.2005 was not written by the SDM and his signatures were obtained in the absence of the SDM.

14. In his cross-examination he also admitted that he has not stated in any of his statements that his daughter had visited his house 2/3 times and had complained about demand of dowry. He could not remember whether in his first statement before the SDM i.e. 11.03.2005 he had stated that his daughter had visited his house 2/3 times and had made no complaints whatsoever. He admitted to having stated to the SDM that he came to know about the demand of car from his son 2/3 days after the death of the deceased. He denied the suggestion that he has made improvements in all his statements i.e. 11.03.2005 and 18.03.2005 before the SDM and 19.03.2005 and 23.03.2005 before the police. He further stated that it is wrong to suggest that on 17.03.2005 after the last rites were performed in Chirag Delhi, he and his relatives had demanded ` 7,00,000/- in lieu of the dowry and

stridhan articles. He denied the suggestion that the accused and his family were offering the return of her goods but the proposal was not agreeable to them (the deceased's family) as they wanted cash due to which an altercation and quarrel took place between the two families. He further stated that it was wrong to suggest that he and his son threatened the accused and his family and told them that they would falsely implicate them in this case.

15. PW-4 Raj Kumar, deceased's brother deposed that on 09.03.2005, he received a telephone call from the deceased and she told him that her in-laws were harassing her and were demanding a car; PW-2 called Hukum Chand and told him that he would come and bring back his sister. PW-4 went to Gurgaon on 10.03.2005 and on 11.03.2005 when he called his residence he was informed that his sister had died due to electric shock. He further deposed that by the time he reached Chirag Delhi the cremation was already over; he sent his parents back to Palwal with a friend. He further deposed that he went inside the room where the deceased expired and found that there was no electrocution type of incident and blood was found on the bed-sheet. He stated that he told his friends that his sister had been murdered by her in-laws as they were demanding a car. Thereafter he went back to Palwal. He further deposed that his statement was recorded 6/7 days after the incident by the SDM.

16. In his cross-examination he deposed that he did not give any statement nor did he make a complaint prior to the recording of the statement by SDM; the police did not take down his complaint. He was unable to remember the date when he tried to make a complaint to the police. He denied the suggestion that on 17.03.2005 at the last rites ceremony they demanded ` 7,00,000/- from the family of the accused. He denied that a quarrel took place between the two families. He further stated that it was wrong to suggest that he and his father threatened the accused and his family and told them that they would falsely implicate them in this case.

17. The initial post-mortem in this case was not able to establish the cause of death; the doctors had observed frothing in the mouth, of the deceased, and minute blood spots. The police therefore, sought viscera report, in terms of the queries Ex. PW-9/B. The viscera report, Ex. PW-9/C stated that death was caused

by zinc phosphide poisoning. This aspect was corroborated by the doctor PW-10 who also admitted that such chemicals were easily available in the market, from pesticide shops. PW-16 also said that such chemicals were used to kill rodents, etc.

18. Having regard to the prosecution's duty to prove the ingredients of both Sections 498-A and 304-B, it would be essential to recollect that the law insists that each ingredient, which forms the offence under the latter provision, and not merely one element has to be proved. It must always be kept in mind that Section 304-B IPC provides for a penal offence, and is posited on the following ingredients: (i) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances; (ii) Such death must have occurred within seven years from the date of the marriage (iii) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relative of her husband; and (iv) Such cruelty or harassment must be in connection with the demand of dowry.This was emphasized in Satvir Singh and Ors. vs. State of Punjab and Anr. [(2001) 8 SCC 633], by the Supreme Court in the following manner:

"22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section **304B** is to be invoked. But it should have happened "soon before 15 her death". The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasis the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the death would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept

"soon before her death".

In Ram Badan Sharma vs. State of Bihar [(2006) 10 SCC 115] it was again held by the Supreme Court, that:

"35. There are three main ingredients of this offence: (a) that, there is a demand of dowry and harassment by the accused on that count; (b) that, the deceased died; and (c) that, the death is under unnatural circumstances within seven years of the marriage. When these factors were proved by reliable and cogent evidence, then the presumption of dowry death under Section 113B of the Evidence Act clearly arose. The aforementioned ingredients necessarily attract Section **304B IPC**. Section **304B** is a special provision which was inserted by an amendment of 1986 to deal with a 18 large number of dowry deaths taking place in the country. In the instant case, if the circumstances of the case are analyzed on the touchstone of Section **304B IPC**, all the three basic ingredients of Section **304B I.P.C.** are present in the instant case. There has been persistent demand of dowry and harassment, humiliation and physical violence and beating by the husband and her in-laws. The deceased died under unnatural circumstances within seven years of the marriage."

The nature of evidence required to prove the kind of cruelty was stressed by the Supreme Court in Hira Lal and Ors. v. State (Govt. of NCT), Delhi [(2003) 8 SCC 80 in the following observations:

"Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman are required to be established in order to bring home the application of Section 498-A **IPC**. Cruelty has been defined in the Explanation for the purpose of Section 498-A. Substantive Section 498-A **IPC** and presumptive Section 113-B of the Evidence Act have been inserted in the respective statutes by the Criminal Law (Second Amendment) Act, 1983. It is to be noted that Sections 304-B and 498-A **IPC** cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to Section 498-A gives the meaning of "cruelty". In Section 304-B there is no such explanation about the meaning of

"cruelty". But having regard to the common background of these offences it has to be taken that the meaning of "cruelty" or "harassment" is the same as prescribed in the Explanation to Section 498-A under which "cruelty" by itself amounts to an offence. Under Section 304-B it is "dowry death" that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498-A. A person charged and acquitted under Section 304-B can be convicted under Section 498-A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections (See Akula Ravinder v. State of A.P. (1991 Supp. (2) SCC 99). Section 498-A **IPC** and Section 113-A of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113-A of the Evidence Act is seven years; presumption arises as 15 to dowry death when a woman committed suicide within a period of seven years from the date of marriage.

19. This Court is of the opinion that the Trial Court appears to have been overwhelmed by the unnatural death, and the cause for it, i.e. pesticide poisoning. This seems to have unduly clouded its judgment, in completely overlooking certain salient aspects, which pointed to glaring prosecution inadequacies. These were the inconsistencies as regards when the cruelty or harassment was meted out to the deceased, the nature of such cruelty, i.e. beatings, or incessant taunts, or some other form of mental torture etc. As remarked by the Supreme Court the two offences, i.e. Sections 498-A and 304-B IPC are distinct. Nevertheless, to get into the net of Section 304-B, which is graver, and carries a harsher punishment, as is expected, the prosecution has to prove that the degree of cruelty or intensity was such that it led to unnatural death- of course, also concurrently linking it with dowry harassment. Apart from bland and vague assertions about “cruelty towards demand for car” neither PW-1 nor PW-4 spell out what kind of cruel behavior did the accused indulge in vis--vis the deceased. This is quite apart from the improvement made by both the witnesses from the statements recorded earlier,immediately after her death. This Court feels that the Trial Court treated this aspect rather casually, by saying that since they were in a trauma, the explanation that they were confused, or misled, is acceptable. We are afraid such explanations cannot be allowed to pass muster. Here, if the deceased’s relatives had suspected

anything at all, regarding the accused's hand in the death of his wife, or the hand of any relative, they would have naturally mentioned about it, in the first available opportunity. If not PW-1, certainly PW-4 would have stated it. The latter witness's testimony also does not inspire confidence because he did not record any statement earlier than 18.03.2005, and what is more, by his own admission, did not attend the thirteenth day ceremony of his dead sister. Had he really been aware of a demand for a car, and dowry harassment, he would have informed his father contemporaneously, and taken steps to record his statement with the police. Furthermore, if indeed PW-4 had been told on 9th March, 2005, telephonically by the deceased about cruelty meted out to her by the accused and his family, he would have stated so to the police, immediately after her death. The police has not made any effort to connect this statement with any phone records. Therefore, the Appellant quite rightly argues that these depositions and statements are afterthoughts.

20. That leads the Court to analyze the cause of death. No doubt, it was unnatural; the body showed some blood spotting near the neck, and frothing in the mouth. The doctor PW-10's testimony makes an interesting reading. He deposed that though it was possible to say whether the cause of death was electrocution, no opinion was in fact given on that aspect. That aside, he (as well as PW-16) deposed that the chemical found in the viscera was commonly available, in shops, and used to kill rats (rodents). The opinion in the report was that death was probably caused by zinc phosphide poisoning. Now, these leave the Court with a fairly hazy picture. Even if it were accepted that the cause of death was zinc poisoning, there is nothing to rule out the plausibility of the accused's version that he thought that his wife died due to electrocution. There were no visible or external signs of injury of the kind for the police to conclude that she was subjected to beatings, or physical violence. In these circumstances, the finding of the Court that the cause of death was unnatural enough to hold the Appellant criminally responsible under Section 304-B IPC was reaching a conclusion without the necessary factual and legal foundation. That the death was unnatural cannot be the exclusive basis for a conviction for that offence. Here, as held earlier, there was no acceptable evidence of cruelty, or dowry harassment, to lead to a conviction even under Section 498-A. However, to hold that the accused was

guilty for a graver offence under Section 304-B IPC was to ignore the necessary ingredients of that offence, and reach theconclusion only by focusing the mind on the nature of death. That it was unnatural or suicidal, is not enough to constitute the offence, if the other elements necessary to attract a conviction are not proved, as is the case here; the prosecution failed to prove the essential elements constituting the offence.

21. For the above reasons, this Court is of the opinion that the Trial Court fell into serious and grave error in recording its conviction and findings holding the Appellant guilty, and sentencing him, in the manner it did, by the impugned judgment. That judgment is therefore, set aside. The Appellant shall be set at liberty forthwith if not required in any other case; Crl. Appeal 59/2012 is consequently allowed.

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