

(2015) 09 MP CK 0040
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 262 of 1997

Anil Aristotal and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 07-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 221
Evidence Act, 1872 — Section 113-B
Penal Code, 1860 (IPC) — Section 107, 304-B, 306, 498-A

Citation : (2016) 1 DMC 167

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Advocate : J.S. Singh, for the Appellant; Ajay Tamrakar, Panel Lawyer,
Advocates for the Respondent

Final Decision : Allowed

Judgement

N.K. Gupta, J—The appellants have preferred the present appeal being aggrieved with the judgment dated 24.1.1997 passed by the Sessions Judge, Bhopal in ST No. 277/1994 whereby the appellants have been convicted of offence under Section 304-B of IPC and sentenced to ten years" rigorous imprisonment.

2. The prosecution story, in short, is that the deceased Anjana was married to the appellant Anil on 19.5.1993 at Agra. Thereafter she was residing with the appellants at Bhopal. The appellant No. 2 was mother-in-law of the deceased. The deceased was found hanged in the house of the appellants on 25.3.1994. The intimation of her death was given to the parents and relatives of the deceased. Sanjeev Lyall (PW-1) brother of the deceased, Duglos Pershad (PW-5) maternal-uncle of the deceased, Edgar Lyall (PW-7) father of the deceased, Smt. Usha Lyall (PW-8) mother of the deceased and other relatives of the deceased came to the Bhopal to attend the burial ceremony of the deceased. Thereafter they went back to Agra. Thereafter on 29.3.1994 Duglos Pershad, maternal uncle of the deceased received a letter Ex.P-1 written by the deceased and discussed

with Edgar Lyall, father of the deceased, then they went to Shri PS Mehra, Advocate and got an FIR Ex.P-7 drafted, which was produced in person before the CSP Govindpura, Bhopal on 7.4.1994. In the meanwhile the postmortem of the deceased took place at Forensic Science Department, Gandhi Medical College, Bhopal. Dr.D.S. Badkur (PW-9) had performed the postmortem on the body of the deceased and found that she had expired due to asphyxia caused by hanging and at the time of death she was not pregnant. After getting the FIR Ex.P-7, the police registered a case against the appellants. The parents and relatives of the deceased had made several allegations against the appellants relating to dowry demand and harassment done by the appellants upon the deceased Anjana. After due investigation, a charge sheet was filed before the ACJM Bhopal, who committed the case to the Court of Sessions.

3. The appellants-accused abjured their guilt. They took a plea that they were falsely implicated in the matter. The deceased was never harassed for any dowry demand or otherwise. Though it was not pleaded that the deceased was suffering from cancer of uterus, and therefore due to agony of that problem, she had committed suicide, but the appellants have tried to settle that defence by examining Basant Shindey (DW-1), Samuel Injul (DW-2), S.N. Singh (DW-3), Manoj Khalka (DW-4), Dr.Ashok Kumar Sehgal (DW-5), Barnard Francis (DW-6), David Minsh (DW-7) and E. Jordan (DW-8).

4. The trial Court after considering the evidence adduced by the parties, convicted and sentenced the appellants as mentioned above.

5. During the pendency of the appeal, appellant No. 2 Smt. Sheela had expired, and therefore the appeal filed by the appellant No. 2 has abated.

6. I have heard the learned counsel for the parties at length.

7. The trial Court has started its judgment to decide the fact as to whether the death of the deceased was homicidal or not. At present that fact is admitted and much discussion is not required on that point. However, Dr.D.S. Badkur (PW-9) has proved the postmortem report Ex.P-21 and found that the deceased died due to hanging and the death was suicidal in nature. Also the witness Nalini Choudhary (PW-3) has stated that she was neighbour of the appellants. She heard a sound that the deceased was calling her, and therefore she invited the attention towards the house of the appellants and found that the deceased was hanged from the ceiling fan with a rope and there was nobody present in the house. There is no allegation of the prosecution that the appellants have killed the deceased, and therefore there is no difficulty in finding that the death of the deceased was suicidal in nature. The nature of the death that whether it is suicidal or homicidal is not important question in the case of offence under Section 304-B of IPC. But while considering the matter for the offence under Section 306 of IPC, it is necessary to conclude that whether the death of the deceased was suicidal or not. If the death of the deceased was homicidal or suicidal, it is unnatural death in the eye of law, and therefore in both the cases

the provisions of Section 304-B of IPC are attracted.

8. As discussed above, it is apparent that the deceased Anjana died an unnatural death. The prosecution has examined Sanjeev Lyall (PW-1) brother of the deceased, Duglos Pershad (PW-5) maternal-uncle of the deceased, Edgar Lyall (PW-7) father of the deceased and Smt. Usha Lyall (PW-8) mother of the deceased to show that the deceased was being harassed for dowry demand. Each of these witnesses have stated that the deceased came to her father's house at Agra for 3-4 times in her married life. She had informed these witnesses that the appellants were demanding for a fridge, TV, cooler etc. Sanjeev Lyall (PW-1) has stated a different story that there was a demand of scooter, but such demand was not corroborated by other witnesses, and therefore it appears that his information to the Court is contradictory to his case diary statement, and therefore it cannot be said that accepted here was a demand of scooter from the side of the appellants. Before accepting the evidence given by Sanjeev Lyall, Duglos Pershad, Edgar Lyall and Smt. Usha Lyall, the matter is challenged by the appellants as to why they did not inform the police when they came to attend the burial ceremony of the deceased and as to why they did not take any step within time against the appellants. The witnesses have given explanations for their delayed conduct. Such explanations are to be considered first. The witnesses have given an explanation that when the deceased told them about her grievance regarding demand of dowry, she was always accompanied by appellant Anil, and therefore the witnesses have told the appellant Anil to behave properly, and therefore there was no need to take any step against the appellants. However, such an explanation appears to be not acceptable.

9. As per the witnesses, Mr. Sinha, a relative of appellant Anil, was a mediator in settlement of the marriage of the deceased Anjana and appellant Anil and if there was some problem to the deceased Anjana from the side of the appellants, then the matter would have been referred to Mr. Sinha for its resolution, but after considering the evidence of all the witnesses, it is apparent that the matter was never referred to Mr. Sinha. Similarly, the witnesses have accepted that one Denish Pershad, maternal uncle of the deceased was residing in MAC Technical Institute Campus at Bhopal and he was a senior mechanic. If Anjana had some problem from the appellants, then as to why these witnesses did not tell to their close relative Denish Pershad to help the deceased Anjana from time to time. According to the witnesses, Denish Pershad was present at the house of the appellants, when the burial ceremony of the deceased Anjana was to take place and he arranged for scooter etc. for various witnesses for their mobility. Non examination of Denish Pershad clearly indicates that the parents and relatives of the deceased are telling a falsehood, which could not be confirmed from the side of Denish Pershad, maternal uncle of the deceased Anjana. It is not alleged that the parents of the deceased had bad relations with Denish Pershad, on the contrary it is established by their evidence that they went to the house of Denish Pershad when they reached to Bhopal to attend the burial ceremony and

thereafter they went to the house of appellant Anil.

10. The witnesses have given an explanation for not lodging the FIR at Bhopal soon after the burial ceremony that they were surrounded by soldiers of CRPF and they were not permitted to go anywhere and by a military truck they were forced to go to railway station and to return back to Agra. In this connection, the statement of A.A. Qureshi (PW-10) may be considered. He has stated that there was a festival of Holi on the day when the dead body of deceased Anjana was to be brought from mortuary and to be taken for burial. He contradicted the statements of parents and relatives of the deceased that they went to the house of appellant Anil in an auto rickshaw. He has accepted that he received the parents and relatives of the deceased at railway station Bhopal and he took them to the house of Anil. It is apparent that the parents and relatives of the deceased have claimed that more than ten persons had come to Bhopal to attend the burial ceremony of the deceased and such ten persons could not be transported in one auto-rickshaw. A.A. Qureshi (PW-10) has been examined from the side of the prosecution and he was not declared hostile. Therefore, his testimony is binding for the prosecution. Hence, the evidence given by the parents and relatives of the deceased that they were not properly taken to the house of the appellants or they were surrounded by CRPF or they were not permitted to lodge an FIR, cannot be accepted.

11. In this context, the evidence given by the Wing Commander E. Jordan (DW-8), Samuel Injul (DW-2) and S.N. Singh (DW-3) is also important. Since on that day, no public vehicle for transportation was available, therefore the Wing Commander E. Jordan (DW-8) had arranged for a truck of CRPF to bring the dead body of the deceased from mortuary to the house of the appellants and from the house of the appellants to the graveyard. Similarly, due to festival of Holi, it was not possible for the appellants to bring a coffin, and therefore the dress which was worn by the deceased at the time of her marriage, was upon the body of the deceased at the time of her burial. After considering the evidence of the parents and relatives of the deceased and their contradictory statements with their case diary statements, it would be apparent that when they attended the burial ceremony, they did not know about any torture or dowry demand done by the appellants against the deceased, and therefore they never wanted to lodge an FIR at that time against the appellants and the explanation given by them that they were not permitted to do so many things at Bhopal on the day when the deceased Anjana was buried, such sentimental explanation cannot be accepted for want of any real factual position. It is apparent that such stories were cooked by the witnesses without any basis. The appellants and their relatives specially Wing Commander E. Jordan (DW-8) had arranged burial ceremony of the deceased Anjana, and looked after the comfort of the parents and relatives of the deceased while they stayed at Bhopal and also of their return journey. There was no reason with these witnesses for not lodging an FIR at the police station on the day when they came to attend the burial ceremony.

12. Edgar Lyall has stated that he wrote an FIR to the Superintendent of Police, Bhopal and sent it before he could receive the letter Ex.P-1 sent by the deceased to her maternal uncle Duglos Pershad. However, no receipt of that FIR has been filed by Edgar Lyall and there is no description in the FIR Ex.P-7 that Edgar Lyall had sent a previous FIR to the SP Bhopal, and therefore the statement of Edgar Lyall that he had sent a previous FIR before getting the letter Ex.P-1 appears to be lame excuse. A letter Ex.P-5 had also been filed, which was received by Edgar Lyall, but if the said letter is perused, then there is nothing about any dowry demand or harassment done by the appellants upon the deceased Anjana.

13. After considering the statement given by Duglos Pershad and Edgar Lyall that when Duglos Pershad has received the letter Ex.P-1 written by the deceased Anjana, for the first time the parents and relatives of the deceased could know about the problem of the deceased Anjana and thereafter the parents and relatives of the deceased started taking action against the appellants. Hence the entire evidence given by the parents and relatives of the deceased Anjana appears to be falsehood that the deceased Anjana was telling them about the dowry demand etc. Firstly the letter posted by the deceased could not shock the parents if they had the knowledge of such demand and secondly in the letter Ex.P-1 the deceased Anjana had specifically prohibited Mrs. Duglos Pershad (her Mami) not to inform such problems to her father. If she would have already told about the demand etc. to her parents, then there was no need to write down such a caution on the letter Ex.P-1. Looking to the conduct of the parents and relatives of the deceased, it is apparent that they did not know about any demand in the life time of the deceased Anjana. Everything they have stated is nothing but a falsehood, otherwise they would have taken any action against the appellants in the lifetime of the deceased Anjana. They would have at least contacted Mr. Sinha for resolution of the dispute or they would have requested Denish Pershad maternal uncle of the deceased to look after the problem and to give information from time to time. According to Smt. Usha Lyall and Edgar Lyall, they gave a sum of Rs. 10,000/- to the deceased in July 1993 and thereafter they gave a sum of Rs. 10,000/- in February 1994. If there was a demand of fridge, cooler etc., then instead of giving Rs. 10,000/- in cash for two times, a fridge and cooler would have been given to the appellants. Hence by material contradiction in the evidence given by these witnesses, it is apparent that the parents and relatives of the deceased did not know about any demand made by the appellants prior to the death of the deceased and their evidence relating to that fact is nothing, but imagination and a bundle of falsehood.

14. According to the witnesses, the deceased told them about the dowry demand in October 1993, but in the cross examination of witnesses Smt. Usha Lyall and Edgar Lyall, it was established that the deceased Anjana suffered with an abortion at Agra in that period and she was referred by a doctor to Dr.Sarkar, a senior gynecologist, who found a serious problem in the uterus of the deceased, and therefore she was required to take a long treatment. The appellants went to Agra after the abortion, at that time behaviour of the parents etc. of the

deceased with the appellants does not show that they found any such harassment done by the appellants upon the deceased prior to the death of the deceased Anjana and hence except the letter Ex.P-1, there is nothing on record which is believable against the appellants. The entire remaining story is cooked by the parents and relatives of the deceased Anjana.

15. So far as the letter Ex.P-1 is concerned, Anil Kumar Das (PW-14), Handwriting Expert was examined to prove his report. He found that the handwriting of the person, who wrote the letter Ex.P-1 was the same as the handwriting found in the diaries recovered from the house of the appellants, which were written by the deceased, and therefore after comparison of the specimen handwriting and handwriting of the documents Ex.P-1 and P-5, he found that the handwriting in those documents were of the same person. Several questions were asked to the Handwriting Expert that he did not enlarge various letters to give his finding and he did not mark the curve or slant of writing of a particular letter. However, if the entire evidence is considered, then the appellants have admitted that the letter Ex.P-5 was written by the deceased and if the letters Ex.P-1 and P-5 are compared, then it would be apparent that those letters were written by the same person. Hence the report given by the Handwriting Expert Anil Kumar Das cannot be discarded. It is duly proved that the letter Ex.P-1 was written by the deceased Anjana.

16. If the text of the letter Ex.P-1 is considered, then she had written in the letter about her small amount of the salary because the pay scale in Madhya Pradesh was less. It was not alleged by the deceased that her salary was snatched by any of the appellant, and therefore that portion relating to the salary has no importance. She had mentioned in the letter Ex.P-1 about the social parties, which took place in the house of the appellants and house of other friends. Every guest wanted to take hug of the deceased and to have kiss from her side, but it is not mentioned in the letter that the appellants forced the deceased to do so or she was kissed by someone else forcefully in presence of the appellants, and therefore that description of the letter indicates about the description of the parties in which she was not comfortable. She had mentioned in the letter in detail about the conduct of the appellant Anil that he was kicked off from various hotels and ultimately he got a job in a hotel "Jahanuma" and instead of joining as early as possible, he postponed his joining to 1.4.1994 and he was staying at home watching TV, and that portion does not indicate for any dowry demand or harassment. She has also mentioned that when she went along with the appellant in a party, her mother-in-law was habitually taunting that the bride of that marriage had received a refrigerator and gifts, whereas it was not given to the appellants and relatives. In the letter, it was not mentioned that such taunt was given by appellant No. 1 Anil. Since the appellant No. 2 Sheela has expired, and therefore her conduct is not required to be examined in the case. Moreover the deceased did not mention any consequential harassment subsequent to the taunt.

17. Learned prosecutor has invited attention of this Court to the portion of Ex.P-1 in which the deceased narrated her busy schedule of entire day with a specific sentence mentioned by the deceased in the letter Ex.P-1 "I am totally found in the house and just cannot even drink a glass water according to her own wishes", to show that the torture was done to the deceased in the house of the appellants.

18. If the entire text of the Ex.P-1 is read, then it appears that the deceased was often exaggerating problems by throwing slogans. She has written the sentence in Hindi "Unchi Dukan Feeki Pakwan", but she did not give any explanation about that slogan. Similarly, she wrote a sentence just mentioned earlier that she was unable to drink a glass water on her own wishes, but that slogan was given by the deceased with the context of the conduct of appellant No. 1 Anil relating to his job. When appellant No. 1 Anil got a job in "Jahanuma Hotel", he was avoiding to join that job and he was not accepting the advice of the deceased Anjana, therefore the deceased Anjana has given a slogan that she could not drink a glass water on her own wishes. If such portion is accepted as it is, then it cannot be said that it was a description of harassment or cruelty done by appellant Anil upon the deceased. Hence if the entire letter Ex.P-1 is accepted as it is, then there is no allegation against the appellants regarding specific cruelty or harassment done by the appellants upon the deceased for dowry demand or otherwise.

19. Various defence witnesses including Dr. Ashok Kumar Sehgal (DW-5) have tried to establish that the deceased was suffering from malignancy in the uterus, therefore she was frustrated because she was unable to deliver a child in the family, hence she committed suicide. However, that defence was drained from the evidence of Edgar Lyall and Usha Lyall that in October 1993 a miscarriage was caused to the deceased Anjana and thereafter her treatment papers were prepared by Dr. Sarkar and some direction was given by Dr. Sarkar and according to the direction there was a possibility of malignancy. However, the defence taken by the appellants appears to be not acceptable, because if the malignancy is found in the uterus or breasts of a woman, then to save her life on advice of the doctor, such portion may be removed. It is not proved by the defence that Dr. Sarkar gave an advice for removal of uterus. Dr. Ashok Kumar Sehgal (DW-5) neither examined the deceased internally nor he got any further sonography examination of the deceased. He did not refer the deceased to the Cancer Hospital, Mumbai, and therefore it was not proved that the deceased Anjana was suffering from any malignancy. However, Dr. Sarkar had written the treatment for a longer period to the deceased. Also if the deceased was suffering from pain in the uterus and feeling problem on that count, then she would have referred that fact in her letter Ex.P-1 and also she would have written about such problem to her father Edgar Lyall (PW-7) to get further advice from Dr. Sarkar. Hence the story of defence is not acceptable that she committed suicide due to her uterus problem.

20. In the criminal cases in our country it is not for the defence to prove its defence beyond doubt e.g. it was not required to show any reason as to why the deceased had committed suicide. It is for the defence in our country to create doubt in the prosecution story and it is for the prosecution to prove its case beyond doubt and not vice versa. In the present case if the evidence adduced by the prosecution is considered, then there was no demand from the side of the appellants. Simply a description of taunt has been given by the deceased Anjana in the letter Ex.P-1, which was made by the appellant No. 2 Sheela, but that taunt did not show any dowry demand and its consequential harassment. If it is considered as dowry demand, then for conviction of offence under Section 304-B of IPC, it was to be proved that the deceased was being harassed or dealt with cruelty in consequence of that dowry demand. However, no consequential harassment or cruelty has been established by the prosecution. If the deceased had mentioned the slogan that she could not drink a glass of water in the house on her own wishes, then the said slogan was related to the conduct of the appellant Anil that he was not taking her advice and was leaving his job frequently.

21. In this context, the learned counsel for the appellant has invited attention of this Court to the judgment of Hon"ble the Apex Court in the case of Ashok Kumar Vs. State of Haryana, AIR 2010 SC 2839 : (2010) CriLJ 4402 : (2010) 2 DMC 291 : (2010) 7 JT 460 : (2010) 12 SCC 350 : (2011) 1 SCC(Cri) 266 : (2010) AIRSCW 4651 , in which it is held that for constitution of offence under Section 304-B of IPC, 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. It is further held that for completion of offence under Section 304-B of IPC, it is to be established that the woman was subjected to cruelty or harassment by her husband in consequence of that dowry demand and such cruelty was done soon before her death.

22. In the present case, it is apparent that before receiving the letter Ex.P-1, the parents and relatives of the deceased did not know about any dowry demand from the side of the appellants that there was any demand made by her husband. In the document Ex.P-1, there is no description of any cruelty or harassment done by the appellants, hence the ingredients of Section 304-B of IPC are not duly proved by the prosecution. In the present case though the presumption under Section 113-B of Evidence Act is available, but in the absence of evidence of cruelty or harassment done by the appellants in consequence of that demand of dowry, the appellants cannot be convicted of offence under Section 304-B of IPC. The learned counsel for the appellant has also invited attention of this Court to the judgment of Single Bench of this Court in the case of Anil Kumar Jain Vs. State of Madhya Pradesh, (1996) 41 MPLJ 594 : (1996) MPLJ 594 in which similar law has been laid as laid in the case of Ashok Kumar

(supra).

23. Though the trial Court has not framed any separate charge of offence under Section 306 or 498-A of IPC, but in the light of judgments of Hon'ble the Apex Court in the case of Narwinder Singh Vs. State of Punjab, AIR 2011 SC 686 : (2011) 1 Crimes 200 : (2011) 2 DMC 474 : (2011) 1 JCC 334 : (2011) 1 JT 89 : (2011) 1 RCR(Criminal) 427 : (2011) 1 SCALE 114 : (2011) 2 SCC 47 : (2011) 1 SCC(Cri) 601 : (2011) 1 SCR 110 : (2011) AIRSCW 557 : (2011) 1 Supreme 129 and Smt Shanti and Another Vs. State of Haryana, AIR 1991 SC 1226 : (1991) CriLJ 1713 : (1991) 1 DMC 187 : (1991) 1 JT 118 : (1990) 2 SCALE 988 : (1991) 1 SCC 371 : (1991) SCC(Cri) 191 : (1990) 2 SCR 675 Supp : (1991) 1 UJ 135 , in which it is held that though the offence under Sections 306 and 498-A of IPC are not inferior to the offence of the similar nature as of Section 304-B of IPC, but if no prejudice is caused to the appellant, then in the light of the provisions of Section 221 of Cr.P.C. the accused can be convicted of offence under Section 306 or 498-A of IPC. Under such circumstances, it is to be examined as to whether the appellant Anil can be convicted of such offences or not.

24. As discussed above the evidence as laid against the appellant Anil is considered, then it would be apparent that the deceased was not dealt by him with any cruelty or harassment in consequence of any dowry demand. If the appellant Anil was frequently leaving his job and not interested in joining the hotel "Jahanum" as early as possible, then his conduct does not fall within the purview of Section 107 of IPC and prima facie no offence under Section 306 of IPC is made out against the appellant Anil. Similarly the deceased had committed suicide within one year of her marriage and in that one year she went to the house of her parents and other relatives according to her choice, she could tell her problems to her maternal uncle Denish Pershad at Bhopal. She did not write down about her problem to her father. If the text of the document Ex.P-1 is accepted as it is, then as discussed above, all the points raised by the deceased in that letter do not fall within the purview of cruelty or harassment done by the appellants upon the deceased Anjana, and therefore the appellant Anil cannot be convicted even of offence under Section 498-A of IPC.

25. On the basis of the aforesaid discussion, it appears that the prosecution has failed to prove the offence under Section 304-B of IPC against the appellant Anil. On the contrary, it appears that the parents and relatives of the deceased did not have any information about the behaviour of the appellants towards the deceased till her lifetime and by the letter Ex.P-1 they got an information. However, the text of the letter does not indicate that the appellants have done any cruelty to the deceased Anjana in consequence of that dowry demand or otherwise. Hence the appeal filed by the appellant No. 1 Anil Aristotal is hereby allowed. His conviction and sentence imposed by the trial Court for commission of offence punishable under Section 304-B of IPC are hereby set aside. He is acquitted from the charge of Section 304-B of IPC.

26. At present the appellant No. 1 Anil is on bail, and his presence is no more

required, therefore it is directed that his bail bonds shall stand discharged.

27. A copy of this judgment be sent to the trial Court along with its record for information and compliance, if any.