
(2012) 12 DEL CK 0323
In the Delhi High Court
Case No : Criminal A. 635 of 2008

Deepak

APPELLANT

Vs

The State of NCT of Delhi

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374, 382
Dowry Prohibition Act, 1961 — Section 2
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 304B, 34, 498A

Citation : (2013) 4 AD 870 : (2013) 196 DLT 708 : (2013) 1 DMC 232 : (2013) 1 JCC 261 : (2012) 1 JCC 261

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : R.N. Mittal, with Mr. Pankaj Kumar and Mr. Manoj Kumar, for the Appellant; Manoj Ohri, APP for State, for the Respondent

Final Decision : Disposed Off

Judgement

Manmohan, J.—Present appeal has been filed under Sections 374 and 382 Cr. P.C. challenging the judgment dated 05th July, 2008 and order on sentence dated 08th July, 2008 whereby the appellant-husband has been convicted under Sections 498A/ 34 and 304B/ 34 of the Indian Penal Code, 1860 (for short "IPC") and sentenced to undergo rigorous imprisonment for three and ten years respectively. A fine was also imposed in respect of both the convictions. The prosecution's case in nutshell is that Ms. Sangeeta (hereinafter referred to as "the deceased") married the appellant Deepak on 09th February, 2000. The appellant and his father had demanded dowry at the time of fixation of marriage. Even after solemnization of the marriage, the appellant and his son had continued to harass the deceased for dowry. The appellant and his father used to demand money from the father of the deceased on one pretext or another. As per the prosecution's case on 28th March, 2004, appellant's father demanded Rs. One lac from Mr. Hari Kishan, the father of the deceased which was refused.

On this, the appellant's father threatened the father of the deceased that he would not see his daughter alive. On 04th April, 2004, Police received information that appellant's wife had committed suicide.

2. Mr. Mittal submits that even if the statements of PW4 and PW5 are taken in their entirety, no case under Sections 304B and 498A IPC is made out against the appellant-husband. He further submits that allegations against the appellant are similar to those made against the brothers of the appellant, who have been acquitted.

3. Mr. Manoj Ohri, learned APP for State, on the other hand, supports the judgment of the trial court. He refers to the statement of PW5 brother of the deceased, wherein specific allegations have been made against the appellant-husband.

4. This Court has heard the learned counsel for parties and perused the file. Sections 498A and 304B IPC are reproduced hereinbelow:-

498A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.-For the purposes of this section," cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

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.

5. Section 113B of the Indian Evidence Act, 1872 which is also relevant for the

present case is reproduced hereinbelow:-

113-B. Presumption as to dowry death.--When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

6. This Court is of the view that in order to attract conviction u/s 304B IPC, the following ingredients have to be satisfied:-

(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 of the marriage;

(iii) Soon before her death, the woman must have been subject 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. [See Baldev Singh Vs. State of Punjab,].

7. Further, in the opinion of this Court, from a conjoint reading of Section 304B IPC and Section 113B of the Indian Evidence Act, it can be said that for conviction u/s 304B IPC, it has to be proved that the victim was subjected to cruelty or harassment in relation to a dowry demand soon before her death. The expression "soon before" is a relative term and depends upon the facts and circumstances of each case.

8. In the instant case, the marriage took place between the deceased and the appellant on 9th February, 2000 and the deceased committed suicide on 04th April, 2004.

9. From the perusal of the statements of PW4 and PW5, the father and the brother of the deceased, it is apparent that the last dowry demand allegedly made by the appellant-husband was several months before the date when the deceased committed suicide.

10. In the opinion of this Court much time had elapsed between the demand and incident and there seems to be no direct proximity between the two as far as present appellant is concerned.

11. Keeping in view of the aforesaid, the appellant is acquitted u/s 304B IPC.

12. Insofar as conviction u/s 498A IPC is concerned, the statement of PW5 brother of the deceased is reproduced hereinbelow:-

I am living at the aforesaid address with my parents, brothers. Deceased Sangeeta was my sister. She was married to accused Deepak, present in court today, on 9.2.2000. We gave the dowry, as per the demand of in-laws of Sangeeta. My father gave motor cycle as a dowry at the time of marriage. After

the marriage, accused Deepak and his father Laxmi Narain demanded Maruti Car instead of motor cycle. We linger on their demand.

After this, the father in law, mother in law and Deepak started harassing my sister. They were not supplying proper food. My sister used to tell me regarding their demands of dowry and the harassment for bringing insufficient dowry. Occasionally, they used to beat her...

13. Keeping in view the aforesaid specific allegations by PW4 and PW5 in relation to the demand of dowry and harassment and torture, the conviction of the appellant u/s 498A IPC is upheld. However, the order on sentence u/s 498A IPC is reduced to the period already undergone by the appellant. With the aforesaid observations, present appeal stands disposed of.