

(2018) 08 MP CK 0036

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1954 Of2009

Genda Lal Choudhary

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 04-08-2018

Acts Referred:

Indian Penal Code, 1860 — Section 304B, 306, 498A
Dowry Prohibition Act, 1961 — Section 3, 4
Evidence Act, 1872 — Section 113B
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2018) 08 MP CK 0036

Hon'ble Judges : Nandita Dubey, J; Vijay Kumar Shukla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Nandita Dubey, J.

This appeal has been filed by the appellant against the judgment dated 19.08.2009, passed by learned Addl. Sessions Judge, Rewa in Sessions Trial

No. 207/2007, whereby the appellant has been found guilty of offence punishable under Sections 498-A and 304-B of the IPC, and has been

sentenced to three years R.I. with fine of Rs.500/-, and life imprisonment with fine of Rs.500/- respectively with default stipulations.

2. The prosecution case, in brief, is that deceased Savita was married to appellant four years prior to the incident. It is alleged that she was tortured

mentally and physically for demand of television in form of dowry on account of which she committed suicide by hanging.

3. Nibbulal (PW.9) lodged a report at PS-Janeh that his younger brother Gendalal, after having food, went to watch television at 11 PM at Chhurha,

leaving his wife alone at home. His brother came back at about 3 AM and tried to

open the door, but as it did not open, therefore, he entered through window and found his wife Savita hanging from the rope. On the basis of this report, Marg was recorded at Marg No.2/2007 and criminal law was set in motion. Autopsy on the body of deceased was conducted by Dr.N.K. Pandey (PW.11) who found that the deceased Savita was 8 weeks pregnant at the time of death, and opined that the cause of her death was Asphyxia as a result of ante-mortem hanging.

4. Statements of the witnesses were recorded and the body of deceased was sent for postmortem after making a spot map and panchnama. A case was registered vide Crime No. 31/2007 under Sections 498-A,304-B of IPC and Section 3/4 of Dowry Prohibition Act. Charges under Sections 498-

A,304-B and Section 306 of IPC have been framed against the appellant on 08.04.2008 by learned Special Judge (Atrocities), Rewa.

5. To substantiate the charges against the accused-appellant, the prosecution has examined 12 witnesses.

6. The accused refuted the allegations stating that he was falsely implicated in the offence. However, he did not produce any witness in his defence.

7. The trial Court, relying on the statements of Badku (PW.2), Manoj Kumar (PW.3), Nathiya (PW.4), Nibbulal (PW.9) and Ramlal (PW.10) has

come to the conclusion that deceased Savita was harassed for demand of television as dowry and found the accused-appellant guilty of offence

punishable under Sections 498-A and 304-B of IPC, convicted and sentenced him as aforesaid. However, the appellant was acquitted of the offence

punishable under Section 306 of IPC.

8. In order to attract the application of Section 304-B of IPC, the essential ingredients are as follows :-

â??(i) Death of a woman is either by burns or bodily injury or otherwise than under normal circumstance;

(ii) It should be within seven years from the date of her marriage;

(iii) It should also be shown that soon before her death she was subjected to cruelty or harassment by husband or a relative of husband;

(iv) Such harassment or cruelty should pertain to demand for dowry.â??

9. Section 113-B of the Indian Evidence Act,1872 speaks about the presumption as to dowry death. If the ingredients under Section 304-B of IPC are

attracted, the Court shall presume and record such fact as proved unless and

until it is disproved by the accused. The burden of disproving such conclusive presumption is on the accused. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B of IPC shows that there must

be material to show that "soon before" her death the deceased was subjected to cruelty or harassment which may be mental or physical or both.

"Soon before" is a relative term meaning thereby there must be close proximity between the demand of dowry and death.

10. Badku (PW.2), Nathia (PW.4) and Manoj Kumar (PW.3), parents and brother of deceased have clearly stated that they were informed that

Savita was unwell, but on reaching her matrimonial house, they found her lying dead in Atari. They have clearly stated that the deceased had

complained to them about the harassment and demand of television and Rs.2,000/- as dowry. Her brother has stated that he went to bring her home on the festival of Holi but the accused refused to send Savita with him.

11. Evidence of Badku (PW.2), Manoj Kumar (PW.3) and Nathia (PW.4) is assailed by the appellant contending that no complaint about the dowry

was ever lodged by the parents of the deceased and the alleged demand of dowry is only an after thought. In a case where demand of dowry is

alleged, such demand is normally confined within the four walls of the house and the family members do not disclose the demand of dowry being a

private matter and in hope that relationship of couple may improve. In the present case, the statement of parents and brother of deceased were

recorded on the same day i.e. on 06.08.2007 and they have clearly mentioned about the demand of television by the accused.

12. Nibbulal (PW.9), elder brother and Ramlal (PW.10) father of the accused-appellant have also admitted that the accused is fond of watching

television and he went to Chhurha to watch television at the house of one Kallu at 11 PM in the night and returned at 3 AM in the morning. However,

this Kallu has not been examined as a witness to substantiate the story, but the fact that accused is very fond of watching television and went half a

kilometer away to the house of Kallu corroborates the story of Badku (PW.2), Manoj Kumar (PW.3) and Nathia (PW.4) that the demand for the

same has been made.

13. More over from the spot map, it is reflected that the deceased was found hanging from a height of 15½ ft. with the rope of about 3½ ft. in the

length. The Investigating Officer did not find any stool or ladder in the room which could have been used by the deceased to reach to that height to

commit suicide. The panchnama recorded by Tahsildar on 6. 08.2007 also mentions bluish marks on the face and stomach of the body of deceased.

14. Having gone through the postmortem report, the testimonies of Badku (PW.2), Manoj Kumar (PW.3) Nathia (PW.4), Nibbulal (PW.9) and Ramlal

(PW.10), the spot map and the panchnama , it is clear that death of Savita was not natural. She was subjected to cruelty is obvious from the bluish

marks found on the body of deceased . It is also clear that the death of Savita was not suicidal. In this regard, the reasoning of trial Court cannot be

found fault with.

15. The body of the deceased was found hanging in the room of appellant where he lived alone with his wife. The room of the appellant, according to

the spot map, has two openings, one door which opened outside, and another which opened towards the side of his father's portion which is also

admitted by Nibbulal (PW.9). Therefore, it was expected of him to furnish some explanation in his statement under Section 313 Cr.P.C. as to the

cause of her death and absence of any cogent explanation by him, points to his guilt.

16. In (2007) 12 SCC 288 Swamy Shdaddananda alias Murali Manohar Mishra Vs. State of Karnataka, the Supreme Court has observed that if it is

proved that the deceased died in an unnatural circumstance in her bedroom, which was occupied only by her and her husband, law requires the

husband to offer an explanation in this behalf. Absence of any explanation by the husband would lead to an inference which would lead to a

circumstance against the accused.

17. Similarly in (2007) 10 SCC 433 Raj Kumar Prasad Tamrakar Vs. State of Bihar and another the Supreme Court has held :

23. The autopsy report shows that 'a blackening and charring' existed so far as Injury No. (i) is concerned . The blackening and charring keeping in

view the nature of the firearm, which is said to have been used clearly go to show that a shot was fired from a short distance. Blackening or charring

is possible when a shot is fired from a distance of about 2 feet to 3 feet. It, therefore, cannot be a case where the death might have been caused by

somebody by firing a shot at the deceased from a distance of more than 6 feet.

The place of injury is also important. The lacerated wound was found over grabella (middle of forehead) . It goes a long way to show that the same must have been done by a person who wanted to kill the deceased from a short distance. There was, thus, a remote possibility of causation of such type of injury by any other person, who was not in the terrace. Once the prosecution has been able to show that at the relevant time, the room and terrace were in exclusive occupation of the couple, the burden of proof lay upon the respondent to show under what circumstances death was caused to his wife. The onus was on him. He failed to discharge the same.

18. In the light of the above discussion, we are of the opinion that Savita suffered death at her matrimonial house otherwise than under natural circumstance within seven years of her marriage, and the case squarely falls within the ambit of "dowry death".

19. All the aforesaid facts clearly established the legal requirement for an offence falling under Sections 304-B read with Section 113-B of the Evidence Act and 498-A of IPC against the accused-appellant and the conviction and sentence imposed by the trial Court do not call for an interference by this Court.

20. In the circumstances, the appeal filed by the appellants being merit-less is accordingly dismissed. The conviction of the appellant under Section 498-A and 304-B of the IPC is accordingly upheld and affirmed. The appellant who is in jail shall remain incarcerated to undergo the remaining part of his jail sentence.