
(2007) 07 MP CK 0112

In the Madhya Pradesh High Court

Case No : Criminal Rev. No. 361 of 2007

Gopal Garg and another

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 11-07-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, 306, 498A

Citation : (2007) 4 MPLJ 70

Hon'ble Judges : B.M. Gupta, J

Bench : Single Bench

Advocate : A.K. Barua, with Arun Barua, for the Appellant; Mohd. Irshad, Panel Lawyer for State, for the Respondent

Final Decision : Dismissed

Judgement

B.M. Gupta, J.

Petitioners by Shri A.K. Barua, Sr. Advocate with Arun Barua, Advocate.

Respondent/State by Shri Mohd. Irshad, Panel Lawyer.

This petition has been preferred by the petitioners impugning the order dated 11-4-2007 passed by the IVth Additional Sessions Judge (Fast Track Court), Shivpuri in Sessions Trial No. 54/2007, by which the learned Judge has ordered to frame the charges against the petitioners for the offence punishable under sections 304-B, 498-A and 306 of Indian Penal Code.

Although, according to the petition, the impugned order as a whole has been assailed, however, during the course of arguments, Shri A.K. Barua has submitted that he is only assailing the impugned order so far as it relates to the charge u/s 304-B of Indian Penal Code on the following grounds:

(i) As per the definition of section 304-B of Indian Penal Code, harassment ought to be in connection with any demand of dowry. The term "dowry" has been defined u/s 2 of the Dowry Prohibition Act, 1961 (hereinafter referred to as the

Act, 1961). As the marriage had already been taken place prior to the incident hence the alleged harassment on the alleged demand of Rs. 50,000/- cannot be said to be in connection with the marriage. In view of this, offence is not made out. In support, he has drawn attention on a judgment of the Apex Court rendered in the case of Appasaheb and Another Vs. State of Maharashtra, .

(ii) The petitioners are the Jeth and Jethani of the deceased. The incident has happened at Shivpuri and the petitioners are the residents of village Sandkheda, Dist. Guna. In view of this fact, the allegation against the petitioners with regard to the alleged harassment/cruelty ought not to be relied on. In support, he has drawn attention on (i) certificate Annexure P-2 given by the Sarpanch of the village, (ii) voter identity card of the petitioner No. 1, (iii) bhuabhilekh pustika issued by the revenue officers, (iv) birth certificate, dated 25-9-2006, (v) admission card issued by the Divisional Board of Primary Education, Guna and (vi) spot map, dated 11-10-2006 prepared by the investigating officer.

(iii) While drawing attention at receipt dated 21-4-2006 issued by Shri Shantinath Digambar Jain Atishay Kshetra and the statements of Gaurishankar and Arvind who are the father and brother of the deceased, has mentioned that marriage was solemnized in a Samuhik Vivah Sammelan and there was no settlement of dowry at the time of marriage.

Shri Mohd. Irshad, learned Panel Lawyer, while drawing attention at the statement of Arvind, the brother of the deceased, has submitted that since beginning and continuously, there was a demand of Rs. 50,000/- and harassment on this point on account of which she committed suicide within a period of five months of her marriage.

To appreciate the contentions, perusal of section 304-B of Indian Penal Code and section 2 of the Act will be required, which are as under :

[Section 304 of Indian Penal Code -- (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 purpose 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.] (Emphasis supplied)

The definition of dowry as given in section 2 of the Act is as under:

Definition of "Dowry". -- "Dowry" means any property or valuable security given or agreed to be given either directly or indirectly

- (a) by one party to a marriage to the other party to the marriage; or
- (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,
- at or before (or any time after the marriage) (in connection with the marriage of the said parties, but does not include) dowry or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II. -- The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860). (Emphasis supplied)

For the present dispute, it is only to be seen as to whether harassment of the deceased on the payment of Rs. 50,000/- was an amount of dowry in connection of her marriage. To appreciate the same, the allegation against the petitioners are required to be perused. Witnesses Gaurishankar, Arvind @ Vinod and Kamala Bai have been examined by the investigating agency. With regard to the allegation the relevant statements of all the three witnesses being similar, the statement of witness Gaurishankar, who is father of the deceased is only quoted hereinunder:

(Emphasis supplied)

It appears that the deceased was being harassed on demand of Rs. 50,000/- in the shape of dowry and on account of the same, she committed suicide in her matrimonial home within a period of five months of her marriage. This harassment had started within 18-20 days of her marriage. The nature of demand was that sufficient dowry has not been given in her marriage and unless the aforesaid amount is paid, the harassment will continue in the same way. Even two days before commission of suicide, the deceased informed her parents on telephone that she was being beaten on such demand because it could not be fulfilled by her parents. On perusal of the statement, although it appears that there was no settlement of dowry at the time of marriage but it started immediately after a few days of marriage and the same was in shape of dowry on allegation that the same was given insufficient at the time of marriage. As per the definition of dowry, prima facie, the allegation cannot be said that the same was not in connection with the marriage.

The demand was not made to meet the household expenses or for starting any business or for purchasing manure or alike. The statement of Gaurishankar is very specific that the demand was with regard to dowry on the ground that sufficient dowry was not paid in the marriage. There appears immediate proximity in harassment with demand of dowry on the ground that the same was given insufficient at the time of marriage. In case of Appasaheb (supra), the Hon'ble Apex Court was deciding an appeal after conviction u/s 304-B of Indian Penal Code. As per the facts of that case, the marriage was solemnized before two and half years of the incident. There was a demand of Rs. 1,000/- or Rs. 1,200/- from the parents of the deceased to meet the household expenses and

also for purchasing the manure. There was no allegation that this amount was demanded in the shape of dowry on the ground that sufficient amount was not given as dowry at the time of marriage. In such circumstances, the Hon"ble Apex Court in para-9 has observed as under:

Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential" xxxxxxxxxxxx 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 for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of section 304-B viz. demand for dowry is not established, the conviction of the appellants cannot be sustained.

In view of this, the first contention of Shri Barua does not deserve to be sustained.

With regard to second contention, that the incident had happened at Shivpuri while the petitioners are residing at District Guna and on this ground their involvement in the allegation ought not to be accepted. On perusal of the aforementioned statement, the allegation against the petitioners is existed. The truthfulness or otherwise of the same and also of the documents cannot be assessed and concluded by this Court at this very initial stage. For determination of these facts evidence will be required during the trial. On this ground, this contention is also not sustainable.

With the above observation, the revision is dismissed.