

(2018) 04 MP CK 0061

In the Madhya Pradesh High Court

Case No : CRIMINAL APPEAL NO.906 OF 2005

Jagdish Prasad And Others

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 10-04-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 313, 374(2)
Indian Penal Code 1860 — Section 34, 302, 304B, 498A

Citation : (2018) 04 MP CK 0061

Hon'ble Judges : SUBODH ABHYANKAR, J

Bench : Single Bench

Advocate : Durgesh Gupta, Manish Awasthi

Final Decision : Partly Allowed

Judgement

This criminal appeal under Section 374 (2) of the Code of Criminal Procedure has been preferred by the appellants being aggrieved by the judgment

dated 16.4.2005 passed by the 5th Additional Sessions Judge, Sagar in ST No.139/2004, whereby the present appellants have been convicted for

commission of offence punishable under Section 304-B of IPC and sentenced to undergo ten years rigorous imprisonment for the same.

2. The prosecution story, in short is that the appellants were prosecuted for the offence alleged to have been committed between 21.2.2000 to

27.6.2003 whereby they demanded dowry from deceased Kusum Bai. Kusum Bai got married to appellant No.3-Lavkesh @ Lakhan on 21.2.2000, on

the same date deceased Kusum Bai's sister Sita also got married to appellant No.4 Prem Narayan @ Prem, brother of appellant No.3. According

to the prosecution case, initially deceased Kusum Bai was treated with affection but subsequently the accused persons started to demand motor-cycle,

colour TV, bed, wrist watch etc. from the deceased and her parents and also started to treat her with cruelty as a result of which she died within

seven years of her marriage in a suspicious circumstances on account of burn injuries. Initially the case was registered under Section 302/34 of IPC

but after the evidence was recorded the learned Judge of the trial Court has convicted the appellants under Section 304-B/34 of IPC and sentenced

them to ten yearsâ?? RI, and being aggrieved of the same, this appeal has been filed before this Court by the appellants.

3. Learned counsel for the appellants has submitted that the appellants have been falsely implicated in the matter and there is nothing on record to

substantiate the claim of the prosecution witnesses except the oral testimony of interested witnesses that the deceased was being treated with cruelty

soon before her death and also that a demand of dowry was made from her parents. Learned counsel for the appellants has further submitted that it is

a case of suicide only, as the deceased was suffering from some disease and being distressed by the said disease, she committed suicide.

4. On the other hand, learned counsel for the State has submitted that the death of the deceased has taken place within seven years of her marriage

and as such the burden lies on the accused persons only to rebut the presumption of dowry death and otherwise also there is ample evidence on

record to bring home the charge of dowry death.

5. Heard the learned counsel for the parties and perused the record.

6. The incident took place on 27.06.2003 at around 5.15 pm and due burn injuries she died in the hospital on 29.06.2003 at 10.30 am. So far as the

death of deceased Kusum Bai is concerned, it has been proved by Dr. Sudhir Jain (PW-1), who has opined that he conducted the postmortem of the

deceased on 29.6.2003 and the cause of death is said to be due to anti-mortem burn injuries resulting into shock. The death is said to have taken place

within 12 hours of the postmortem. This fact has not been challenged by the accused persons and hence it is held that deceased Kusum Bai has died

on account of burn injuries.

7. Now coming to the question of demand of dowry, it is seen that the prosecution has examined the family members of the deceased in this regard.

Panchu Jatav (PW-2) is the father of deceased Kusum Bai. He has stated that at the time of marriage of the deceased, he had given all the necessary

utensils etc. apart from Rs.30,000/- as per their status. In the marriage also a sum of Rs.40,000/- was given by him as dowry, apart from two beds,

TV etc. were also given. He has further stated that the accused persons were demanding every item in two sets, as the deceased Kusum Bai??

sister had also married with appellant No.4 Prem Narayan @ Prem, brother of appellant No.3 Lavkesh. He has further stated that when the accused

persons started to harass his daughter, he called a Panchayat in which the accused persons were advised to behave properly. But, as the demand of

dowry was not fulfilled by him, on every occasion on which his daughter Kusum Bai used to come to home, she would always made complaint

regarding the demand of dowry by the accused persons. Prior to her death, around two months ago the deceased had come to his house and had

stated that on account of non-fulfilling the dowry demand, the accused persons had also beaten her and subsequently he came to know that his

daughter Kusum Bai has died on account of burn injuries, which information was provided to him by his other daughter Sita on phone.Â This witness

has also stated that since deceased Kusum Bai had no issue, her husband used to harass her on this count also. He has further stated that he tried to

convince the husband of the deceased, but it was all in vain and before her death she was taken to her in-laws?? house prior to two months of her

death.

8. Similarly Phool Chand (PW-3) and Mahesh Kumar (PW-4), who are the brothers of deceased Kusum Bai have given the similar statement.

9. Sita Bai (PW-5) is the sister of deceased Kusum Bai, she was also married in the same family in which the deceased Kusum Bai was married and

is the wife of appellant No.4 Prem Narayan who is the brother of appellant No.3 Lavkesh. She has made similar statement that the accused persons

used to demand of dowry from her parents.Â She has also stated that on the date of incident, Kusum Bai was assaulted by the accused persons. She

has further stated that Jagdish, Sita Bai and Neetu caught hold deceased Kusum Bai and set her on fire. This witness tried to raise alarm, but she was

not allowed to speak to anybody and they also did not allow to see her status on account of extensive burn injuries. She has also stated that initially no

demand of dowry was made, but subsequently they started claiming dowry. However, she has stated that she has not stated in her police statement

that the accused persons were also given certain amount by her father. She has also stated that after the deceased got burnt, the accused persons took her to the hospital for treatment. She has also stated that no complaint regarding dowry demand by the accused persons was ever made before any authority. A question was also put to her that after she had seen the incident, the accused persons did not try to immolate her also, to which she has replied that no such attempt was made by the accused persons. It is rather surprising that this witness who was also threatened by the appellants had the courage to call her father on phone to inform about the incident but did not raise any alarm and informed her neighbors. She has admitted that deceased had become saddened because she had no issue and this witness had given birth to a baby girl and for which A3 Lavkesh had also got her examined through doctors. Thus, the evidence of this witness who claims to be an eye witness to the incident is rather sketchy, exaggerated and requires corroboration for bringing home the charge of dowry death.

10. Arjun Singh Jat (PW-6) is a witness of Lash Panchayatnama. He also knows the accused persons. He has admitted in his cross examination that there was no dispute between the deceased and her husband Lavkesh and also that accused Jagdish and his wife used to live separately from Lavkesh and his deceased wife and their kitchens were also separate. This prosecution witness has not been challenged by the prosecution and as such his testimony is binding on them. This legal aspect regarding the binding nature of evidence of a prosecution witness who has not been declared hostile has been succinctly emphasized by the the Apex Court in the case of Akil v. State (NCT of Delhi), (2013) 7 SCC 125. Para 31 and 32 of the same reads as under:-

“31. In Mukhtiar Ahmed Ansari this Court in paras 29 and 30 dealt with the hostile witness who was not declared hostile and the extent to which the version of the said witness can be relied upon as under: (SCC pp. 270-71)

“29. The learned counsel for the appellant also urged that it was the case of the prosecution that the police had requisitioned a Maruti car from Ved Prakash Goel. Ved Prakash Goel had been examined as a prosecution witness in this case as PW 1. He, however, did not support the prosecution. The prosecution never declared PW 1 hostile. His evidence

did not support the prosecution. Instead, it supported the defence.

The accused hence can rely on that evidence.

30. A similar question came up for consideration before this Court in *Raja 7 Â Ram Â v. Â State of Rajasthan* . In that case, the

evidence of the doctor who was examined as a prosecution witness showed that the deceased was being told by one K that she should

implicate the accused or else she might have to face prosecution. The doctor was not declared 'hostile'. The High Court, however, convicted

the accused. This Court held that it was open to the defence to rely on the evidence of the doctor and it was binding on the prosecution.

32. In the decision in *Raja Rama* similar issue was dealt with in para 9 and it was held as under: (SCC p. 274)

9. But the testimony of PW 8 Dr Sukhdev Singh, who is another neighbour, cannot easily be surmounted by the prosecution. He has testified in

very clear terms that he saw PW 5 making the deceased believe that unless she puts the blame on the appellant and his parents she would have to

face the consequences like prosecution proceedings. It did not occur to the Public Prosecutor in the trial court to seek permission of the court to heard

(sic declare) PW 8 as a hostile witness for reasons only known to him. Now, as it is, the evidence of PW 8 is binding on the prosecution. Absolutely

no reason, much less any good reason, has been stated by the Division Bench of the High Court as to how PW 8's testimony can be sidelined.

11. Chanda Bai (PW-7) happens to be the mother of the deceased. She has also reiterated the same fact that at the time of marriage of her daughter

Kusum Bai, appropriate dowry was given, but still the accused persons used to harass her for more dowry. This witness has also been cross examined

in detail and she has stated that as deceased Kusum Bai could not conceive, hence the accused persons used to pester her. She has also stated that in

the hospital, her daughter Kusum Bai stated her that the accused persons threatened her to give a statement that she got burnt on account of stove

while making tea. In para 10 of her cross examination she has admitted that on account of bad habits of both of his sons, accused Jagdish had

separated them along with their wives.

12. Pankaj Pandey (PW-8), who was the CSP at the relevant time, is the Investigating Officer in the case and in whose presence various memos

have been prepared. He has stated that he had knowledge that during the course of investigation, deceased Kusum Bai was admitted in the hospital

and her dying declaration was also recorded through the Tahsildar, but since the dying declaration was not furnished to him, hence has not annexed it

along with the charge sheet. His attention is also drawn to the statements of the witnesses recorded under Section 161 of Cr.P.C. in which the

witnesses Panchu, Phoolchandra, Mahesh Kumar and Meeta Bai @ Usha in their statements Ex.D/1 to D/4 have stated that the deceased has given

a dying declaration also.

13. In the accused statement under Section 313 of Cr.P.C. the accused persons defence that they never demanded any dowry from the deceased or

her parents. Accused Lavkesh has stated that as deceased Kusum Bai had no issue, she was desperate to have one and used to remain dismal.. It is

also their defence that Appellant No.1-Jagdish used to live separately with his wife Appellant No.2 Sita Bai and the other accused/appellant Appellant

No.3 Lavkesh and Appellant No.4 Prem Narayan were residing separately.

14. This Court finds that so far as the allegations made against the appellant No.1 Jagdish, appellant No.2 Sita Bai and appellant No.4 Prem Narayan

@ Prem are concerned, although the same are consistent but are of omnibus in nature. As discussed already that Arjun Singh Jat (PW-6) who is an

independent witness as also Chanda Bai (PW-7) who happens to be the mother of the deceased has stated that Appellant No.3 Lavkesh and his

deceased wife and Appellant No.1 Jagdish Prasad and his wife Appellant No.2 Sita Bai were living separately, in such circumstances, the testimony

of the prosecution witnesses cannot be accepted without corroboration which is none in the present case. The proposition regarding the omnibus

statement being given by the prosecution witnesses has been propounded by the Apex court in the following manner in the case of Monju Roy v. State

of W.B., (2015) 13 SCC 693. The relevant paras of the same read as under:-

â??7. We have given serious thought to the question raised about the possibility of exaggeration in the prosecution version in implicating all the family members.

8. While we do not find any ground to interfere with the view taken by the courts below that the deceased was subjected to harassment on account of

non-fulfilment of dowry demand, we do find merit in the submission that

possibility of naming all the family members by way of exaggeration is not ruled out. In *Kans Raj*, this Court observed: (SCC p. 215, para 5)

“5. A tendency has, however, developed for roping in all relations of the inlaws of the deceased wives in the matters of dowry deaths which, if

not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their overenthusiasm and anxiety to seek conviction for

maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of

the prosecution even against the real accused as appears to have happened in the instant case. The court has, thus, to be careful in summoning

distant relatives without there being specific material. Only the husband, his parents or at best close family members may be expected to demand

dowry or to harass the wife but not distant relations, unless there is tangible material to support allegations made against such distant relations. Mere

naming of distant relations is not enough to summon them in the absence of any specific role and material to support such role.

9. In *Raja Lal Singh v. State of Jharkhand* it was observed: (SCC p. 419, para 14) “14. No doubt, some of the witnesses e.g.

PW 5 Dashrath Singh, who is the father of the deceased Gayatri, and PW 3 Santosh Kr. Singh, brother of the deceased, have stated that the

deceased Gayatri told them that dowry was demanded by not only Raja Lal Singh, but also the appellants Pradip Singh and his wife Sanjana Devi, but

we are of the opinion that it is possible that the names of Pradip Singh and Sanjana Devi have been introduced only to spread the net wide as often

happens in cases like under Sections 498-A and 394 IPC, as has been observed in several decisions of this Court e.g. in *Kamesh Panjiyar v. State of*

Bihar, etc. Hence, we allow the appeal of Pradip Singh and Sanjana Devi and set aside the impugned judgments of the High Court and the trial court

insofar as it relates to them and we direct that they be released forthwith unless required in connection with some other case.”

10. Moreover, ingredient of the offence under Section 304-B IPC is not mere demand of dowry but “cruelty or harassment” for or in connection

with demand of dowry. In *Amar Singh v. State of Rajasthan* it was observed: (SCC pp. 71-72, para 29)

“29. What is punishable under Section 498-A or Section 304-B IPC is the

act of cruelty or harassment by the husband or the relative of the husband on the woman. It will be also clear from Section 113B of the Evidence Act that only when it is shown that soon before her death a woman has been subjected by any 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 within the meaning of Section 304-B IPC. The act of subjecting a woman to cruelty or harassment for, or in connection with, any demand for dowry by the accused, therefore, must be established by the prosecution for the court to presume that the accused has caused the dowry death.â??

11. The court has to adopt a pragmatic view and when a girl dies an unnatural death, allegation of demand of dowry or harassment which follows cannot be weighed in golden scales. At the same time, omnibus allegation against all family members particularly against the brothers and sisters and other relatives do not stand on the same footing as husband and parents. In such case, apart from general allegation of demand of dowry, the court has to be satisfied that harassment was also caused by all the named members.

12. In the facts and circumstances of the present case, even if it is accepted that the appellants were involved in raising the demand for dowry there is no material that the appellants harassed the victim resulting in her death. Normally, it is the husband or parents of the husband who may be benefited by the dowry and may be in a position to harass and not all other relatives, though no hard-and-fast rule can be laid down in that regard. It is also true that till such an unfortunate event takes place, the family members may not disclose the demand of dowry being a private matter and under the hope that the relationship of the couple may improve. However, having regard to the nature of their relationships, there being possibility of the appellantsâ?? having been named by way of exaggeration, we are of the view that the appellants deserve to be given benefit of doubt in that regard in the facts of the present case.

Tested on the anvil of the aforesaid proposition, the facts of the present case and the evidence adduced therein do not inspire the confidence to come to a conclusion that the case of the prosecution has been proved beyond reasonable doubt.

15. However, it is not so with the appellant No.3 Lavkesh alias Lakhan, who

happens to be the husband of the deceased and was residing with her at the time of her death but it is rather surprising that the incident had taken place on 27.6.2003 at around 5:15, whereas the death has taken place on 29.6.2003 at around 12:15, thus deceased Kusum Bai was alive for a period of two days and during these two days, the prosecution has not produced any MCL on record nor any doctor has been examined in this behalf as to what was the deceased's condition and whether she was in a position to give any dying declaration. It is hardly believable that no efforts were made by the Investigating Officer to have her dying declaration recorded by the Tahsildar and this fact has been disclosed by the Investigating Officer Pankaj Pandey (PW-8), who, in para 7 of his cross examination has clearly stated that the dying declaration of the deceased was also recorded by the Tahildar when she was admitted in the District Hospital but as the copy of the dying declaration was not furnished to him, he has not filed it along with the charge sheet. He has also stated that he did not try to locate the Tahsildar, who had recorded the dying declaration. Thus, this dying declaration can be said to be a very important piece of evidence against or for the accused persons and had it been proved, and had the effect either acquitting or convicting the appellants, but the best evidence, which was available with the prosecution has been withheld from being produced. In view of the same, this Court is of the considered opinion that although there are allegations regarding demand of dowry and ill-treatment by the appellants to deceased Kusum Bai, but still that cannot be said to be conclusive evidence to level the charge under Section 304-B/34 of IPC on the appellants as her death is still shrouded in the mystery because her suicide due to her depression for not having any issue cannot be ruled out.

16. The appellants have also examined Sanjay Kumar Jain (DW-1), who was posted as Naib-Tahsildar in the month of June, 2003. He has stated that between 27.6.2003 to 29.6.2003 he has not recorded any dying declaration by the name of Kusum Bai. He has also admitted that when he was taking training as Civil Judge on 26.8.2003 at Jabalpur, certain enquiry was also made from him regarding the death of Kusum Bai.

17. In the aforesaid analysis of the evidence on record, this Court has no hesitation to come to a conclusion that the prosecution has not been able to prove the charge under Section 304-B/34 of IPC against the appellants and they

are entitled to benefit of doubt. However, since the harassment of the deceased at the hands of the appellants is proved on the basis of evidence on record instead of Section 304-B/34, they are hereby convicted under Section 498-A/34 of IPC.

18. So far as the sentence is concerned, it appears that the appellants No.1, 2 and 4 have undergone the jail sentence of seven months and 21 days,

hence it would be appropriate to sentence the said appellants for the period already undergone by them looking to the fact that the incident took place

around 17 years ago i.e. in the year 2000 and by now the appellants must have been settled in their life. So far as the sentence of appellant No.3

Lavkesh alias Lakhan is concerned, it appears that he has already undergone the entire jail sentence, hence no order is required to be passed in this

regard.

19. In the result, the instant criminal appeal filed by the appellants is hereby partly allowed to the extent indicated above. The appellants No.1, 2 and 4

are on bail, their bail bonds stand discharged.