

(2004) 12 RAJ CK 0052
In the Rajasthan High Court
Case No : Criminal Appeal No. 605 of 2000

Khem Chand @ Pappu and Another

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 08-12-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 215, 313
Evidence Act, 1872 — Section 113A, 113B, 4
Penal Code, 1860 (IPC) — Section 304B, 306, 498A

Citation : (2005) 3 RLW 1812 : (2005) 2 WLC 290

Hon'ble Judges : Khem Chand Sharma, J

Bench : Single Bench

Advocate : A.K. Gupta, for the Appellant; Jainendra Jain, Public Prosecutor, for the Respondent

Judgement

Khem Chand Sharma, J.—This criminal appeal by appellants Khem Chand @ Pappu and Smt. Prabhati arises out of the judgment and order dated 11.10.2000 passed by the learned Additional Sessions Judge No. 1, Sikar, thereby convicting the appellants for offence u/s 304B IPC and sentencing them to undergo rigorous imprisonment for 7 years.

2. On 26.7.98 at 11.10 AM complainant Moti Ram submitted a typed report, Ex.P3 at Police Station Sadar, Sikar alleging therein that he had performed the marriage of his niece Santosh daughter of his brother late Birma Ram. According to him his brother Birma Ram was not alive at the time of marriage and that he had given dowry beyond his capacity but still the members of her in laws family were not satisfied with the dowry and started harassing her mentally and physically. Whenever she visited her parents house, she complained of torturing, be labouring and not providing food on account of less dowry given at the time of marriage and that complaint, his brother and other family members pacified her that every thing would be all right by afflux of time. On some occasions, the compliant and his family members gave 5 and 10 thousand rupees to her in laws with a view that good sense will prevail and they would not torture her. In this

respect, the villagers and members of her maternal side arranged meetings of their society and tried to make the members of her in laws' family understand, but of no avail. According to the report, about six days back i.e., on 21.7.98, her father-in-law came there to bring her back. On that occasion she asked the complainant not to send her as they would kill her. She had stayed at village Chelasi and Gokulpura for about 2-2 & 1/2 months prior to 21.7.98. On 21.7.98 her father in law assured that she would not be tortured in future. At that time, Bhagirath Singh, Ramdeva Ram, Pitha Ram, Moti Ram and other family members were present there. Believing on the assurance, they sent Santosh with her father in law. She had a daughter. The complainant then alleged that Pappu, Dhuda Ram, Prabhati, Birbal and Gordhan of her in laws family caused her death and threw her into the well and that they abated her to commit suicide. According to the complainant they were not informed of the death of Santosh and they were informed of the death of Santosh and they were informed by two persons of village Khakholi.

3. On the basis of above written report, police registered a case for offence u/s 498A and 304B IPC vide FIR Ex.P4 and proceeded with the investigation and having completed investigation, submitted challan against the accused.

4. The learned Trial Court, on the basis of evidence and material collected during investigation and placed before it, framed charges under Sections 498A and 304B IPC against the accused appellants. The accused denied the charge and claimed trial.

5. In order to prove its case, the prosecution examined as many as 15 witnesses and got exhibited some documents. After the prosecution evidence was complete, the appellants were examined u/s 313 Cr.P.C. In defence two witnesses, namely DW1 Isharram and DW2 Hanuman Singh were examined.

6. At the conclusion of trial the learned Trial Court found the appellants guilty of having committed offence u/s 304B IPC and accordingly convicted and sentenced them in the manner stated herein above.

7. In assailing the conviction, learned counsel for the appellants has vehemently contended that the Trial Court has committed grave error in convicting the appellant u/s 304B IPC. Referring the prosecution evidence, learned counsel argued that the prosecution has not been able to prove beyond doubt that the deceased was subjected to cruelty and harassment in connection with the demand for dowry. According to him, there are major contradictions in the statement of prosecution witness which go to the route of the case. The Trial Court ought not to have placed reliance on the statements of witnesses which are full of contradictions, in arriving at a conclusion of guilt against the appellants u/s 304B IPC.

8. I have given my thoughtful consideration to the above argument. The attract the provisions of Section 304B IPC, one of the main ingredient of the offence which is required to be established beyond doubt is that the victim was subjected

to cruelty and harassment "in connection with demand for dowry". The arrive at a just conclusion whether the deceased was subjected to cruelty and harassment in connection with demand of dowry, it would be profitable to scan the relevant evidence. PW1 Mohan Lal, uncle of deceased who managed the marriage of deceased with the help of Moti Ram and other members of the family has deposed that after marriage, Santosh (deceased) started visiting her in laws" house. Whenever she happened to be at her parents house, she used to inform that her mother-in-law, father-in-law, husband and Dever used to beat and tell her that nothing was given in dowry and had the marriage been at some other place, they would have received much more dowry. According to the witness, he and his cousin Moti Ram went to Chudoli and made Dhuda Ram (father-in-law) understand. But Dhuda Ram was aggrieved of less dowry being given and demanded scooter. The witness deposed that with a view to get rid of day to day problem, he gave 15000/- in two installments of Rs. 10000/- and 5000/- about two years back, with the request that they themselves should purchase the scooter and not to harass her in future. He further deposed that about two months prior to her death, when her brother Bana Ram @ Anil had gone to bring her back he found that her mother-in-law and father-in-law were beating her. On being asked as to why they were beating her, the in laws in turn replied that they will continue to do so. In cross examination, the witness stated Dhuda Ram (father-in-law), Prabhati (mother-in-law), husband and Dever murder Mst. Santosh and then threw her into the well. The witness could not state the date and month on which Rs. 10,000/- were paid. However, according to him, Rs. 10000/- were given after one year of the marriage. The witness was not able to state as to on which date Rs. 5000/- were given. According to the witness, he had paid Rs. 15000/- to Dhuda Ram and that he had stated this fact to the police but the same does not find place in his statement Ex.D1. He admitted that the fact of witnessing beating by Bana Ram had already been disclosed by Bana Ram to him even prior to filing the first information report.

9. PW2 Bana Ram, brother of deceased has deposed that about two months prior to her death he had visited her in laws" house and saw that her mother-in-law and husband were beating his sister Santosh. Reference of this witness does not find place in the FIR. In has not stated anything about demand of dowry.

10. PW4 Mst. Ganga (mother of deceased) widow of Birma Ram has stated more or less similar to what PW 1 Mohan Lal. According to her, the deceased on her visits used to inform that her mother-in-law Prabhati, Father-in-law Dhuda, husband Hema Ram, Devar Balvir, Gordhan and sister-in-law used to quarrel and beat her and used to tell that her family members have given less dowry and had they arranged the marriage at some other place, they would have received much more money. She has also repeated the same allegation that Rs. 15000/- were given to them in two installments. According to her she sent her son Anil to bring back Santosh and Anil in turn informed that he saw that Father- in-law, mother-in-law, husband and sister-in-law beating her after being locked in a "Kotha". Thereafter she stated at her parents" house for two months, during which she

informed that they used to beat her on account of less dowry being given and also demanding scooter. In cross examination she could not state as to when Rs. 10000/- and 5,000/- were given. The allegation of the cash paid and demand of scooter does not find place in the statement Ex.D3. On being confronted with her police statement she deposed that she had disclosed this fact to the police.

11. PW5 Mst. Bhagwani, grand mother of the deceased has also given some what similar statement as that of PW1 Mohan Lal and PW4 Mst. Ganga, except some minor contradictions as to the names of persons who gave beating to Santosh when her brother went to bring her back. In cross examination, when confronted with her police statement Ex.D4, she stated that she does not remember whether stated before the police "TERI MAA NE DHAN KAM DIYA. MAINE POLICE KO LIKHA DIYA THA KI PARESHAN KARTE HAIN EVAM ROTI NAHIN DETE HAIN. However, this allegation does not find place in Ex. D4. Even the allegation as to the demand of scooter does not find place in Ex.D4.

12. PW6 Mst. Anchi, aunt of deceased has deposed that on her visits, deceased used to tell about mal treatment by Dhuda Ram (father-in-law) Prabhati (mother-in-law), Balveer (Devar), Gordhan (Devar), Santosh (sister-in-law) and husband Khem Chand and their grievance that nothing was given in dowry including scooter. According to her when Bana Ram went to bring back the deceased, he found that all including father-in-law, mother-in-law, husband and Dever were beating the deceased in Kotha. This witness has also stated that Rs. 15000/- were paid and in turn, they told that they would now purchase scooter. However, this witness also could not state as to when the aforesaid sum was paid and to whom and who made the demand for scooter.

13. PW7 Keshar Dev (cousin of deceased's father), PW8 Ganpat, PW9 Gopal (uncle of deceased) and PW11 Moti Ram have given same version as that of the version given by PWs 1, 4, 5 and 6 except with little variations. But these witnesses also could not state as to when Rs. 15000/- were paid, when a demand of scooter was raised and by whom.

14. The typed report (Ex.P3) of the incident was lodged by PW11 Moti Ram, uncle of the deceased. This typed report does not contain the allegation of demand of scooter. This allegation appears to be a development in the course of trial. PW 1 Mohan Lal, another uncle of deceased Has stated that deceased informed them that accused appellants used to harass her as they were not satisfied with the dowry. As stated above, the allegation that Dhuda Ram, father-in-law demanded scooter and that he paid Rs. 10000/- and 5000/-for purchase of scooter does not find place in the typed report Ex.P3. Undisputedly, the marriage of the deceased took place about 3 years prior to the incident i.e., in 1995. At one place, the witness stated that he paid the aforesaid amount 2 years prior to recording of his statement in 1999. Thus according to him, he paid the said sun in 1997. At another place the witness stated that amount was paid after one year of her marriage i.e., in 1996. Evidently, he could not state the months and date when payment was paid. There are contradictory statements about the

demand of scooter and it is not conclusively proved as to when and by whom the demand was raised. That apart, the allegation of demand of scooter does not find place even in the report Ex.P5. However, it is established by the medical evidence and from the sworn testimony of investigating officers that the dead body of deceased wife was found lying in a dry well fitted with electric motor, iron pipes and stairs. The medical jurist noted as many as six injuries and according to him, the injury to the right lungs was sufficient in the ordinary course of nature to cause death.

15. Thus, the picture which emerges from a cumulative reading and assessment of the material available in the form of oral and documentary evidence is that there is no evidence on record to show that there was demand of dowry on the part of appellants. However, it stands established that in-laws's family of the deceased including the appellants were not satisfied with the dowry and on that account she was being harassed. It is proved from the evidence on record that she was not provided with meals and was being tortured and beaten on account of less dowry being given at the time of marriage. In that view of the matter, it must be concluded that prosecution has not been able to prove beyond doubt the charge u/s 304B IPC. However, the evidence discussed and analysed above conclusively, prove that deceased was subjected to cruelty by the appellants and their cruel conduct led the deceased wife to commit suicide and, therefore, the appellants should be held guilty for offence u/s 498A IPC.

16. Having held that deceased was subjected to harassment and cruelty and their cruel conduct led the wife to commit suicide, the question which now emerges for consideration of this court would be, whether presumption u/s 113A of the Evidence Act should be raised that appellants abetted the deceased to commit suicide, inasmuch as she committed suicide within 7 years of her marriage and the appellants subjected her to cruelty and harassment.

17. Learned counsel for the appellants has argued with vehemence that there is no evidence to prove that the accused appellants abetted the suicide by instigating the deceased to do so. Learned counsel submitted that merely because an accused has been held liable to be punished u/s 498A it does not follow that on the same evidence the must also and necessarily be held guilty of having abetted commission of suicide by the woman concerned. According to him, there is no evidence to raise presumption u/s 113A that appellants abetted the deceased to commit suicide. In support of his argument, learned counsel has relied upon Ramesh Kumar Vs. State of Chhattisgarh,

18. I have pondered over the argument and given through the case law cited at the bar. Having quoted Section 113A of the Evidence Act in para 11, their Lordships observed:

"...Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113A shows that to attract applicability of Section 113A, it must be shown that (i) the woman has committed suicide, (ii) suicide has been

committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the above said circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the above said three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to "all other circumstances of the case". A consideration of all other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression- "the other circumstances of the case" used in Section 113A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase "may presume" used in Section 113A is defined in Section 4 of the Evidence, which says- Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it".

19. There Lordships then held that Sections 498A and 306 IPC are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence u/s 498A and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. However, merely because an accused has been held liable to be punished u/s 498A IPC it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned.

20. In the above case, the cause of death of deceased was her own feeling ashamed of her own faults. She categorically declared that "none to be held responsible or harassed for her committing suicide. Her writing on page 12 of the diary (Article-A) was clearly suggestive of the fact that sometime earlier also she had expressed her wish to commit suicide to her husband and the husband had taken a promise from her that she would not do so and on the date of incident, the husband probably told the deceased that she was free to go wherever she wished and wanted to go and this revived the earlier impulse of the deceased for committing suicide. In was in this light of evidence that the Apex Court held that "there is no evidence and material available on record wherefrom an inference of the accused appellant having abetted the commission of suicide by Seema may be drawn. The totality of the circumstances discussed hereinabove, specially the dying declaration and the suicide notes left by the deceased herself, which fall for

consideration within the expression "all other circumstances of the case" employed in Section 113A of the Evidence Act, do not permit the presumption thereunder being raised against the accused. The accused appellant, therefore, deserves to be acquitted of the charge u/s 306 IPC.

21. Evidently thus, the facts involved in the above cited case are entirely different than that of the facts involved in the case at hand. In the case at hand, there was neither any dying declaration nor any suicidal note as was there in the above quoted case and hence Ramesh Kumar's case (supra), is of no help to the appellants.

22. In the case at hand, deceased Santosh was married to appellant Khem Chand @ Pappu @ Hema Ram about 3-3 & 1/4 years prior to her death which occurred otherwise than under normal circumstances. The evidence brought on record, as stated above, conclusively proved that appellant husband and his parents were not happy with the dowry given at the time of marriage and on that account the deceased was subjected to cruelty and harassment. Lastly on 21.7.98 the deceased went to her husband's house on the assurance of her father-in-law and then after few days she died and her body was found lying in a well. At that time also she was suspicious of her death at the hands of appellants which she expressed to her family members. The appellants were charged for offence of higher degree causing "dowry death" u/s 304B IPC as also Section 498A IPC. I have already held above that the evidence was not sufficient to prove that deceased was subjected to cruelty and harassment in connection with demand of dowry so as to constitute the offence u/s 304B IPC, but at the same time it has been proved that appellants were not happy with the dowry and on that account she was being subjected to cruelty and harassment. Therefore, presumption u/s 113B of the Indian Evidence Act can well be raised against the appellants on the same facts constituting offence of cruelty u/s 498A IPC and it can safely be concluded that appellants abetted Santosh to commit suicide and is thus liable to be convicted for offence u/s 306 IPC. It is true that charge u/s 306 IPC. It is true tat charge u/s 306 IPC has not been framed, but omission to frame charge u/s 306 IPC cannot be said to have resulted in any failure of justice. I am fortified in my view by a decision of the Apex Court in K. Prema S. Rao and Another Vs. Yadla Srinivasa Rao and Others, , wherein their Lordships have held as under: "As provided in Section 215 Cr.P.C. omission to frame charge u/s 306 IPC has not resulted in any failure of justice. We find no necessity to remit the matter to the Trial Court for framing charge u/s 306 IPC and direct a retrial of the charge. The accused cannot legitimately complain of any want of opportunity to defend the charge u/s 306 IPC and a consequent failure of justice. The same facts found in evidence, which justify conviction of the appellant u/s 498A for cruel treatment of his wife, make out a case against him u/s 306 IPC of having abetted commission of suicide by the wife. The appellant was charged for an offence of higher degree causing "dowry death" u/s 304B which is punishable with minimum sentence of seven years" rigorous imprisonment and maximum for life. Presumption u/s 113A of the Evidence Act could also be raised against

him on same facts constituting offence of cruelty u/s 498A. No further opportunity of defence is required to be granted to the appellant when he had ample opportunity to meet the charge u/s 498A IPC".

23. In the result, this appeal is partly allowed. The conviction of appellants u/s 304B IPC is set aside. However, they are convicted for offence under Sections 498A and 306 IPC.

24. Now comes the question as to what sentence should be awarded to the appellants. Appellant Khem Chand @ Pappu @ Hemraj has already undergone nearly 6 years and 4 months' imprisonment till date and therefore, I feel that ends of justice would be met if he is sentenced to the period already undergone by him. As far another appellant Mst. Prabhati is concerned, it appears that she is a lady of about 54 years of age. The arrest memo, Ex.P.7 reflects that she was arrested on 31.10.1998 and in the arrest memo her age has been mentioned as 48 years and thus she has attained the age of 54 years. Keeping in view the mitigating circumstances including the fact that Prabhati being a lady of 54 years of age and that principal accused has already undergone more than six years of imprisonment and further that she has also remained in custody for about 3 months during investigation and after the judgment, I feel that it would not be appropriate to send her behind the bars at this juncture. Consequently, both the appellants are sentenced to the period already undergone by them appellant Mst. Prabhati is already on bail. She need not surrender to her bail bonds which stand discharged. Appellant Khem Chand is in jail and he be released forthwith, if not required in any other case.