
(2014) 05 AHC CK 0014
In the Allahabad High Court
Case No : Criminal Appeal No. 2119 of 2007

Ram Ganesh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 19-05-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Dowry Prohibition Act, 1961 — Section 2
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2014) 87 ALLCC 212

Hon'ble Judges : Arvind Kumar Tripathi II, J

Bench : Single Bench

Advocate : Lalit Kishore Pandey, Bhola Singh Patel and Praveen Kumar Verma,
Advocate for the Appellant

Judgement

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Arvind Kumar Tripathi II, J.—Heard Shri Bhola Singh Patel and Shri Praveen Kumar Verma, learned Counsel for the appellant and Shri Sharad Dixit, learned AGA for the State respondent. This criminal appeal has been filed by the appellant - Ram Ganesh challenging the order dated 9.8.2007 passed by the learned Additional Sessions Judge, Court No. 14, Lucknow in Sessions Trial No. 210 of 1991 (State v. Ram Ganesh) by which he has convicted the appellant and sentenced him to undergo one year RI and fine of Rs. 1000/- under section 498-A IPC and in default of payment of fine he has to undergo further one month's imprisonment and also to undergo 10 years RI under section 304-B IPC. Both the sentences will run concurrently.

2. As per prosecution story, FIR was lodged on 7.10.1990, at about 21:05 hours, by the informant Kalideen alleging that he had married his daughter Ramshree three years prior with Ram Ganesh. After marriage his son in law started demanding Rs. 10,000/- to get his piece of land free from mortgage. His son in

law repeated and asked that you have given your daughter, then give money also. The informant gave Rs. 800/- and said I am a poor person and am not in a position to arrange such an huge amount. When the informant could not arrange the demanded money, his son in law started torturing his daughter. Some villagers informed him by coming to his village, but when he reached his daughter's house, then he found his daughter's dead body, who was killed by his son-in-law. On this, a case under section 498-A/ 304-B IPC was registered, which is Ex. Ka.1, and dead body was sent for post-mortem. On 9.10.1990, at about 1:10 PM, post mortem of dead body was conducted by Dr. B.P. Singh in K.G.M.C. Mortuary, Lucknow. Carbon copy of post-mortem report is Ex. Ka.4. Sri Surendra Kumar Verma, Circle Officer started investigation and visited the place of occurrence and prepared site plan (Ex. Ka.2). Statement of witnesses were recorded. On 11.10.1990, the Investigating Officer along with S.O. Banthara of village Tirva and arrested the accused appellant from his house. Thereafter, charge-sheet was submitted, which is Ex. Ka.3. The accused was charged under sections 498-A and 304-B IPC. He pleaded not guilty and claimed to be tried.

3. Prosecution has examined informant as PW-1, Ram Shanker as PW-2, Surendra Kumar Verma, Investigating Officer as PW-3, Dr. B.P. Singh as PW-4.

4. Statement of accused-appellant was recorded under section 313 Cr.P.C. in which he has admitted the marriage, but denied rest of the statements. He further stated that the daughter of deceased is with him and his wife was ill and died on Fehan Chauraha due to illness. He submitted that he came home with the dead body. He submitted that he is innocent and has been implicated on account of enmity. In his support he has examined Chhotey Lal as D.W.-1 and Babu Lal as D.W.-2.

5. Dr. B.P. Singh PW-4 has conducted post-mortem of the dead body. Following injuries were found on the person of the deceased:--

1. Contusion 2 cm. x 2 cm. on the left lower lip;
 2. Contusion 3 cm. x 2 cm. in the front side of belly 12 cm above navel;
 3. Scabed abraded contusion 2 cm. x 2 cm. on the back side of little finger; and
 4. Scabed abraded contusion 5 cm. x 3 cm. above the third lumbar spinal.
6. This witness has further opined the deceased died due to shock and hemorrhage and injuries received by her before death. He has further stated that it is difficult to say that whether the injuries were caused due to assault or due to fall
7. PW-3 is Investigating Officer. He has during investigation prepared site plan Ex. Ka.2, arrested the accused and after completion of investigation submitted charge-sheet Ex. Ka.3. He has stated in his examination in-chief that no eye-witness could be obtained in the village. There was rumour in the village that the deceased was ill, and she was being treated at the behest of accused.

8. Ram Shanker PW-2 is the witness whose examination-in-chief was recorded on 18.9.1991, but as it could not be completed, case was fixed for 25.9.1991 for further evidence of PW-2, but he never appeared before the Court for further examination, but on 4.12.1991 the learned Counsel for the accused informed the Court that he will not cross examine the witness Rama Shanker. This witness has simply stated that Ramshree was married with Ram Ganesh three years prior to death. He was out for doing labour work. When he returned, he received information that Ramshree was seriously ill, then he asked his wife as to who has given this information. She told that a relative of Bechan has given such information. A perusal of statement of this witness reveals that evidence of this witness is of no help either to the cause of prosecution or to the cause of defence, hence this statement has no evidentiary value.

9. PW-1 Kalideen has stated in his examination-in-chief that after one year of marriage "Gauna" was performed. Till six months nothing happened, and there was no demand, but when his daughter came to his house after that period, she informed that the appellant is asking for Rs. 10,000/-. When he asked his son-in-law, then he told that his land is mortgaged, and he wants this money to redeem it.

10. It was submitted by the learned Counsel for the appellant that such demand is not a demand of dowry.

11. The definition of word "dowry" given in the Dowry Prohibition Act, 1961 is as under:--

2. Definition of "dowry".--In this Act, "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;

12. In the case of Appasaheb and Another Vs. State of Maharashtra, the Apex Court has held as under:--

"Two essential ingredient of section 304-B IPC, apart from others, are (i) death of women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, and (ii) women is subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for "dowry". The explanation appended to sub-section (1) of section 304-B IPC says that "dowry" shall have the same meaning as in section 2 of Dowry Prohibition Act, 1961."

Section 2 of Dowry Prohibition Act reads as under:--

"2. Definition of "dowry".--In this Act "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 parent 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.

In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. 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. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See : Union of India and others Vs. Garware Nylons Ltd. etc., and Chemical and Fibres of India Ltd. Vs. Union of India and others, . 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 IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained."

13. This view was again reiterated by the Apex Court in Vipin Jaiswal (A-I) Vs. State of A.P. rep. by Pub. Prosecutor, Thus, the demand made for business by the appellant from father of the deceased does not come within the preview of word "dowry".

14. Chhotey Lal D.W.-1 has stated on oath that no dowry was fixed in the marriage. There was no dispute regarding dowry. There was no one else in the family of Ram Ganesh except his wife and a girl child. Regarding cause of death, he has stated that on the date of incidence, Ram Ganesh's wife was ill, and she was lying on the "takhet". She tried to get up, but fell down due to which she became unconscious, then he and another villager took her to hospital along with Ram Ganesh, but she died on the way. The same statement has been given by D.W.-2 Babu Lal.

15. To prove a case to fall within a preview of dowry death, the prosecution has

to prove that there was demand of dowry, for non-fulfillment of demand of dowry there was cruelty and death has occurred within seven years of marriage.

16. In this case, the demand of Rs. 10,000/- was for redeeming the mortgaged land does not come within the preview of dowry, hence no presumption under section 113-B of the Indian Evidence Act can be drawn. The prosecution will have to stand on its own legs. Chhotey Lal D.W.-1 and Babu Lal D.W.-2 have stated the reasons of death. PW-5 the doctor is not clear as to whether the injuries on the body of deceased were caused due to fall or due to assault. When there is no presumption, then the prosecution will have to prove that these injuries were caused by assault by the appellant. There is no such evidence on record.

17. The statement of defence witnesses can also not be discarded simply because they are defence version.

18. In the case of Munshi Prasad and Others Vs. State of Bihar, and State of Haryana Vs. Ram Singh, the Apex Court has held that the evidence tendered by defence witness cannot always be termed to be a tainted one. The defence witnesses are entitled to equal treatment and equal respect as that of prosecution. The issue of credibility and trust worthiness ought also to be attributed to the defence witness at par with that of the prosecution.

19. In the instant case, in the light of statement of PW-3 that there were rumour in the village that Ramshree was ill and she was being treated at the behest of accused, the Trial Court has very casually dealt with the statement of D.W."s.

20. When the demand made by the appellant does not fall within its preview of "Dowry", then there can be no presumption under section 113-B of the Indian Evidence Act, and then the prosecution will have to stand on its own legs.

21. Considering the entire circumstances and evidence on record, this Court is of the view that prosecution has failed to prove the demand of dowry and cruelty for non-fulfillment of demand of dowry. The prosecution has also failed to prove that injuries were caused by assault by the husband. In consequence, the criminal appeal is liable to be allowed, and is hereby allowed. The order dated 9.8.2007 passed by the learned Additional Sessions Judge, Court No. 14, Lucknow in Sessions Trial No. 210 of 1991 is set aside. The appellant is acquitted of the charges under sections 498-A and 304-B IPC framed against him. He is in jail. He be released forthwith, if not wanted in any other case.