

(2021) 12 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case (M) No. 67 Of 2020

Shakuntla Devi

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 10-12-2021

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 34, 304B, 306, 498A
Dowry Restraint Act, 1960 — Section 2, 7
Indian Penal Code, 1860 — Section 304B
Dowry Prohibition Act, 1961 — Section 2
Code Of Criminal Procedure, 1973 — Section 239

Citation : (2021) 12 J&K CK 0016

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Ajay Bakshi, Aseem Sawhney, Satinder Gupta

Final Decision : Disposed Of

Judgement

Rajnesh Oswal, J

1. The present petition has been filed by the petitioner, who is mother of the deceased for quashing order dated 03.10.2019 passed by the 2nd Additional Sessions Judge, Jammu (hereinafter to be referred as the trial court) by virtue of which, the learned trial court has charged the respondent Nos. 2 to 4 for commission of offences under sections 306 and 498-A/34 RPC and discharged them for commission of offence under section 304-B RPC. It is submitted that the order impugned is bad in law as the learned trial court without perusing the statement of the petitioner herein, PW Nisha Devi, PW Ashok Kumar and PW Krishan Lal has altered the charge from 304-B RPC to 306 and 498-A/34 RPC despite the fact that there was abundant evidence on record for framing of charge under section 304-B RPC against the respondents 2 to 4.

2. Mr. Ajay Bakshi, learned counsel for the petitioner has vehemently argued that there was sufficient material on record in the form of evidence of PW Shakuntla

Devi, PW Nisha Devi, PW Ashok Kumar and PW Krishan Kumar for framing the charge under section 304-B RPC against the respondent Nos. 2 to 4 but the learned trial court ignored the vital evidence and altered the charge to 306/498-A/34 RPC. He further strenuously argued that the definition of the dowry under the Dowry Restraint Act, 1960 as was applicable under the then State of Jammu and Kashmir was ambiguous and as such, the same is required to be interpreted in a manner that serves the purpose for which section 304-B was incorporated in the Act. He further relied upon the judgment of Apex Court in *Satbir Singh v State of Haryana and State of Himachal Pradesh v Nikku Ram and others*, (1995) 6 SCC 219. Mr. Aseem Sawhney, learned AAG too has argued that the definition on the similar lines.

3. Mr. Satinder Gupta, learned counsel for the respondent Nos. 2 to 4 vehemently argued that the definition of the dowry as defined under the Jammu and Kashmir Dowry Restraint Act 1960 is entirely different vis-a-vis dowry as defined under the Dowry Prohibition Act, 1961 that is applicable to the whole of the India excluding the then State of Jammu and Kashmir. He has placed reliance upon the judgments of Apex Court in *State versus A Arun Kumar*, *Satvir Singh versus State of Punjab*, *Hira Lal versus State*, *Balwant Singh versus State*, *Appa Saheb versus State of Maharashtra*, *Gurnaib Singh versus State of Punjab*.

5. From the record, it is evident that on 14.03.2019, the petitioner submitted a written application with the Police Station, Bakshi Nagar in which it was stated that her daughter was married with respondent No. 2 in the year, 2017. The respondents 2 to 5 did not make any demand prior to the marriage, but they had given the dowry as per their capacity. The respondent No. 2 continued to demand dowry after the solemnization of marriage and started beating her daughter. Thereafter, her daughter started demanding money from them. She without disclosing to her husband gave two lacs to her few days ago but thereafter, the respondent started demanding car. They were poor people and could not meet the said demand. Due to that her in-laws started beating her. Respondent Nos. 2, 3 and 5, last night administered beating to her daughter and she phoned her. She was upset and stated that her husband, father in law, mother in law and brother in law have started beating her and they also snatched the phone from her. Thereafter in the morning, respondent No. 2 phoned her and stated that her daughter had hanged herself. On the receipt of this information, FIR bearing No. 43/2019 for offence under sections 304-B RPC was registered and after the conclusion of the investigation, charge sheet for commission of offence under section 304-B/34 RPC was filed against the respondents. The respondent No. 5 had absconded as such, charge sheet was filed in absentia. The learned Sessions Judge transferred the matter to the trial court. The learned trial court after hearing the arguments on charge/discharge, vide order dated 03.10.2019, charged the respondents 2 to 4 for commission of offence under sections 306, 498-A/34 RPC and discharged the respondents for commission of offence under section 304-B RPC.

6. This controversy has arisen only because of the reason that the definition of the dowry as contained in the Dowry Restraint Act, 1960 as was applicable in the erstwhile State of Jammu and Kashmir, was very restrictive in its application whereas the definition of a dowry as contained in the Dowry Prohibition Act, 1961 as applicable in rest of the India except the erstwhile State of Jammu and Kashmir was of wider amplitude .

7. Before appreciating the rival contentions of the parties, it would be apt to take note of the definition of section 304-B RPC. The same is reproduced as under:

"304-B. Dowry death-

(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 1: For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Restraint Act, 1960.

Explanation: 2: For the purpose of this sub-section. "cruelty" shall have the same meaning as in stion 498-A of this code.

(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.]"

8. From the perusal of the aforesaid section, it is evident that in order to charge a person for commission of offence under section 304-B RPC, the following essential ingredients must be forthcoming from the allegations contained in the charge-sheet:

(i) That the death of a woman should be caused by burn or bodily injury or occur otherwise than in a normal circumstances.

(ii) That such death was must have occurred within seven years of her marriage.

(iii) That she must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) That such cruelty or harassment should be for or in connection with the demand or dowry.

(v) That such cruelty or harassment is shown to have been meted out to the woman soon before her death.

9. Further the explanation 1 appended to the section demonstrates that the expression dowry shall have the same meaning as in section 2 of the Dowry restraint Act, 1960. So far as section 304-B of the Central Code is concerned, the

expression dowry has the same meaning as contained in section 2 of the Dowry Prohibition Act, 1961.

10. Section 2 of the Dowry Restraint Act, 1960 is reproduced as under:

"2. Definition of 'dowry'-In this Act unless the context otherwise requires,-

Dowry means any property transferred agreed to be transferred as a part of the contract of any betrothal, marriage, any prebetrothal, post-marriage ceremony such as Thaka, Rophera/Duphera, Phirsal, Phersozen and the like by one party to the betrothal, marriage, any prebetrothal, post-marriage ceremony such as Thaka, Rophera/Duphera, Phirsal, Phersozen and the like or the father, mother, or guardian of that party to the other party to the marriage or to the father, mother or guardian of the other party, but does not include voluntary marriage gifts such as ornaments to a bride and dresses to a bridegroom the value of which in aggregate does not exceed two thousand rupees]."

11. As per definition of dowry as defined under the Dowry Restraint Act, 1960, dowry means any property transferred or agreed to be transferred as a part of any betrothal, marriage, pre-betrothal, post-marriage ceremony and other ceremonies such as Thaka, Rophera, Duphera, Phirsal, Phersuzen and like ceremonies. This section contemplates the transfer of a property or agreement for transfer of a property as a part of contract in connection with the ceremonies as mentioned in the section and such other ceremonies of like nature. The learned trial court discharged the respondent Nos: 2-4 on the premise that there was no such contract between the parties as such offence under section 304-B RPC is not made out and further that there was no evidence that the deceased was subjected to cruelty by the accused in relation to the demand of the dowry or a car soon before her death.

12. This court is not convinced with the reasons furnished by the learned trial court for non-applicability of section 304-B RPC just because there was no contract within the meaning of section 2 of Dowry Restraint Act, 1960. The section 2 of the Dowry Restraint Act, 1960 begins with expression "In this Act unless the context otherwise requires" meaning there by that the definition of "Dowry" used in the Act 1960, cannot be put in to straight jacket formula and if the Act of 1960 necessitates or requires, then the word "dowry" can contemplate other situations/persons as well. The Act of 1960 was enacted to provide for restraining the taking or giving of dowry in connection with marriages and for matters incidental thereto.

13. Now if the section 2 of the Act of 1960 is read in conjunction with section 304-B RPC, in a manner as done by the trial court then the whole purpose of adding section 304-B RPC to the statute shall be defeated. Section 304-B RPC contemplates the death of woman within the period of 7 years and also the persons who can be proceeded against under section 304-B i.e. husband and his relatives where as the section 2 of the Act 1960 contemplates persons to be proceeded against as party to the marriage or betrothal and father, mother and

guardian of the party. The purpose of making amendment in Ranbir Penal Code in the year 2014, was to curb the menace of rising dowry deaths. The trial court was considering issue with regard to framing of charge under section 304-B RPC but the trial court got swayed by the definition of dowry as defined under the Act of 1960 forgetting the legislative intent behind making the amendment, more when the definition was elastic even for the purpose of Act of 1960 by the use of expression "In this Act unless the context otherwise requires".

If the interpretation of the trial court is accepted, then none other than the husband, his father and mother can be proceeded against under section 304-B RPC and it would do violence not only to the statue but also the legislative intent behind it. No doubt the criminal statues/penal laws are required to be interpreted in strict manner but at the same time, they cannot be interpreted in a manner that frustrates the very purpose of enacting a statue. It would be profitable to take notice of the observations of Apex Court in "Attorney general of India versus Satish" reported in 2021 SCC Online Sc 1076, made as under:

"37. This takes the Court to the next argument of Mr. Luthra that there being an ambiguity, due to lack of definition of the expressions - "sexual intent", "any other act", "touching" and "physical contact", used in Section 7, coupled with the presumptions under Sections 29 and 30 of the Act, the reverse burden of proof on the accused would make it difficult for him to prove his innocence and, therefore, the POCSO Act must be strictly interpreted. In the opinion of the Court, there cannot be any disagreement with the said submission of Mr. Luthra. In fact it has been laid down by this Court in catina of decisions that the Penal Statute enacting an offence or imposing a penalty has to be strictly construed. A beneficial reference of the decisions in the case of Sakshi vs. Union of India reported in (2004) 5 SCC 518, in the case of R. Kalyani vs Janak C. Mehta & Ors reported in (2009) 1 SCC 516 and in the case of State of Punjab v. Gurmeet Singh (2014) 9 SCC 632 be made in this regard. However, it is equally settled legal position that the clauses of a statute should be construed with reference to the context vis-a-vis the other provisions so as to make a consistent enactment of the whole Statute relating to the subject matter. The Court can not be oblivious to the fact that the impact of traumatic sexual assault committed on children of tender age could endure during their whole life, and may also have an adverse effect on their mental state. The suffering of the victims in certain cases may be immeasurable. Therefore, considering the objects of the POCSO Act, its provisions, more particularly pertaining to the sexual assault, sexual harassment etc. have to be construed vis-a-vis the other provisions, so as to make the objects of the Act more meaningful and effective."

14. In the same judgment, His Lordship Hon'ble Justice S Ravindra Bhat, while concurring with majority view in the judgment, observed/held as under:

I do not see the need to recount the facts or the arguments, which have been fairly and accurately set out in Trivedi, J's judgment. Instead, I proceed with the task of interpretation of provisions of POCSO, and the proper rule of

interpretation which should be adopted in such cases. Long ago, in *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. & Ors.* this court observed the need to contextualize the provisions of any law which requires interpretation, even while focusing on its text: "If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

58. One time tested and well accepted mode of interpreting a statute, especially a new statute, is to apply the "mischief rule" - first spoken of in Heydon's case which contains a four-points formula, acting as an aid in construing a new law or provision. These are firstly, what was the common law before the making of the Act; secondly what was the mischief and defect for which the common law did not provide; thirdly what remedy Parliament resolved and appointed to cure the disease plaguing the society; and lastly the true reason of the remedy. The judgment in Heydon's case also emphasised that courts always have to interpret the law so as to suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico. This rule was approved, and its purport explained, in *Kanwar Singh v. Delhi Administration* thus:

"It is the duty of the court in construing a statute to give effect to the intention of the legislature. If, therefore, giving a literal meaning to a word used by the draftsman, particularly in a penal statute, would defeat the object of the legislature, which is to suppress a mischief, the court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will advance the remedy and suppress the mischief."

59. The aim of such statutory construction was put, pithily and simply in *Swantraj v. State of Maharashtra*:

"Every legislation is a social document and judicial construction seeks to decipher the statutory mission, language permitting, taking the cue from the rule in Heydon's(l) case of suppressing the evil and advancing the remedy."

15 Now it is to be seen as to whether there is any evidence on record to justify framing of charge under section 304-B RPC with regard to the demand of dowry. Before considering this issue, it is to be noted that the court is not supposed to hold mini trial at this stage. In *State of Karnataka v. M. R. Hiremath*, (2019) 7 SCC 515, the Apex Court has held as under:

"25. The High Court ought to have been cognizant of the fact that the trial court

was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In *State of T.N. v. N. Suresh Rajan* [*State of T.N. v. N. Suresh Rajan*, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] , advertent to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29)

"29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the= court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

16. PW Shakuntala Devi petitioner herein, stated that at the time of marriage no demand of dowry was made but at the time of marriage dowry was given and when the son was born to deceased, a motor cycle was given to respondent No. 2. They were deceived as the respondents were told at the time of marriage that the respondent No. 2 was employed and earning Rs. 40,000/- per month but in fact, he was jobless. She has further stated with regard to the payment of Rs. 8500/- for registration of the vehicle. She has further deposed about the payment of two lacs to the in-laws of her daughter. She stated that they were continuously making demands of money and car.

17. PW Krishan Kumar who happens to be the brother of the deceased has stated that respondent Nos. 2 to 5 did not talk about the dowry at the time of marriage and simply asked for a girl but they gave them one motor cycle and other articles in the marriage. After one year of marriage, they started demanding 8500/- for getting the registration of the vehicle and his father paid the same. At the time of delivery, Rs. 10,000/- were demanded and his father paid the same. On 05.01.2019 a demand of Rs. 2.00 lacs was made from his father for the purpose of redeeming their gold and silver. He further stated that on 22.02.2019, the deceased came to their house and stated that the maternal grandmother of respondent No. 2 was demanding car and she further stated that they are also demanding dowry and she was beaten. On 13.01.2019 she called and stated that she was being assaulted by her in-laws.

18. PW Ashok Kumar father of the deceased has also deposed on similar lines.

PW Nishu Devi who is the sister of the deceased in her deposition has leveled general allegations and has also stated that respondent Nos. 2 to 5 were demanding money time and again and same was paid to them.

19. From the record, it is evident that the deceased died because of suicide and further that she died within the seven years of marriage. The trial court further held that there was no evidence that the deceased was subjected to cruelty by the accused in relation to the demand of the dowry or a car "soon before her death". In *Satbir Singh v. State of Haryana*, (2021) 6 SCC 1, the Apex Court held as under:

15. Considering the significance of such a legislation, a strict interpretation would defeat the very object for which it was enacted. Therefore, it is safe to deduce that when the legislature used the words, "soon before" they did not mean "immediately before". Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is quite varied, as it can range from physical, verbal or even emotional. This list is certainly not exhaustive. No straitjacket formulae can therefore be laid down by this Court to define what exactly the phrase "soon before" entails.

20. The learned trial court has in fact conducted the mini trial and has appreciated the evidence that was not permissible at this stage. Thus this finding of the trial court that there was no evidence of cruelty "soon before death" is also not sustainable in view of the statement of the abovementioned witnesses.

21. In view of what has been discussed above, the present petition succeeds and the order dated 03.10.2019 passed by learned 2nd Additional Sessions Judge Jammu is set aside and the trial court is directed to frame the charges for commission of offences under section 304-B, 498-A/34 RPC against the respondent Nos. 2 to 4. The respondents 2 to 4 were granted bail by the trial court and as they have remained on bail for more than 2 years, as such, they shall continue to remain on bail during the course of trial.

22. Disposed of.