
(2018) 04 MP CK 0175
In the Madhya Pradesh High Court
Case No : Cr.A. No.1408 OF 2005

Smt. Annu Bai And Others

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 28-04-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 374(2)
Indian Penal Code, 1860 — Section 34, 304B, 498A
Dowry Prohibition Act, 1961 — Section 3, 4

Citation : (2018) 04 MP CK 0175

Hon'ble Judges : SUJOY PAUL, J

Bench : Single Bench

Advocate : Pradeep Hazari, Mohit Nayak

Final Decision : Disposed Of

Judgement

This is an appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment dated 7th July, 2005 passed in Sessions Trial

No.29/04 by Additional Sessions Judge, Umaria convicting appellants No.1, 2 and 4 under Section 304-B/34 IPC by sentencing them for seven years

RI with fine of Rs.500/- with default stipulation.Â All the appellants are also held guilty for offences under Section 498A/34 of IPC.Â For this

reason, they are sentenced for RI for one year with fine of Rs.200/- with default stipulation.Â All the appellants were held guilty under Section 3 of

Dowry Prohibition Act and sentenced to undergo imprisonment for five years RI with fine of Rs.15,000/- with default stipulation.

In addition, all the appellants are held guilty under Section 4 of the said Act and directed to undergo one year RI with fine of Rs.100/- with default

stipulation.Â Appellant No.3 was held guilty under Section 304B/34 of IPC and directed to undergo RI for 10 years and fine of Rs.500/- with default

stipulation. Â

2. Briefly stated, the story of the prosecution is that on 18.7.2003, Tulsi Prasad, younger brother of appellant no.4 informed the Police Station, Umaria

that Rekha Bai had died because of burn injuries.Â The marg intimation No.41/03 was recorded and witnesses were summoned by issuing Exhibit

P/1. The panchnama of body of Rekha Bai Exhibit P/2 was prepared, postmortem report Exhibit P/3 was obtained which shows that the reason of

death is the shock because of burn injuries.Â Spot map Annexure P/4 was prepared, soil and clothes of the deceased, match box were seized by

memo Exhibit P/14.Â The marriage invitation card of deceased was also seized.Â Statements of witnesses were recorded.Â Thus, FIR was

recorded containing offences under Sections 498A, 304/34 IPC and Section 3 & 4 of the Dowry Prohibition Act.Â The appellants were arrested and

in due course the charge-sheet was filed before the concerned Magistrate. Since offences were triable by Sessions Court, the matter was committed

to the Sessions Court by order of Magistrate dated 19.1.2004.Â The Sessions Court, in turn, framed the charges and all the appellants denied the

allegations in toto. They contended that they are falsely implicated in the incident. The Court below after recording evidence of the parties found the

charges as proved against the appellants and directed them to undergo sentence as mentioned above.

3. Shri Pradeep Hazari, learned counsel for the appellants criticized the findings by contending that (i) the statement of prosecution witness PW/6

shows that deceased was residing in a different room of same house; (ii) her cooking arrangement and kitchen was different and therefore appellant

No.1, 2 and 4 were unnecessarily implicated in the present case; deceased was residing with her husband, appellant No.3 who at the time of incident

was not present in the house and was on duty in the course of his employment.Â The incident had taken place at around 11 Oâ?? clock in the

morning; (iii) The P.W./8 did not support the story of the prosecution.Â He was not declared hostile by the prosecution yet no credence was given by

the court below to his statement; (iv) That there exists serious variations in the story of prosecution mentioned in the FIR and the statement recorded

under Section 161 Cr.P.C.Â In the court, for the first time certain new depositions relating to demand of dowry were made by the prosecution

witnesses which were not part of statements recorded under Section 161 Cr.P.c.Â Thus, court below has erred in believing the story of the prosecution.Â (v) That prosecution witnesses have contended thatÂ the caste to which appellant and deceased belonged, there is no custom of demand of dowry.Â The office bearer of the society of that particular caste entered the witness box and deposed his statements in this regard.Â Â There was no justification in not believing the statement of said witnesses. (vi) PW/10Â is a senior police officer, who, during cross-examination, admitted that certain portion of statement under section 161 Cr.P.C. was actually not narrated by the complainant.Â In this viewÂ of the matter, the court below has erred in believing the story of the prosecution.Â (viii) That the incident which had allegedly taken place before 15 days before the date of death was not having any relation with any demand of dowry.Â Infact, it was relating to a quarrel and dispute regarding sending the deceased to her parental house.Â As an afterthought, the allegations of dowry were mentioned, which story is totally unbelievable.Â Shri Hazari placed reliance on 2010 (12) SCC 350 (Ashok Kumar vs. State of Haryana) to bolster his submission that the incident in question cannot be treated to be â??soon before the date of deathâ? and therefore penal provision is not attracted. Reliance is also placed on 2015 (3) SCC 724 (Sher Singh @ Partapa vs. State of Haryana).Â Â Lastly, it is submitted that the judgments on which heavy reliance is placed by court below in para 37, 38 and 39 of the judgment, are not applicable in the facts and circumstances of the present case.

4. Per contra, Shri Mohit Nayak, learned Government Advocate for the State supported the impugned judgment and contended that the necessary ingredients for attracting the penal provisions were available.Â The prosecution was able to establish the allegations beyond reasonable doubt.Â

There is no procedural infirmity or palpable perversity in the impugned judgment which warrants interference by this court in appellate jurisdiction.

Considering the nature of crime committed by the appellants, they are not entitled to get any relief from this court.

5. No other point is raised by the learned counsel for the parties.

6. I have heard the learned counsel for the parties and perused the record.

7. Before dealing with the rival contentions of the parties, it is apposite to refer

section 304-B of IPC :1[304B. Dowry death.â?

(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 â??dowry deathâ?, and such husband or relative shall be deemed to have caused her death.

Explanation.â?"For the purpose of this subsection, â??dowryâ? 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.]

Â A plain reading of this section makes it clear that in order to prove the charge under Section 304-B, the prosecution has to prove the following five preliminary facts even by preponderance of probability :-

(i) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured,

(ii) Within seven years of a marriage.

(iii) and that she was subjected to cruelty or harassment by her husband or any relative of her husband,

(iv) in connection with any demand for dowry, and,

(v) that the cruelty or harassment meted out to her was ""soon before her death"".

This is trite law that once the presence of these five concomitants is established or shown or proved by the prosecution, even by preponderance of

possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof

upon him and requiring him to produce evidence dislodging his deemed culpability beyond reasonable doubt.Â This emerges clearly as the manner in

which Parliament sought to combat the scourge and evil of rampant bride burning or dowry deaths. What Parliament intended by using the word

deemed""Â in Section 304-B IPC was that only preponderance of evidence would

be insufficient to discharge the husband or his family members of their guilt.Â It would not be appropriate to lessen the husband's onus to that of preponderance of probability as that would annihilate the deemed guilt expressed in Section 304-B, and such a curial interpretation would defeat and neutralise the intentions and purposes of Parliament.Â This interpretation provides the accused a chance of proving their innocence. Neither life nor liberty can be emasculated without providing the individual an opportunity to disclose extenuating or exonerating circumstances. (See : Sher Singh alias Partapa Vs. State of Haryana-(2015) 3 SCC 724).

8. The aforesaid test now needs to be applied in the facts and circumstances of the present case.Â The death of woman in the present case is caused in abnormal circumstances by her having been burnt.

9. The defense raised an objection before the court below that the death of woman had taken place after seven years.Â However, the marriage invitation card (Ex.P/6) was recovered by the police authorities and was placed before the court below.Â The prosecution witnesses have categorically deposed that marriage was solemnized within seven years.Â The genuineness of marriage invitation card and statement of witnesses could not have been demolished by the defense.Â Thus, the court below has rightly concluded that incident had taken place within seven years of marriage.

10. Dowry death stands defined for all purposes under section 304-B IPC.Â The death can be accidental, suicidal or homicidal. The first type is tragedy and no criminal intention is attached in such deaths.Â The suicidal death of married woman who was meted out cruelty by her husband, where her demise occurred within seven years of marriage in connection with dowry demand, should led to prosecution and punishment under section 304-B and/ or 306 IPC.Â Thus, the spinal issue needs consideration is whether deceased was subjected to cruelty or harassment by her husband and other appellants in connection with any demand for dowry.

11. In the present case, in the FIR it was recorded that deceased was victimized for not bringing gold, silver and vehicle.Â Similar statement was made before the police in the statement recorded by Koti Singh, father of deceased.Â If the FIR is read in juxtaposition to the statement given on 9.9.2003 before the police under section 161 Cr.P.C, it will be clear like noon day

that the statements are in tune with the case of the prosecution.

Â The father of deceased Koti Singh (P.W.6) categorically deposed that when deceased visited her matrimonial house 15 days before her death, she

informed about harassment caused to her by the appellants.Â In para-9 of cross-examination, he denied the suggestion that appellants were not

demanding dowry from the deceased.Â This witness clearly stated that deceased was residing with her husband in a different room in the same

house.Â He also denied that entry of the room in which deceased was residing with her husband had a different entry and had no connection with

other part of the house where her in-laws were residing. Sheela Singh (P.W.13) mother of the deceasedÂ in clear terms deposed that deceased use

to tell her during her visit to matrimonial house that appellants subjected her to cruelty for want of dowry.Â Pertinently, this witness also deposed that

deceased was residing with her husband in the same house but in a different room.Â Rajesh Singh (P.W.4) brother of the deceased also deposed that

the appellants use to harass deceased and use to demand money, motorcycle, cooler, fan etc. OnÂ plain reading of the statements of these relative

witnesses which could not be demolished during cross-examination, it is clear that the factum of cruelty because of dowry demand is duly established

by them. In other words, it was duly established that deceased was subjected to cruelty and harassment by the appellants in connection with the

demand for dowry.Â This courtÂ in Raj Kumar and others Vs. State of Madhya Pradesh -2005 Cri.L.J.1072 opined that in cases of dowry death the

statements of family members of victims can be relied upon.Â The relevant portion reads as under :-

27. In case of dowry death, the family members of the victim are the best witnesses and only they can depose what was the treatment given to the

victim. The deceased herself made complaint to her brother regarding ill-treatment by the appellants, therefore, absence of supporting evidence of any

independent witness will not cause any dent to the prosecution case. Merely because there was delay in recording the statements of the witnesses due

to inaction of the investigating officer, it would not be proper to acquit the appellants solely on account of some defect in investigation.Â In view of

the overwhelming evidence which inspires confidence, mere delay in recording statements of witnesses would not be a reason to discard the evidence

of the prosecution witnesses in toto.

(Emphasis supplied)

12. In view of aforesaid analysis, the contention of learned counsel for the appellants that the deceased was residing in a different room and her

kitchen was also different is of no use. Once the connection between demand for dowry and cruelty/ harassment is established, geographical distance

or proximity, pales into insignificance.Â Moreso, when the deceased was residing in the same house but in a different room.Â Thus, it cannot be said

that there was no possibility of harassment to the deceased who was practically living under the same roof.

13. Learned counsel for the appellants placed heavy reliance on the statement of Tulsi Prasad (P.W.8) to contend that the statement of prosecution

witnesses clearly demolished the case of the prosecution.Â I do not see any merit in the said contention. This witness is younger brother of appellant

Vishnu Prasad.Â He was residingÂ in a different house.Â His deposition about no demand for dowry is related to the date of marriage.Â In other

words, he deposed that when he visited the house of deceased before her marriage, they did not demand for any dowry.Â Thus, this statement does

not demolish the case of the prosecution where it is clearly established that after marriage and before the death, the appellants used to harass and

subject the deceased to cruelty about demand for dowry.

14. Another submission of appellants is that there was no custom of demand for dowry in the caste of appellants.Â This statement did not get support

from the statements of various prosecution witnesses.Â Â In the present scenario, even for the sake of argument, even if it is accepted that no such

custom existed in a particular caste regarding demand for dowry, as a thumb rule, it cannot be ruled that because of such custom, the factum of

demand of dowry can be brushed aside when prosecution witnesses have categoricallyÂ deposed and established the factum of demand of dowry

and cruelty related with it.Â Putting it differently, despite there being custom of this nature, there can always be exceptions and, therefore, mere

existence of a custom cannot be a reason for disbelieving the evidence led by the prosecution.

15. Sudhir Laad (P.W.10) in his statement stated that certain portion of police statement Ex.D/1 was not given byÂ Rajesh. Even if this piece of

evidence, during cross-examination, is believed to be true, it will not cause any dent to the story of the prosecution. As noticed, the other

prosecution witnesses, namely, mother, father and brother of the deceased satisfactorily established about demand of dowry and cruelty related with

such demand. Thus, this argument raised by the appellants must fail.

16. Lastly, it is argued that the alleged incident of demand of dowry had taken place 15 days before the date of death and, therefore, it does not fall

within the ambit of expression "soon before her death". This point is no more res integra. In Ashok Kumar Vs. State of Haryana (2010) 3

SCC-350, the Apex Court opined that the words 'soon before her death' is to emphasize the idea that her death should, in all probabilities, has been the

aftermath of such cruelty or harassment. In other words, there should be a reasonable, if not direct, nexus between her death and the dowry related

cruelty or harassment inflicted on her. Similar view was expressed by Apex Court in the case of Yashoda Vs. State of Madhya Pradesh-(2004) 3

SCC-98, where Court held that determination of the period would depend on the facts and circumstances of a given case. However, the expression

would normally imply that there has to be reasonable time gap between the cruelty inflicted and the death in question. If this is so, the legislature in

its wisdom would have specified any period which would attract the provisions of this Section. However, there must be existence of proximate link

between the acts of cruelty along with the demand of dowry and the death of the victim. For want of any specific period, the concept of reasonable

period would be applicable. Thus, the cruelty, harassment and demand of dowry should not be so ancient whereafter, the couple and the family

members have lived happily and that it would result in abuse of the said protection. Such demand or harassment may not strictly and squarely fall

within the scope of these provisions unless definite evidence was led to show to the contrary. The same view is taken in the case of Sher Singh

(supra).

17. In the facts and circumstances of the present case, the live link between demand of dowry and cruelty/ harassment by the appellants is duly

established by the prosecution. The demand of dowry is not so stale which can be said to be beyond the scope of expression "soon before her

death". On the contrary, a direct relation is established between the two

emanating from dowry demand and death of a married woman.Â Thus, this argument must also fail.

18. In the impugned judgment, all the appellants were rightly held guilty for committing offence under section 304-B IPC.Â The said provision

mandates that in cases of dowry death, the sentence cannot be less than seven years.Â The court below rightly directed the appellants No.1,2 and 4

to undergo sentence for seven years.Â However, appellant No.3 Rewa alias Chandrika, husband of deceased, was directed to undergo sentence for

ten years by holding him guilty under section 304-B/34.Â Here, in my considered opinion, the court below has committed an error of law.Â Once

offence under section 34 are not attributed and proved against remaining appellants, it cannot be proved against appellant No.3, the husband of the

deceased alone.Â Thus, appellant No.3, should have been given same amount of sentence i.e seven years.Â Curiously, in the case of Ashok Kumar

(supra), it was not the case of the prosecution that at the time ofÂ incident, husband was present at home and he failed to protect or save the

deceased from burning.Â Considering this aspect, the ApexÂ Court directed that ends of justice would be met by awarding him minimum sentence

provided in law i.e seven years RI for offence under section 304-B IPC.Â For this reason also, I deem it proper to interfere in the impugned judgment

to the extent appellant No.3 was directed to undergo sentence for 10 years and deem it proper to reduce the same uptoÂ seven years R.I.

19. In view of aforesaid analysis, the impugned judgment dated 07.07.2005 passed in S.T.No.29/04 stands modified to the extent indicated above.Â

Resultantly, appellant No.3 would be required to undergo sentence forÂ 7 years R.I.Â If he has already undergone that period of sentence, he be

released forthwith.Â If other appellants have not undergone aforesaid sentence, they shall surrender and undergo the sentence of seven years R.I.

20. Appeal is disposed of.