

(2000) 05 RAJ CK 0060

In the Rajasthan High Court

Case No : Criminal Leave to Appeal No. 30 of 2000

State of Rajasthan

APPELLANT

Vs

Lokesh Kumar and Ars.

RESPONDENT

Date of Decision : 31-05-2000

Acts Referred:

Dowry Prohibition Act, 1961 — Section 2

Evidence Act, 1872 — Section 113

Penal Code, 1860 (IPC) — Section 304

Citation : (2001) 1 DMC 94 : (2001) 1 RLW 172 : (2000) 3 WLC 257 : (2000) 2 WLN 568

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : G.K. Vyas, P.P, for the Appellant;

Judgement

B.J. Shethna, J.—Ordinarily, while granting leave to file an appeal against the order of acquittal and admitting the appeal, this Court is not required to pass a speaking order but learned Public Prosecutor Mr. Vyas vehemently submitted that this is a Gross case in which the learned Trial Judge committed a grave error in acquitting the accused for the offence punishable u/S. 304-B and 498A I.P.C., therefore, non-bailable warrant be also issued.

(2). The respondent no. 1 accused Lokesh Kumar is husband of deceased Kiran. They got married on 18.5.94 and within a period of less than five months, his wife deceased Kiran committed suicide on 7.10.94 because of the constant demand of dowry from her by her husband Lokesh Kumar and mother-in-law Bhanwari Devi.

(3). Going through the impugned order of acquittal, prima-facie it appears that the learned Judge acquitted the accused against all the well settled norms and the law laid down by the Hon"ble Supreme Court in umpteen number of cases. It appears that while acquitting the accused, the learned Trial Judge has not at all considered the ingredients of Sec. 304-B I.P.C. Sec. 304-B I.P.C. reads as under:-

Dowry death.

"304 B. (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: For the purposes of this sub-section, "dowry" shall have the same meaning as in Sec. 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."

(4). It appears that the learned Trial Judge has also completely ignored the fact that the presumption as to dowry death has to be raised against the accused u/ S. 113B of the Indian Evidence Act. Sec. 113B of the Indian Evidence Act reads as under:-

Presumption as to dowry death;

"113 B. When the question is whether a person has committed the dowry death of a woman and is shown that soon before her death such woman had been subjected by such 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.

Explanation: For the purposes of this section, "dowry death" shall have the same meaning as in Sec. 304B of the Indian Penal Code (45 of 1860)."

(5). From a perusal of the record of the case, it is clear that most of the prosecution witnesses have deposed before the Trial Court that the deceased Kiran was telling them that her husband Lokesh Kumar was not doing any job and always demanding money from her parents for purchasing tempo and for not bringing the same, she was subjected to mental as well as physical cruelty.

(6). Going through the reasons assigned by the learned Trial Judge for acquitting the accused in his judgment, it appears that the learned Trial Judge was prima-facie wrong in holding that the evidence of the relations of the deceased Kiran was hearsay evidence. There seems to be some wrong concept prevailing in the mind of the learned Trial Judge about the hearsay evidence. The witnesses have clearly deposed that they were told by none else but by deceased Kiran that Lokesh and his mother Bhanwari Bai were harassing her for not fulfilling their demand. There was a direct evidence in this case. Unfortunately, the learned Trial Judge, inspite of such evidence against the accused acquitted them for a serious offence punishable u/S. 304-B and 498A I.P.C.

(7). I may only reproduce some portion of para 4 of his judgment which is as

under:-

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(8). In view of the above, leave is granted Appeal admitted. Non-bailable warrant be issued against the respondents accused.

(9). It must be stated that I may not be mis-understood that I have prejudged the issue by passing this order. These observations were required to be made for the purpose of issuing non-bailable warrants as I am satisfied that a very very strong prima-facie case is made out for issuance of non-bailable warrants against the accused who have been in a very casual manner acquitted by the learned Trial Judge for a serious offence like the offence u/S. 304-B and 498A I.P.C.