
(2009) 06 MP CK 0011

In the Madhya Pradesh High Court

Sumati Jain, Jinendra Kumar, Surendra Kumar and Anand
Kumar All sons of Bhikamchand Jain

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 18-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Dowry Prohibition Act, 1961 — Section 2
Evidence Act, 1872 — Section 113B, 114
Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2009) ILR (MP) 2731 : (2009) 3 MPHT 495

Hon'ble Judges : Rakesh Saxena, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Saxena, J.—Appellants have filed this appeal against the judgment dated 22.2.2003, passed by the Additional Judge to the Court of Additional Sessions Judge, Sihora, district Jabalpur in Sessions Trial No. 748/01 convicting them u/s 304-B of the Indian Penal Code and sentencing them to rigorous imprisonment for seven years

2. The facts as alleged by the prosecution are that accused Sumati Jain was married to Mukta Jain (Deceased) on 18.5.2001 according to the customs and rites of Jain community. At the time of marriage, Rs. 51,000/-cash, almirah, cooler, bed etc. were given in the dowry. On 31.5.2001, Mukta was brought back from her in-laws house by her brothers. For 2-3 days, when the inmates of the house saw her sad, they asked for its reason. She disclosed that her husband Sumati Jain, his elder brothers Jinendra and Surendra and mother-in-law Pyari Bai used to say that they did not get sufficient dowry. They expected Colour T.V., Sofa-set and motorcycle in the dowry. They wanted that she should bring all these articles and also some money for the business purpose. Her family members told to her that they will make her-in-laws understand that within 2-3 months they would arrange for the aforesaid articles. On 18.6.2001, Mukta went

back to her in-laws house at village Kumhi. On 25.6.2001, due to cruelty meted out to her, Mukta sprinkled kerosene and set fire to herself. She succumbed to burn injuries before she reached the hospital.

3. The intimation of death of Mukta by burn injuries was reported to Police Station, Sihora, by Dr. Pandey of the Civil Hospital. A Murg (Ex. P/7) was recorded. After issuing notice to witnesses, inquest proceedings were conducted. The dead body of Mukta was sent to Civil Hospital, Sihora, for postmortem examination. A team of two doctors viz. Dr. N.K. Pandey and Dr. Raj Kumar Jain performed the postmortem examination and found 70-75% of burn injuries on her body. The burns were of 2nd and 3rd degree and were caused by hot flames. The cause of death was shock and asphyxia as a result of extensive burns.

4. After investigation, charge sheet was filed and the case was committed for trial.

5. During trial, accused persons abjured their guilt and pleaded false implication by the close relatives of the deceased. In their statement u/s 313 of the Code of Criminal Procedure, no specific defence was taken, however, Dr. Chandramani of Medical College, Jabalpur (PW-1) was examined in defence to show that the deceased was suffering with mental unsoundness.

6. Prosecution, in order to substantiate its case, examined 12 witnesses.

7. Learned trial Court relying mainly on the evidence of PW-1 Sadhna Jain, PW-2 Mukesh Kumar Jain, PW-3 Vimlabai Jain, PW-4 Madhuri Tiwari, PW-5 Ajesh Kumar Jain, PW-8 Parasmani and PW-9 Manisha Jain held the accused/appellants guilty and convicted and sentenced them as aforesaid. However, finding the prosecution evidence insufficient against accused Sanmati Jain and Smt. Anita Jain acquitted them of the charge.

8. Aggrieved by their conviction, appellants have filed this appeal.

9. Shri Surendra Singh, learned senior advocate for the appellants submitted that the prosecution witnesses concocted a false and frivolous case against the accused persons. The evidence of the prosecution witnesses, who belonged to the family of the deceased, was not reliable. After the death of deceased, they did not make any complaint to police against the accused persons. It was only after 7-8 days that they disclosed to police that the accused persons demanded dowry and subjected the deceased to cruelty. Though most of the witnesses were present at the time of inquest, yet they did not make any allegation against the accused persons to the police officers. The evidence of the prosecution witnesses about demand of dowry and meting out cruelty to deceased was not specific and reliable. There might have some trivial misbehaviour or taunting by the accused persons, but it could not have been taken to form the cruelty in terms of Section 498-A of the Indian Penal Code. No neighbour of the accused persons, who could have thrown light on the conduct of the accused persons, was examined in the case. The deceased had gone to her parents house and after living there for

about 7-8 days had returned back to her husband's house. None of the prosecution witnesses made any complaint to accused persons about their conduct. There was no evidence to show that the deceased was subjected to cruelty for 7-8 days prior to her death. As such, he submitted, it cannot be held that any demand was made by the accused persons from the deceased or that she was subjected to cruelty in relation to demand of dowry soon before her death. According to him order of conviction passed by the trial Court was liable to be set aside.

10. Shri G.S. Thakur, learned Penal Lawyer for the State, on the other hand submitted that the evidence adduced by the prosecution clearly proved that accused persons maltreated the deceased and subjected her to cruelty for not bringing enough dowry and made demand to bring more dowry. It was amply established that the deceased died otherwise than under normal circumstances by burn injuries in the house of accused persons within seven years of her marriage. He justified the finding of conviction recorded by the trial Court.

11. I have heard the submissions made by the learned Counsel for the parties and perused the impugned judgment and evidence on record carefully.

12. For appreciating the arguments advanced by the learned Counsel of both the parties, it would be appropriate to advert to the requisite provisions of law. Section 304-B of the Indian Penal Code provides the definition of dowry death:

[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.-For the purposes of this Sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961)." The term cruelty has been explained in the explanation attached to Section 498-A of the Indian Penal Code, which provides:

Explanation.-For the purpose of this section, "cruelty means

(a) any wilfull conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical of the woman: or

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Section 113-B of the Indian Evidence Act provides for presumption as to the

dowry death. It states as under:

[113-B. Presumption as to dowry death.-When the question is whether a person has committed the dowry death of a woman and it 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 purpose of this section, "dowry death" shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).

13. While considering the scope of the aforesaid provisions in practice, the Apex Court in Kunhiabdulla and Another Vs. State of Kerala, observed:

A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case the presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption u/s 113-B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods "soon after the theft", is either the thief, or has received the goods knowing them to be stolen, unless he can account for its possession. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

14. It has not been disputed by the learned Counsel for the appellants that the deceased was married to accused Sumati Jain on 18th May 2001 and she died of burn injuries by committing suicide by setting fire to herself in the house of

accused persons on 25.6.2001 i.e. within seven years of her marriage. The questions that remain to be decided are whether (1) deceased had been subjected to cruelty or harassment by the accused persons; (2) such cruelty or harassment was for, or in connection with demand of dowry; and (3) whether such cruelty or harassment had been meted out to her soon before her death.

15. PW-1 Sadhna Jain, the wife of Mukta's brother, testified that the marriage of Mukta was performed with accused Sumati Jain on 18th May 2001. On 31st May 2001 Mukta came back to her parents house and lived there for about 18 days. Finding her sad for 2-3 days, she enquired from her about the cause of her sadness. Mukta told to her that her mother-in-law and other accused persons used to talk that no sufficient dowry was given. They asked her to bring colour TV, fridge and a sofa-set. Her husband told that the money of his business had been spent in the marriage, therefore, she should bring some money also. After living there for about 18 days, she went back to her in-laws house and then on 25.6.2001 she died of burn injuries. On examining the evidence of this witness, it is seen that Mukta did not tell her that the accused persons in any manner harassed her and subjected her to any kind of cruelty for not meeting the said demand. Sadhna Jain admitted that nobody told her that accused persons subjected Mukta to cruelty. She did not even tell her husband that accused persons harassed her. In para-13 of her statement Sadhna Jain admitted that Mukta had gone to her in-laws happily and none of her family members expressed their resentment to the persons who had come to fetch Mukta as to why they were making demand of T.V. and fridge from Mukta. She admitted that she was present when inquest proceedings were conducted, but she did not disclose to any police officer that accused persons made demand of dowry from Mukta or harassed her. It is also significant to note that for the first time she made allegations against accused persons when her statement was recorded by the police after about 6-7 days (on 3.7.2001). On the basis of evidence of this witness it is not possible to hold that the accused persons subjected Mukta to cruelty or harassed her for not meeting the demand made by them.

16. PW-2 Mukesh Kumar Jain, brother of the deceased, testified that on the day of marriage though accused Jinendra mentioned to him that there was no colour T.V. or sofa-set in the articles of dowry, but he did not insist for giving those articles or made any demand. According to him, on 31st May 2001 when he had gone to fetch Mukta, her mother-in-law told him that they did not give a mat for the bedding and a 'Chauki' (small stool) in the Chowk, it was inauspicious. He however admitted that giving of a mat and 'Chauki' in the marriage was thought auspicious and in fact they had forgotten to give those articles. Mukta had told to him only that her in-laws used to speak absurd. Evidence of this witness, in my opinion appears quite innocuous. No inference can be drawn on the basis of his evidence that any demand of dowry was made by the accused persons from Mukta or she was harassed by them for not meeting the demand.

17. PW-3 Vimla Bai, the mother of Mukta, though in the Chief Examination stated

that Mukta told to her that accused persons used to say that they did not get anything in dowry and suggested her that the next time when she comes, she should bring colour TV, sofa-set, motorcycle and some money for the business, but in her statement (Ex. D/1) recorded u/s 161 of the Code of Criminal Procedure and statement (Ex. D/2) recorded by the police during Murg enquiry, no facts about the said demands were found mentioned. She admitted that on 18.6.2001 when the persons from the in-laws' house of Mukta had come to fetch her, she did not make any complaint to them in respect to Mukta. Mukta had gone to her in-laws house happily, but died of burn injuries on 25.6.2001. She did not hear that during the period intervening 18.6.2001 and 25.6.2001 her in-laws subjected her to any kind of cruelty in connection with dowry. She had no knowledge as to who were present in the house of Mukta during the said period. She also admitted that her statement was recorded by the police after about 4-5 days of the death of Mukta, but before that she did not disclose to anybody that Mukta had made any complaint against her in-laws. On the basis of evidence of this witness, no inference can be drawn that the accused persons made any demand from Mukta or harassed or subjected her to cruelty in that regard.

18. PW-4 Smt. Madhuri Tiwari , a neighbour of Mukta stated that Mukta told to her that when she complained her difficulty about cooking on the earthen oven to her mother-in-law she told to her that she may bring gas burners whenever she comes back from her parents house. Similarly, when she wanted to see TV, younger brother of her husband told that if she was so interested, she might bring a TV from her house. However, these facts were found missing in Ex. D/3, the police statement of Madhuri Tiwari. Similar is the situation with the evidence of PW-5 Ajesh Kumar Jain (brother) and PW-8 Parasmani (sister of Mukta). Though these witnesses stated that Mukta told to them about making of demand of TV and fridge, but Ajesh Kumar stated that he did not make any complaint in this regard to accused persons and did not take it seriously, because such type of trivial matters occur frequently in all the houses. He disclosed to the police about making of the demands by the accused persons only after about 5-6 days. The evidence of PW-8 Parasmani is of general nature. She stated that when she asked Mukta for the cause of her sadness, she disclosed that the accused persons used to say that colour TV, fridge and Sofa-set were not given in the dowry.

19. PW-9 Ku. Manisha Jain, another sister of Mukta, stated that they had brought Mukta from her in-laws house on 31st May 2001. For 2-3 days Mukta remained indifferent. When she enquired, she told to her that accused persons used to make demand of TV, motorcycle and money. Accused Jinendra used to abuse her and her husband had slapped her also. Manisha stated that Mukta disclosed these things to her in secrecy and her family members came to know about her misery only when she told to them. She admitted that she and other family members did not ask the accused persons as to why they used to harass Mukta. The facts that accused Jinendra abused Mukta and accused Sumati slapped her were not stated by any other witness. The statement of Manisha appears

unnatural that Mukta disclosed only to her about her harassment in connection with demand of dowry and it was she only who disclosed this fact to other family members. Her statement finds no corroboration from the evidence of other witnesses.

20. For proof of the charge of offence u/s 304-B of the Indian Penal Code it is necessary that it should be established that the deceased woman was harassed or subjected to cruelty by her husband and relative of her husband for or in connection with any demand of dowry and such cruelty or harassment was soon before her death. On scanning the evidence adduced by the prosecution, it appears that in quite ordinary and general manner dissatisfaction about the dowry was expressed by the accused persons and they expected something more, but there was absolutely no evidence to indicate that Mukta was harassed or subjected to cruelty on that account. Even the mother, brother and sister of Mukta did not take it seriously and expressed no resentment to accused persons in that regard. It is important to note that Mukta came to her house on 31.5.2001 and lived there for about 18 days and again went to her in-laws house on 18.6.2001 happily. Had she felt the conduct of accused persons cruel or objectionable, she would not have gone back happily, and her family members would have naturally asked the accused persons not to harass her. Even if it is assumed that soon after marriage some demand was made to her and she felt aggrieved, but for quite some time she lived at her parents' house and thereafter she went back to her husband house on 18.6.2001 and met with death by burn injuries on 25.6.2001. In such circumstances it cannot be inferred that her death had any nexus with the demand made by the accused persons. It cannot be held that she was subjected to cruelty or harassment soon before her death. Merely because deceased died otherwise than under normal circumstances within one and a half month of her marriage, it cannot be presumed that the accused were liable for causing the dowry death in the absence of any evidence to show that the deceased was subjected to cruelty or harassment by the accused persons and that such cruelty or harassment was for or in connection with any demand of dowry and was soon before her death.

21. In the case in hand, there is absolutely no evidence to indicate as to what transpired between the deceased and the accused persons while she lived at their house from 18.6.2001 till her death. There is no evidence that during this period she was subjected to any kind of cruelty or harassed for or in connection with demand of dowry and her death occurred because of that reason. Since the deceased had gone back to her parents house on 31.5.2001 and lived there till 18.6.2001 and came back to the house of accused persons and lived there till 25.6.2001, it could not be presumed that there was any proximate and live link between the demands allegedly made from her and her death. One more circumstance, which goes in favour of accused is that there is no evidence to indicate that there was any demand of dowry by them when they fixed the marriage. It does not appear believable that within a few days of the marriage accused persons would have started making demand of articles in dowry. Since it

has not been established that soon before her death deceased was subjected to cruelty or harassment for or in connection with any demand of dowry, the presumption u/s 113-B of the Indian Evidence Act shall not come into play.

22. For the forgoing reasons, I am of the opinion that the prosecution has failed to establish the charge against the accused/appellants of causing dowry death of Mukta beyond a reasonable doubt. This appeal, therefore, deserves to be allowed. Accordingly, the impugned judgment of conviction and sentence passed by the trial Court is set aside. The accused/appellants are acquitted.

23. Appellants are on bail. Their bail bonds and surety bonds stand discharged.

24. Appeal allowed.