

(2013) 09 MP CK 0091

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 653 of 2007

Vishwajeet and Smt. Taruni

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Constitution of India, 1950 — Article 20
Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2), 428
Dowry Prohibition Act, 1961 — Section 2
Evidence Act, 1872 — Section 113A, 113B
Penal Code, 1860 (IPC) — Section 302, 304(B), 304B, 304B(2)

Citation : (2013) ILR (MP) 2702

Hon'ble Judges : Subhash Kakade, J

Bench : Single Bench

Advocate : I.K. Dwivedi, for the Appellant; Askhay Namdeo, Panel Lawyer, for the Respondent

Final Decision : Partly Allowed

Judgement

Subhash Kakade, J.—In this appeal preferred u/s 374(2) of the Criminal Procedure Code, 1973, from jail, the appellants had called in question the defensibility of the judgment of conviction and order of sentence passed on 24.04.2006 by the learned First Additional Sessions Judge, Betul in Sessions Trial No. 186/2005 (State of M.P. Through P.S. Chopan, District Betul vs. Vishwajeet and others), whereby the learned Trial Judge after finding them guilty u/s 304-B of the I.P.C. and sentenced to undergo R.I. for 10 years each. The facts, briefly stated are as under:--

(A) The three accused persons namely Vishwajeet, Taruni and Gautam were prosecuted u/s 304-B of the I.P.C., in alternative u/s 302 of the I.P.C. Deceased Vishakha was married to accused Vishwajeet 5-6 months prior to her death. Accused Taruni was her mother- in-law and accused Gautam was her Nandeu, brother- in-law. After marriage, every thing was in order, but, after one month accused Taruni forced her to get Rs. 50,000/- and golden chain, ring, etc. as

dowry from her parents. Vishakha refused it saying that her widow mother is not capable to fulfill this demand. Further case of the prosecution is that for non-payment of dowry, the accused persons harassed the deceased and subjected her to cruelty. Many times, even they did not give her food, so villagers arranged it. In these circumstances, Vishakha reported the matter to the President, Mahila Utpiran Nivaran Samiti, Shahpur which ends in form of compromise between both the parties. But, she was being repeatedly tortured. These facts were informed by deceased to her relatives and neighbour also. She was unable to bear the cruelty to which she was subjected, by the accused persons. After one month from compromise, on 30th April, 2005, at about 1:00 p.m. Vishakha committed suicide by hanging herself in matrimonial house of accused Vishwajeet. Neighbour Niranjan informed the incident with the Police Station, Chopana which came to the registered as Marg Intimation No. 10/2005 by H.C. Narendra Verma. Thereafter, investigation was conducted by Sub Divisional Police Officer, Sarani Shri Rajesh Kumar Singh. He inspected the site, prepared map from where he recovered and seized piece of muffler (Duppatta) and green colored Nylon rope that had been used for hanging from sealing beam. This was done in the presence of Niranjan and Jamuni Bhushan. Thereupon, he prepared Panchayata nama in presence of witnesses Manju, etc. and arranged to sent the body for post mortem examination through Constable Shailendra. Team of Dr. M.K. Patil and Dr. K. Aathaner conducted autopsy over the body of the deceased lady and prepared post mortem report giving the cause of death as asphyxia, as a result of strangulation.

(B) Shri Singh received 7 marriage photographs on being presented by Manju, sister of the deceased. He also received and seized application filed by Vishakha and compromise deed vide seizure memo on being presented by H.C. Narendra Kumar Verma. During further investigation Shri Singh recorded statements of witnesses Niranjan, Manju, Neelu, Laxmibai, Urmilabai, Manojeeet Halder, Gurudasi, Jaminibhushan, Sunita and others on various dates. On being enquired Dr. Patil given opinion that probably the case was of homicidal in nature due to strangulation. Senior Scientific Officer of F.S.L. Unit Betul, Shri S.B. Batham also inspected incident site and vide his report, he had given some directions to comply. Shri Makode took photographs filed with negatives. Thereafter, Shri Singh arrested all the three accused persons and on completion of other required formalities investigating agency filed challan u/s 304(B), 498(A) of the I.P.C. adding Section 302/34 of the I.P.C. in the competent Court which in his turn committed the matter to the Court of Sessions Betul and eventually the matter was tried by learned trial Judge.

2. The accused persons abjured their guilt, pleaded false implication as they are innocent, therefore, put to trial.

3. The prosecution in furtherance its case examined neighbor Niranjan (PW/1), who lodged the Marg Intimation (Ex.P-1), the elder sister of deceased Manju (PW/2), other neighbours Neelu (PW/3), Laxmibai (PW/4) and Urmilabai (PW/6).

Dr. Patil (PW/5) is Autopsy Surgeon. Shri Batham (PW/7) is the Senior Scientific Officer and Shri Makode (PW/8) is photographer of F.S.L. Unit Betul. Manojeeet Haldar (PW/10) is attesting witness of important documents compromise deed (Ex.P.38) and application (Ex.P.37). A.S.I. Shri Vikram Singh Chouhan (PW/9), Constable Mamraj Singh (PW/8) and H.C. Narendra Verma (PW/11) are police officers in their presence documents, etc. seized by Shri Singh (PW/9), who conducted entire investigation.

4. The accused persons in their statements recorded u/s 313 of Criminal Procedure Code, denied all evidence put forth against them and claims to be falsely implicated. On behalf of the defence no witness is examined.

5. The trial Court after consideration of the evidence placed before it, found the appellants Vishwajeet and Taruni guilty of the offence punishable u/s 304-B of the IPC and imposed the sentence of ten years rigorous imprisonment on each of them. However, acquitted accused Gautam from the charges punishable u/s 304(B) and 302/34 of the I.P.C. The accused Vishwajeet and his mother accused Taruni also acquitted from the charges punishable u/s 302/34 of the I.P.C. The respondent State does not preferred appeal against these acquittals.

6. Heard learned counsel for the appellant and learned counsel for the respondent- State, also perused the impugned judgment and the material records placed before me.

7. As we are concerned with Sections 304B of IPC, the said provision along with Section 113B of the Evidence Act are relevant, the same are extracted hereinunder:

304B. 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 purpose of this sub-section, "dowry" 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.

Section 113B. 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 has 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 section 304B of the Indian Penal Code (45 of 1860).

8. In this respect, it will be worthwhile to deal with some of the earlier decisions of the Supreme Court where the legal principles in this regard have been dealt with and the law laid down therein with regard to offence falling u/s 304-B of the IPC, while convicting the accused persons for the said offence.

9. The Supreme Court in case of *Devi Lal Vs. State of Rajasthan*, have been set out the ingredients of the provisions of Section 304-B of the IPC as laid down by the Apex Court in earlier cases of *Harjit Singh Vs. State of Punjab*, and *Ram Badan Sharma Vs. State of Bihar*, that:--

The question, as to what are the ingredients of the provisions of Section 304-B of the Penal Code is no longer *res integra*. They are:

(1) that the death of the woman was caused by any burns or bodily injury or in some circumstances which were not normal;

(2) such death occurs within 7 years from the date of her marriage;

(3) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband;

(4) such cruelty or harassment should be for or in connection with the demand of dowry; and

(5) it is established that such cruelty and harassment was made soon before her death.

10. As per above mentioned provisions of Section 304-B of the IPC, the most significant expression used in the section is "soon before her death". The expression "soon before her death" cannot be given a restricted or a narrower meaning. They must be understood in their plain language and with reference to their meaning in common parlance.

11. The concept of reasonable time is the best criteria to be applied for appreciation and examination of dowry death cases. The Supreme Court in case of *Tarsem Singh Vs. State of Punjab*, , held that "the legislative object in providing such a radius of time by employing 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."

12. The 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. These matters, of course, will have to be examined on the facts and circumstances of a given case. Similar view was expressed by the Apex Court in case of *Yashoda and Another Vs. State of Madhya Pradesh*,

13. The Apex Court in case of *Devilal (supra)* expressed the view that:--the Court cannot ignore one of the cardinal principles of criminal jurisprudence that a suspect in the Indian law is entitled to the protection of Article 20 of the Constitution of India as well as has a presumption of innocence in his favour. In other words, the rule of law requires a person to be innocent till proved guilty. The concept of deeming fiction is hardly applicable to the criminal jurisprudence. In contradistinction to this aspect, the legislature has applied the concept of deeming fiction to the provisions of Section 304-B. Where other ingredients of Section 304-B are satisfied, in that event, the husband or all relatives shall be deemed to have caused her death. In other words, the offence shall be deemed to have been committed by fiction of law. Once the prosecution proves its case with regard to the basic ingredients of Section 304-B, the Court will presume by deemed fiction of law that the husband or the relatives complained of, has caused her death. Such a presumption can be drawn by the Court keeping in view the evidence produced by the prosecution in support of the substantive charge u/s 304-B of the Code.

14. Now, the following principles can be culled out to attract the provisions of Section 304-B, IPC the main ingredient of the offence to be established is that soon before the death of the deceased she was subjected to cruelty and harassment in connection with the demand of dowry:--

- (a) The death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal.
- (b) Such death occurs within seven years from the date of her marriage.
- (c) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband.
- (d) Such cruelty or harassment should be for or in connection with demand of dowry.
- (e) It should be established that such cruelty and harassment was made soon before her death.
- (f) Section 304-B of the IPC is an exception to the cardinal principles of criminal jurisprudence that a suspect in the Indian Law is entitled to the protection of

Article 20 of the Constitution, as well as, a presumption of innocence in his favour. The concept of deeming fiction is hardly applicable to criminal jurisprudence but in contradistinction to this aspect of criminal law, the legislature applied the concept of deeming fiction to the provisions of Section 304-B of the IPC.

(g) Such deeming fiction resulting in a presumption is, however, a rebuttable presumption and the husband and his relatives, can, by leading their defence prove that the ingredients of Section 304-B of the IPC were not satisfied.

15. The first question that arise for determination is whether the death of Vishakha occurred otherwise than under normal circumstance?

16. Dr. M.K. Patil (PW/5) conducted autopsy on body of deceased with his colleague Dr. Athaner, prepared postmortem report (Ex.P-5). Doctor firstly opined cause of death as strangulation, but on being enquired vide his report (Ex.P.6) given second opinion that death was probably homicidal in nature due to strangulation.

17. The death of Vishakha was not normal as evidenced by the version of Dr. Patil (PW/5) post-mortem report (Ex.P.5), statements of FSL officers Shri Batham (PW/7) and his detailed report (Ex.P-7) which is supported by photographs (Ex.P-8 to 16) with negatives (Ex.P-17 to 24) clicked by photographer Shri Makode (PW/8). Statements of Niranjana (PW-1), Manju (PW-2), Neelu (PW/3) and Laxmibai (PW/4) and Urmilabai (PW/6) are also supportive.

18. From the evidence of Dr. Patil (PW/5) and other witnesses, it is quite clear that Vishakha died due to hanging herself, therefore, the trial court has rightly concluded that the death of Vishakha occurred otherwise than under normal circumstance.

19. The next question that arises for determination is whether the death of Vishakha occurred within 7 years of her marriage?

20. Manju (PW/2) has stated that the marriage of Vishakha was solemnized about 5-6 months before the incident. This evidence of Manju (PW/2) has been fully corroborated by Niranjana (PW/1), Neelu (PW/3), Laxmibai (PW/4) and Urmilabai (PW/6). Nothing has been elicited in their cross examinations to discredit them. Therefore, the evidence of these witnesses, it is established that the marriage between the Vishakha and applicant Vishwajeet was solemnized about 6 months ago i.e. within 7 years of her marriage.

21. This brings to determine the crucial question as to whether just before the death of Vishakha she was subjected to cruelty by the husband appellant Vishwajeet and relative of the husband, his mother Taruni for not meeting the dowry demand?

22. The gravamen of the accusation revolves on the question of harassment and cruel treatment to the wife for not bringing or meeting the dowry demands

emerging from the husband on various occasions. Such an event can occur only within the precincts of the matrimonial abode and the plausibility of possibility of such occurrence, being known to persons other than the members of the family fold, is rather bleak, if not impossible and to expect for proof of such an event evidence from the independent quarters, is to look something, which, in the ordinary course of event, cannot at all be expected to happen. The possible evidence that could be procedure is the testimony of the relatives of the victim and her other kith and kin, who would normally be living away from her, provided the victim was able to contact or communicate with them, by plausible modes or in person, about the sufferings and harassment meted out to her, immediately after the occurrence.

23. In light of above legal position, on perusal of evidence of these witnesses it is pertinent to mention here that though at the time of marriage, no demand was made by the appellants, but after sometime appellants started demanding dowry, mainly by appellant Taruni and whenever deceased meet relatives and neighbours, she told to them about her agony, harassment and many more times beating at the hands of appellants.

24. The entire fabric of the prosecution case rested on the evidence of Manju (PW/2). The rule of careful scrutiny applies to the statements of Manju (PW/1), because she is sister of prosecutrix. It is to be remember that even in case of interested witness, the rule of careful scrutiny is merely a rule of caution rather than a rule of law. Adopting such precaution, the statement of this witnesses have no reason to disbelieve her testimony. Shorn of a few contradictions or discrepancies here and there, the evidence is clearly consistent. Manju (PW/2) has no axe to grind against the applicants.

25. Star witness Manju (PW/2), sister of Vishakha as well as neighbour also, categorically sated that so many times Vishakha communicated about her sufferings and harassment meted out by her husband Vishwajeet and mother- in-law Taruni and also demand of Rs. 50,000/-, Golden ring and full dowry. Prior to date of incident on eve of Shivratri Festival, Vishakha badly beaten by both the appellants, were also stated by Manju (PW/2).

26. Other next door neighbours Niranjana Sheel (PW/1), Neelu (PW/3), Laxmibai (PW/4) and Urmilabai (PW/6) also fully supported the version of Manju (PW/2). All these witnesses stated that because of this harassment and cruelty for demand of dowry, Vishakha committed suicide by hanging herself from sealing beam in matrimonial house. These witnesses stated that Vishakha were subjected to harassment and cruelty for demand of dowry after lapse of only one or two months of marriage.

27. The evidence of PW/2 has been further corroborated by the evidence of neighbors PW/1, PW/3, PW/4 and PW/6 who have stated that whenever the diseased visited them or came to meet them after her marriage, she used to complain regarding harassment by appellants for or in connection with the

demand for Rs. 50,000, golden ring in the form of dowry. Nothing has been elicited in their cross examination to doubt their testimony.

28. Manju (PW/2) narrated that prior to incident so many times Vishakha was not served food by appellants so, she was compelled to eat uncooked potato etc. Urmilabai (PW/6) supported this fact in these words that Vishakha started begging for food. This behaviour of appellants also proves cruelty against Vishakha.

29. Manju (PW/2) specifically stated that looking to unbearable torture by Vishwajeet and Taruni her sister Vishakha reported the matter to the President of Mahila Utpiran Nivaran Samiti, Shahpur. Manojeeet Haldar (PW/10) is witness of the compromise (Ex.P.38) proceedings which took place between Vishakha and the appellants on the basis of application (Ex.P.37) filed by the Vishakha to the above Samiti. Manojeeet (PW/10) specifically stated that compromise (Ex.P.38) bear his signature. This compromise (Ex.P.38) was seized by Investigating Officer, Shri Singh (PW/9) vide seizure memo (Ex.P.31) with application (Ex.P.37) of Vishakha and other two letters of Manju, though these letters were not filed. This compromise (Ex.P.38) proceeding is fully convincing evidence to prove this fact that there was dispute between the couple, though it was settled by compromise. Manju (PW/2) categorically stated that even after compromise the appellants again started cruelty against Vishakha till her death.

30. Though on behalf of the appellants and acquitted accused Gautam witnesses were not examined by way of defence, but, defence of invalid marriage was put up during cross examination of prosecution witnesses. Learned counsel for the appellants also submitted that to constitute a marriage in the eye of law it has first to be established that the same was a valid marriage.

31. Manju (W/2) admitted this fact that firstly Vishakha was married to one Sachin, after that with Vishnu and appellant Vishwajeet after giving her promise to marry brought her at Village Tavakati and Vishakha and Vishwajeet were living in relation of husband and wife. This fact of third marriage of Vishakha is also admitted by Nirnanjan Sheel (PW/1), Neelu (PW/3), Laxmibai (PW/4) and Urmilabai (PW/6).

32. When, marriage was accepted by relatives, friends and others therefore it cannot be said as invalid. Compromise deed (Ex.P.38) is also substantial proof of acceptance of marriage by the appellants. Marriage photographs are also on record which were seized by Shri Singh (PW/9) vide memo (Ex.P.4) during course of investigation being presented by Manju (PW/2).

33. The concept of marriage to constitute the relationship of "husband" and "wife" may require strict interpretation where claims for civil rights, right to property etc. may follow or flow. But, when the question of curbing a social evil is concerned a liberal approach and different perception cannot be an anathema.

34. Demand of dowry in respect of invalid marriage would not be legally

recognisable, because purpose for which Ss. 498-A and 304-B and S. 113-B of Evidence Act were introduced cannot be ignored. Absence of definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with such woman in purported exercise of his role and status as "husband". Therefore, invalid marriage is no ground to exclude from purview of S. 304-B or 498-A of the I.P.C. Please see *Reema Aggarwal Vs. Anupam and Others*,

35. When once there is a demand for dowry and harassment against the deceased, and death occurs within 7 years after the marriage, the other things automatically follow due to the statutory presumption contemplated u/s 113-A of the Evidence Act against such person. Therefore, presumption of abetment for suicide by her husband Vishwajeet and his mother Taruni could be invoked u/s 113-A of the Evidence Act when the prosecution has discharged the initial onus of proving that the appellant Vishwajeet and Taruni subjected to cruelty against Vishakha.

36. On the reading of the evidence of these five witnesses who have spoken about dowry demand, torture and harassment nothing substantially discrepant can be noticed. These witnesses, though cross examined at length, stated in clear terms about the dowry demand, the torture and the harassment. In that view of the matter the learned trial court was justified in holding the appellants guilty. Therefore, conviction of husband of Vishakha, appellant Vishwajeet and his mother-in-law Taruni u/s 304-B of Indian Penal Code is justified and deserves to be affirmed. The conviction as recorded by the learned trial Court needs no interference.

37. On the question of sentence, learned counsel for the appellants submitted that the incident had occurred in April, 2005. He further submitted that from the date of their arrest appellants are in jail that way about more than 8 and half years have been elapsed. In the above circumstances, learned counsel prayed for leniency in the matter of awarding jail sentence to the appellants Vishwajeet and Taruni.

38. What would be an appropriate sentence in a particular case cannot be based upon a straitjacket formula. It depends upon the facts and circumstances of each case. The principle of proportion between crime and punishment is governed by the "Doctrine of just desert". The doctrine is the foundation of a criminal sentence which is ultimately awarded for a punishment to the wrong doer. What one really deserves should be the punishment for having committed a crime is the underlying principle. The punishment must not be disproportionately great is a corollary of "just desert" which is governed by the same principle which says that there cannot be a punishment without guilt and the basic element behind the principle is the proportion between crime and punishment. The lesser is the gravity of the crime, the smaller would be the punishment and the greater is the gravity of the crime, the higher would be the punishment, subject to the ancillary factors for determining the proportion of the same, though all further subject to

the statutory obligations specifically provided by law in force.

39. (i) Period of detention

(ii) It is pertinent to mentioned here that the present appeal is preferred by the appellants after getting the legal aid from the State Legal Aid Committee, which also goes to show their weaker financial condition.

(iii) It is observed by the Apex Court in case of Hira Lal and Others Vs. State (Govt. of NCT) Delhi, that the court has no jurisdiction of award the sentence of less than 7 years as prescribed minimum sentence u/s 304-B(2) of I.P.C. is 7 years.

40. Taking into consideration the over all circumstances, I found substance in the submission made by the learned counsel for the appellants, I deem it just and proper to reduce the sentence of imprisonment of appellants Vishwajeet and Taruni, now running in their forties and sixties, respectively.

41. On considering the background facts, the sentence of imprisonment of appellants Vishwajeet and Smt. Taruni for 10 years by impugned judgment is modified to the period already undergone by the appellants. The appellants Vishwajeet and Smt. Taruni shall be released forthwith from custody unless required to be in custody in connection with any other case.

42. The appeal is partly allowed so far as it relates to quantum of sentence only. Before parting, because matter involves question of common importance, Registry, subject to approval of Hon''ble the Chief Justice, may take suitable steps to inform learned Courts of the State while dealing with trial of criminal cases should specifically prepare complete chart of period of detention as required by Section 428 of the Code. Accused persons are entitled to set off period of each and every day of their detention for which they had been detained during investigation, enquiry or the trial of that particular case. Because, the trial Courts are in better position to furnish details of each and every day detention, specially detention period of investigation and enquiry, therefore, the trial Courts are requested to give specific details of the period of detention, if any, undergone by the accused during the investigation, enquiry or trial of the same case and before the date of conviction, in one appropriate para of the judgment.