

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CRIMINAL PROCEDURE

Judgment reserved on : November 18, 2008

Judgment delivered on : December 05, 2008

Crl. A. No.220/1999

Shakuntla and Another ...

Appellants
Through: Mr. S.S. Sharma, Advocate

versus

The State ...

Respondent
Through: Mr. Amit Sharma, Additional Public
Prosecutor for State

SUNIL GAUR, J.

1. Appellant Rajinder Kumar S/o Om Prakash was married with Kamlesh on 12th day of March, in the year 1986 and a child was born to them in the middle of the year 1988. On 27th day of February, in the year 1989, at about 7.15 pm, Kamlesh died unnatural death in her matrimonial house by burning and the appellant along with his mother were accused of causing dowry death in this case.

2. The law was set into motion upon intimation of this incident to the local police. On receipt of DD No.11-A dated 27.2.1989 at Police Station Mansarovar Park for investigation, ASI Jagpal Singh alongwith Constable Jaivinder Singh reached at the spot at House No.G-1/1040-B, Mansarovar Park, Delhi where Kamlesh W/o Rajinder Singh was found dead due to burn. On summoning, SDM Shahdara reached there and started proceedings under Section 176 Cr.PC. In the meantime, Smt. Prem Wati W/o Dayanand and Dayanand S/o Nanhu Mal R/o A-63, Chilli Saroya, Ashok Nagar, Delhi-92 reached there and their statement was recorded. Statement of Smt Premwati recorded by the SDM is as follows: I am residing at the above said address with my family. I married my daughter Kamlesh who is younger in all of my girls, three years ago, with Rajinder Kumar S/o Om Prakash R/o House No.G-1/1040-B, Mansarover Park, Shahdara, Delhi. I had given the dowry according to my reach in the marriage of my daughter Kamlesh. After few days of her marriage, there were some difference between Kamlesh and Rajinder and I received complaint that the in-laws of Kamlesh are preparing to get my daughter out from their family as she could not be able to get pregnancy. Rajinder used to quarrel with Kamlesh on some pretext or the other and he also used to misbehave with

Kamlesh. Mother-in-law of Kamlesh also used to torture Kamlesh. Today on receipt of call from my husband, I visited the house of in-laws of Kamlesh at Mansarovar Park. I have doubt that Kamlesh has been killed by burning her by her in-laws. After proceedings u/s 176 Cr.PC postmortem was done and the dead body was handed over to the family.

3. After completion of investigation of this case, appellant and his mother were charged for committing offence under Section 304-B and under Section 498-A of the IPC and they had claimed trial. Twenty four witnesses have deposed in this case and the material evidence is of the parents of the deceased i.e. PW-4 and PW-5 and sister of the deceased i.e. PW-18. Shyam Lal (PW-6) was the mediator who had got the marriage in question solemnised. The medical evidence is of Dr. L.T. Ramani (PW-15) who had opined about the cause of death of Kamlesh being ante mortem burns. Retired Assistant Sub Inspector Jagpal Singh (PW-20) is the Investigating Officer of this case.

4. Appellant Rajinder in his statement under Section 313 Cr.PC before the trial court had claimed that he is innocent and had alleged false implication in this case. The two witnesses got examined by the appellant in his defence are Radhey Shyams but their parentage is different. They are DW-1 and DW-2. They have deposed regarding appellant and his mother being present at the house of DW-2 in the evening at about 4.30 pm to attend the birth day of the son of Radhey Shyam, DW-2.

5. After the trial, appellant and his mother have been convicted by the trial court for committing offence under Section 304-B and under Section 498-A of the Indian Penal Code and they were sentenced to undergo Rigorous Imprisonment for seven years each for committing the offence of dowry death and to RI for two years each and a fine of rupees two thousand each for committing offence under Section 498-A of the IPC and in default of payment of fine, to undergo RI for two months. Hence this appeal.

6. During the pendency of this appeal, mother of the present appellant i.e. co-appellant Shakuntala had died and the factum of her death was got verified and thereafter vide order dated 18th November, 2008, her appeal stood abated.

7. Both the sides have been heard and with their assistance, the evidence on record has been scrutinized. 8. The necessary ingredients of the offence of dowry death is that the subjecting of the deceased to cruelty/harassment must be on account of not bringing dowry or bringing insufficient dowry. No doubt, parents of the deceased have stated in their evidence about accused demanding dowry but according to the father of the deceased the harassment of the deceased was for not giving birth to a child after about one year of the marriage. However, it has come in the evidence of the father of the deceased that one month prior to this incident, he had gone to the house of the appellant to bring back the deceased and there he had seen appellant Rajinder beating her and according to this witness, appellant has refused to send the deceased and to stop the deceased from going, eight month old child of the deceased was snatched from her and the deceased had to stay back. Perhaps, this was the reason which impelled the deceased to end her life. Nothing else has come in the evidence of the parents of the deceased to

indicate that the beating of the deceased one month prior to this incident was on account of any dowry demand.

9. It is pertinent to note that the mother of the deceased had asserted in her evidence that there was a dowry demand and appellant Rajinder used to beat the deceased at the instance of his mother but she has been confronted with her statement Ex.PW5/A made before the SDM wherein there is no whisper of any demand of dowry within few months of this incident. Generally, mother of the deceased had asserted in her evidence that the appellant/accused used to demand dowry from her as well as the deceased and at times, the demand was of rupees four thousand and at another time, it was of rupees five thousand and so on. It is true that any type of harassment or cruelty would not attract the provisions of Section 498-A of the IPC but certainly the evidence of mother of the deceased would bring this case within the ambit of Section 498-A of the IPC. However, it clearly falls short of bringing it within the four corners of Section 304-B of the IPC.

10. Although, it has been urged on behalf of the appellant that there are no specific allegations against the appellant, but I find that it cannot be so said as mother of the deceased has categorically stated in her evidence that the present appellant used to beat the deceased at the instance of his mother and this part of the evidence cannot be read in isolation and has to be read with the evidence of cruelty, which was inflicted upon the deceased for bringing insufficient dowry and there was a demand for dowry also from the side of the appellant/accused. In cases like present one, the cumulative effect of the evidence on record has to be seen and the evidence cannot be brushed aside by saying that the time and date of the particular instances of cruelty have not been highlighted in the evidence. Evidence is to be read as whole and not in piecemeal.

11. To rule out the unnatural death of the deceased, the defence has tried to highlight that there was not smell of kerosene oil on the head of the deceased. It may be so, but as per the CFSL report on record, there was smell of kerosene oil in the clothes of the deceased. The reliance placed by the defence upon the decision reported in 1996 (1) Crimes 24 (S.C.), to contend that the chain of circumstantial evidence is not complete, will not be of any help to the present appellant as it has been found that this case is not of simpliciter murder but is of abetment of suicide by the appellant of his wife. Even the defence evidence of appellant not being present at the spot is of no avail because to prove the offence under Section 306 of the IPC, the presence of the appellant at the spot is not necessary. The initial report received from the PCR vide DD No.11-A of fire breaking out in the house of the appellant would be of no avail as it is not the case of the appellant that the deceased had died in an accidental fire, nor it can be so made out from the evidence on record.

]

12. Judgments reported in 1997 (2) CCrJ 326 (A.P.); 1997(2) CCrJ 376 (Delhi); 2002 (1) JCC 327 (Delhi); 1997 (4) CCrJ 31 (Delhi); 1997 (3) Recent CR 85(SC) relied upon by the defence are found to be distinguishable on facts and are of no assistance in the case in hand. No plausible reason for alleged false implication of appellant Rajinder is forthcoming.

13. In cases of dowry related death, the evidence of the parents of the deceased is of primary importance as generally their statements are recorded by the SDM before registration of FIR in such cases, but the evidence of the sister of the deceased cannot be ignored and has to be considered vis-a-vis the evidence of the parents of the deceased. Mithlesh (PW-18) has graphically stated in her evidence about the deceased telling her regarding the appellant/accused subjecting her to cruelty on account of bringing less dowry. Her evidence definitely brings this case within the ambit of Section 498-A of the IPC, but even her evidence is lacking to bring this case within the ambit of Section 304-B of the IPC. However, it can be concluded from her evidence that subjecting of the deceased to cruelty, ultimately culminated in deceased ending her life. Trial court has overlooked the fact that the sister of the deceased i.e. PW-18 telling the deceased not to complain her parents and to tolerate the cruelty is an improvement made by her in her evidence and she has been duly confronted with it. She has clearly stated in her evidence that any major item like TV, Fridge etc. were not given in the marriage of the deceased. It therefore, becomes evident from the evidence on record that she was subjected to cruelty over the period of time for bringing less dowry.

14. After having scanned through the evidence on record, I find that the factum of the deceased dying an unnatural death in her matrimonial house within seven years of her marriage stands established beyond any doubt. However, to bring this case within the four corners of Section 304-B of the IPC, the prosecution has failed to establish that the deceased was subjected to cruelty or harassment soon before her death.

15. Therefore, the offence committed by the appellant is of abetting of a suicide of the deceased and would fall under Section 306 of the IPC, which is lesser offence than the one under Section 304-B of the IPC.

16. In the case of Hira Lal and others Vs. State (Govt. Of NCT) Delhi reported at 2003 (7) JT (S.C.) 596, the necessary ingredient of subjecting the deceased to cruelty soon before her death was missing and the Apex Court had observed as under:- Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment 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 concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence. On the facts of the case even though it is difficult to sustain the conviction under Section 304B IPC, there are sufficient materials to convict the accused-appellants in terms of Section 306 IPC along with Section 498A IPC.

17. In the case of K.Prema S. Rao Vs. Yadla Srinivasa Rao reported at AIR 2003 S.C. 11 the Apex Court has held that although the accused was charged for offence under Section 304B/498A of IPC, but still he could be convicted and sentenced under Section 306 of the IPC.

18. In view of the foregoing narration, this appeal is partly allowed. The conviction of the appellant Rajinder Kumar for the offence under Section 498-A of the IPC is maintained, but his conviction for the offence under Section 304-B of the IPC stands altered to one under Section 306 of the IPC. As a consequence thereof, the substantive sentence of RI for seven years stands reduced to RI for four years. However, the sentence of fine is maintained. Appellant is on bail. His bail bond and surety bonds are discharged. He is directed to be taken into custody to serve out the remainder of the sentence of four years as awarded to him now.

19. With the aforesaid directions, this appeal as well as pending application, if any, stand disposed of.

Sd./-
SUNIL GAUR, J

December 05, 2008