

CASE NO.:
Appeal (crl.) 431 of 1997

PETITIONER:
Yashoda and another

RESPONDENT:
State of Madhya Pradesh

DATE OF JUDGMENT: 04/02/2004

BENCH:
N. SANTOSH HEGDE & B.P. SINGH

JUDGMENT:
J U D G M E N T

B.P. Singh, J.

The appellants in this appeal are the parents of Kalicharan, who was married to Gangabai (deceased) about 4 years before the date of occurrence. Her death in circumstances not considered normal within seven years of her marriage led to the prosecution of the appellants as well as Kalicharan and eight other relatives and villagers charged variously of the offences under Sections 498A, 304B and 201 IPC. The trial of Kalicharan, husband of the deceased, was separated as he was found to be a juvenile and his case transferred to the Juvenile Court for his trial. The appellants alongwith eight other accused persons were put up for trial before the Fourth Additional Sessions Judge, Morena in Sessions Case No. 252 of 1989. The learned Sessions Judge by his judgment and order of February 4, 1992 found the appellants guilty of the offences with which they were charged but acquitted the remaining accused persons who were charged of the offence under Section 201 IPC finding no evidence to support the charge. The appellants herein were sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.500/- under Section 498A IPC; to ten years rigorous imprisonment and a fine of Rs.1,000/- under Section 304B IPC and two years rigorous imprisonment and a fine of Rs.500/- under Section 201 IPC. The appellants challenged their conviction and sentence before the High Court of Madhya Pradesh, Bench at Gwalior in Criminal Appeal No. 31 of 1992 but the High Court, finding no merit in the appeal, dismissed the same upholding their conviction and sentence.

It is not in dispute that deceased Gangabai was married to Kalicharan about 4 years before the occurrence which occurred on May 19, 1989. While the prosecution contended that the death of Gangabai occurred under circumstances otherwise than normal and she was earlier subjected to cruelty and harassment by the appellants as well as by her husband and soon before her death also she was meted out such treatment by them in connection with demand for dowry, the defence contended that Gangabai died on account of an attack of diarrhoea and vomiting, and inspite of the fact that the appellants had taken her for medical treatment to the hospital at Morena where she was treated by the doctors. According to the defence the allegation against the accused that they had made persistent demand of dowry was false and that they had been falsely implicated on account of the fact that some amount had been advanced to Shankar Lal (father of the deceased) by them

which remained unpaid.

The trial court as well as the High Court have subjected the prosecution evidence to critical scrutiny and have concurrently reached the conclusion that so far as the appellants herein are concerned, the charges under Sections 498A; 304B and 201 IPC are fully established.

Shri S.K. Gambhir, Senior Advocate, appearing on behalf of the appellants vehemently contended before us that there was really no substance in the allegation made by the prosecution. He further submitted that the deceased suffered a bout of vomiting accompanied with diarrhoea and when they found that her condition was not stable, the appellants immediately removed her to the Morena Hospital where she was treated by the doctors concerned, but in spite of their best efforts, she did not survive. He also submitted that in any event the prosecution has failed to establish the charge under Section 304B IPC since there was no evidence to prove that the deceased had been subjected to harassment and cruelty by the appellants soon before her death in connection with any demand of dowry. It, therefore, followed that the presumption under Section 304B could not be drawn against them and there was no other evidence to prove that the appellants had caused the death of deceased Gangabai.

The prosecution has examined several witnesses to prove its case which includes Lalaram (PW-3), brother of the deceased; Kalicharan (PW-4), uncle of the deceased; Shankarlal (PW-5), father of the deceased and Ramdei (PW-7), mother of the deceased. The prosecution also examined as PW-2, Natthi Devi who was a nurse attached to the Morena Hospital. This witness was declared hostile but we shall notice her evidence at the appropriate place. The defence examined only one witness, namely \026 Vijay Singh (DW-1). Shri R.N. Pachori (PW-6), who partly investigated the case has also deposed with regard to the steps taken by him after he received the information about the admission of Gangabai in the Morena Hospital in suspicious circumstances.

We have carefully scrutinized the evidence on record despite the concurrent findings of fact recorded by the courts below but we find no reason to differ from the findings recorded by them.

The evidence on record disclosed that Gangabai was married to Kalicharan about 4 years before her death. At the time of marriage some amount in cash and some ornaments were given by the parents of the deceased. Gangabai went to her matrimonial home after the marriage but returned after 5-6 days. She reported to her parents and brother that her father-in-law ; mother-in-law as well as her husband were demanding a gold chain ; a ring and a phool (earring) and had threatened her that if she did not bring those items, she will not be ever sent to her parents house again. The evidence on record also establishes the fact that on two other occasions the deceased had gone to her matrimonial home and on both occasions the appellants persisted in their demand for gold ornaments and harassed the deceased and treated her with cruelty. The evidence on this aspect of the matter is consistent. The mother of the deceased namely, Ramdei (PW-7) to whom the deceased reported her sufferings in detail stated that whenever the deceased came back from her matrimonial home she told her that the appellants were demanding the ornaments and that they assaulted her and threatened her for not bringing those

ornaments. They used to assault her with fists and kicks and also with a 'danda'. According to PW-7 she had seen the marks on her body supporting the version of her daughter that she was assaulted by them on account of the failure of her parents to give the ornaments demanded. Lalaram (PW-3), brother of the deceased, has also deposed on the same lines. In particular, he has mentioned that when he had gone to bring his sister from her matrimonial home, the appellants had demanded from him those three items of jewellery and he had somehow or the other managed to pacify them by assuring that their demands will be fulfilled. He has also stated about the reports made by deceased Gangabai about her ill treatment at the hands of the appellants. The evidence of Kalicharan (PW-4), uncle of the deceased is also to the same effect. He has stated that once when Lalaram (PW-3) went to bring back his sister the appellants refused to send her back on the ground that their demands had not been met. Lalaram (PW-3) came back and reported the matter to his father Shankarlal (PW-5), brother of Kalicharan. Shankarlal then persuaded his brother Kalicharan (PW-4) to go and bring the deceased and deal with the appellants in a suitable manner. According to Kalicharan (PW-4) he went to the matrimonial home of the deceased and in view of the resistance of the appellants, he had to assure them that all their demands will be met and that he will take personal responsibility for the same. It was only thereafter that the deceased was permitted to go to her parents.

The evidence of these witnesses also prove that about 15 days before the occurrence, Kalicharan, the husband of the deceased, had himself come to fetch the deceased. On that occasion also he had reiterated his demand for the gold ornaments and to him also an assurance was given by the father of the deceased Shankarlal (PW-5) that he would arrange for the said articles within a month. On the basis of the evidence of PWs. 3, 4, 5 and 7 we are satisfied that the prosecution has successfully proved its case that there was a persistent demand for gold ornaments ever since the marriage of the deceased with Kalicharan, which demand was reiterated on many occasions and the demand last made was just 15 days before the occurrence.

We shall now consider the evidence relevant to the conduct of the appellants. The defence case is that the deceased suffered a bout of vomiting and diarrhoea and was therefore removed to the Morena Hospital for treatment. It is true that the deceased was removed to the Morena Hospital for treatment on May 19, 1989. It is equally true that the appellants did not inform the parents of the deceased about her death and they came to know about it from another source. PWs. 3, 4 and 5 had rushed to the matrimonial home of the deceased but they found that her body had already been cremated in the night. There is neither any evidence nor any suggestion to the prosecution witnesses that the appellants had made any attempt to send intimation to the parents of the deceased regarding her death, nor is there any dispute that the body of the deceased was cremated on the same night and, therefore, it was not possible to hold post-mortem examination to ascertain the cause of death.

The evidence of the nurse at the Morena Hospital, namely Natthi Devi (PW-2) is to the effect that the deceased had been brought to the hospital in an unconscious condition. She was admitted in the hospital on the basis of a slip given by the doctor. When she found that the condition of the patient was critical she immediately gave a call to the doctor on duty

who responded immediately. However, within 5-6 minutes of the arrival of the doctor, namely - Dr. Srivastava, the patient died. According to her the death of the deceased took place within = an hour of her being brought to the hospital. The witness could not say what medicines were given to the deceased and what was the nature of her ailment. In fact this witness had to be declared hostile since she went back on the statements made by her in the course of investigation.

We have then the evidence of the Investigating Officer (PW-6). According to him it came to his knowledge that the deceased had been admitted in the hospital in suspicious circumstances and she had been cremated without giving information. On the basis of the said information he registered Marg No.5/1989 and proceeded to enquire into the matter. He went to the cremation ground and had seized ashes and some bones of the deceased. During enquiry he recorded the statement of the father and brother of the deceased as well as Kotwar. His enquiry revealed that the deceased had been done to death by her in-laws who had been demanding dowry and that for non fulfillment of demand the deceased used to be reprimanded and beaten. He, therefore, registered Case No. 26 of 1989 under Sections 304B ; 498A ; 201 ; 176 /34 IPC. He had arrested the appellants and some of the other accused.

The evidence on record, therefore, reveals that the deceased was taken to the Morena Hospital in a critical condition when she was about to die and in fact she died within = an hour of her admission in the hospital. The appellants made no effort to inform the parents of the deceased about her death and on the contrary cremated the body of the deceased the same night in a suspicious manner.

Shri Gambhir seriously contended that it was for the prosecution to prove that the deceased had died in circumstances otherwise than normal. He contended that the prosecution ought to have examined the doctor and produced the relevant documents from the hospital to establish the cause of death of the deceased. We cannot uphold this contention. The prosecution has successfully established that the deceased was married to Kalicharan about 4 years before her death. The facts also reveal that the death was not under normal circumstances. There was also evidence to show that the deceased was persistently subjected to cruelty and harassment by her husband as well as by her parents in connection with demand for dowry, in particular the demand for gold ornaments. Once it is held that these facts stand established, under Section 304B IPC a presumption arises that it is a case of dowry death, and that her husband or relatives who subjected her to cruelty and harassment shall be deemed to have caused her death. No doubt this is a rebuttable presumption, but in the absence of any evidence in rebuttal, the Court may, with the aid of the presumption convict the accused of that charge. Once the prosecution proves the facts which give rise to the presumption under Section 304B IPC, the onus shifts to the defence and it is for the defence to produce evidence to rebut that presumption. The defence may adduce evidence in support of its defence or may make suggestions to the prosecution witnesses to elicit facts which may support their defence. The evidence produced by the defence may disclose that the death was not caused by them, or that the death took place in normal course on account of any ailment or disease suffered by the deceased or that the death took place in a manner with which they were not at all connected. In the instant case if the defence wanted to prove that the deceased had suffered from diarrhoea and vomiting and

that resulted in her death, it was for the defence to adduce evidence and rebut the presumption that arose under Section 304B IPC. The defence could have examined the doctor concerned or even summoned the record from the hospital to prove that in fact the deceased has suffered such ailment and had also been treated for such ailment.

The evidence adduced by the prosecution, therefore, clearly establishes that the appellants made a persistent demand for some gold ornaments and the first demand was made when the deceased went to her matrimonial home on the first occasion and returned after 5-6 days. She complained to her mother about the treatment meted out to her. She also narrated her woes to her brother and father. The evidence of her mother Ramdei (PW-7) is clear and categorical that her daughter had been assaulted by the appellants in her matrimonial home and she had seen signs of violence on the person of the deceased. The evidence on record also discloses that on other occasions also when the deceased went to her matrimonial home the demand was repeated. The evidence of her brother Lalaram (PW-3) and her uncle Kalicharan (PW-4) in this regard is eloquent. Even on the last occasion when she was about to leave for her matrimonial home and her husband had come to fetch her, he again made the demand but with a view to pacify him, Shankarlal (PW-5), father of the deceased, assured him that he will make necessary arrangement. While leaving her parental home, the deceased had wept and told her uncle that if the demand of the appellants was not met, they will not let her live. About 15 days after her last departure the parents of the deceased suddenly came to know that she had died. The evidence on record, therefore, clearly establishes that there was persistent demand for gold ornaments and she was being persistently ill treated by the appellants for not bringing those gold ornaments, and her death occurred in circumstances which cannot be considered to be normal.

Mr. Gambhir, however, submitted that there is no evidence to show that soon before her death she had been treated with cruelty and had been harassed by the appellants. According to him the words "soon before" in Section 304B IPC are material and there must be evidence to show that soon before her death she had been subjected to cruelty or harassment by her husband in connection with demand for dowry.

The words "soon before" found in Section 304B IPC have come up for consideration before this Court in large number of cases. This Court has consistently held that it is neither possible nor desirable to lay down any straitjacket formula to determine what would constitute "soon before" in the context of Section 304B IPC. It all depends on the facts and circumstances of the case. Learned counsel for the appellant relied upon a decision of this Court rendered by two Learned Judges reported in AIR 1997 SC 1873 : Sham Lal vs. State of Haryana and submitted that as in that case, so in the present case, there was no evidence to suggest that after the deceased went to her matrimonial home, she had been subjected to cruelty and harassment before her death. The facts of Sham Lal's case are clearly distinguishable and they have been so distinguished in the case of Kans Raj vs. State of Punjab and others : (2000) 5 SCC 207 by a Bench of 3 Learned Judges of this Court. This Court observed :-

"It is further contended on behalf of the respondents that the statements of the deceased

referred to the instances could not be termed to be cruelty or harassment by the husband soon before her death. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough".

(emphasis supplied)

Noticing the earlier judgment of this Court in Sham Lal case it held that the facts were distinguishable as in that case there was evidence to show that an attempt had been made to patch up between two sides for which a Panchayat was convened in which the matter was settled. The Panchayat was held about 10-15 days before the occurrence. There was nothing on record to show that the deceased was either treated with cruelty or harassed with the demand of dowry during the period between her having been taken to the nuptial home and her tragic end.

In the instant case as well there is nothing to show that the demand had been given up or had been satisfied by the parents of the deceased. On the contrary there is evidence to prove that even 15 days before the occurrence such a demand was reiterated and while leaving for her matrimonial home the deceased had wept and told her uncle that if the demand was not met, they will not let her live. The facts of this case are similar to the facts in the case of Kans Raj. In our view the same principle must apply. There is clear evidence on record that the demand for gold ornaments persisted and so did harassment and cruelty meted out to the deceased. Every time she came to her parents she wept and narrated her miserable plight. The last demand was made only fifteen days before her death. In these circumstances it cannot be said that there is no

evidence on record to support the finding that soon before her death she was subjected to cruelty and harassment by the appellants and her husband in connection with demand of dowry.

Learned counsel also submitted that the prosecution evidence did not rule out natural or accidental death. As we have noticed above, the deceased was a young girl and there is no evidence even to suggest that she was suffering from any ailment. 15 days before her death she had gone to her matrimonial home in good health. Suddenly one day her parents came to know that she had died. Her death was therefore, clearly in circumstances which cannot be considered to be normal. If she had really died a natural or accidental death, the appellants were the best persons to disclose the relevant facts which were solely within their knowledge. Indeed when all the conditions of Section 304B were fulfilled and a presumption arose against the appellants they were required to rebut that presumption in order to successfully defend themselves. They did not do so. The evidence of DW-1 has been rightly discarded by the courts below. In these circumstances and in the absence of any acceptable evidence whatsoever, to suspect that the death may have been accidental or on account of natural causes, will be speculative. Law does not permit a Court to speculate or conjecture so as to imagine events about which there is absolutely no evidence on record. The manner in which the dead body was disposed of at night has further added to the incriminating circumstances proved against the appellants.

We are, therefore, satisfied that the prosecution has successfully proved its case against the appellants. We, therefore, concur with the view of the courts below and affirming the conviction and sentence of the appellants, dismiss this appeal.