

CASE NO.:
Appeal (crl.) 779 of 2005

PETITIONER:
T. Aruntperunjothi

RESPONDENT:
State Through S.H.O., Pondicherry

DATE OF JUDGMENT: 05/04/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

Davamani (the deceased) was the wife of the appellant herein. She admittedly committed suicide on 14.03.1994. They were married on 04.09.1992. The deceased gave birth to a female child at Pondicherry in July 1993. The appellant for one reason or the other did not bring her back from her maternal home for a period of about eight months. She was brought back in February 1994. According to the appellant, the deceased proposed to go back to her mother's house to see her mother which he refused stating that she had come back only a month back.

It is not in dispute that at the time when the deceased committed suicide neither the appellant nor his mother was present in the house. Somehow or the other the people of the neighbourhood came to know about it. They broke open the door and found the dead body. The deceased committed suicide at about 1 p.m.. The mother of the appellant came back at 3.30 p.m.

It also stands admitted that the family members of the deceased, namely, her mother (PW-7), sister (PW-8), maternal uncle (PW-6), another relative (PW-9), and brother (who was not examined), came to the house and allowed the cremation of the dead body in his village. They took back all the articles which were given to her at the time of or after the marriage. No first information report was lodged by them. The police was informed by the appellant himself whereupon a case under Section 176 of the Code of Criminal Procedure was initiated. The matter was also considered by panchayat. One Rajarajan Veerasamy, Deputy Tahsildar-cum-Executive Magistrate, (PW-14), conducted an enquiry. He examined the prosecution witnesses and others. He submitted a report before the Station House Officer, Mettupalayam Police Station on or about 15.03.1994 wherein he is said to have raised some suspicion as regards the death of the said Davamani. In his report, it was stated :

"\005.Further, their statements also stress the harassment for want of dowry. The Panchayat's statement does not clear the doubts as they are not aware of any facts and they could not confirm that there are no problems between the deceased and her husband. There is an injury on the right hand side of the neck of the deceased and an internal injuries could be traced out only in the post mortem report.

In my opinion, I suspect that there could be harassment for demand of dowry by the in-laws and husband of the deceased, based on the statements recorded in this regard. Hence, in my opinion, this could be a case of dowry death\005"

On the basis of the suspicion expressed by him, a case under Section 304B of the Indian Penal Code came to be registered against the appellant alone. His mother was not made an accused. She was made a prosecution witness. She was examined on behalf of the prosecution as PW-1. It is furthermore not in dispute that an investigation into the offence was required to be carried out by a Superintendent of Police. Upon the said report of PW-14, Smt. Anita Roy, Superintendent of Police (PW-10), took up the investigation. She was not conversant with the local language. She went to the village Kilinchikuppam and examined the mother, sister and brother of the deceased. The Circle Inspector Munisam and Head Constable Ramaswami (PW-15) accompanied her. Admittedly, the evidences of the witnesses were recorded by the said PW-15. They were said to have been translated in English. Although, according to PW-10, she verified the said statements, but did not state as to how she did it. PW-10 and PW-11 being not available at that time in the village, were asked to come to Pondicherry. PW Nos. 7, 10 and 11 visited Pondicherry on 8.05.1994. Their statements were said to have been recorded by PW-15, in her presence. The said statements were also allegedly translated. She again allegedly verified the said statements without disclosing the mode and manner thereof. Upon completion of the investigation a chargesheet was filed.

The learned Sessions Judge framed the following charge against the appellant:

"That you from 4.9.1992 to 14.3.1994 had subjected your wife Davamani to cruelty and harassment in connection with dowry demand and had driven her to commit suicide by hanging at her residence at Shanmugapuram on 14.3.1994 between 8-15 and 13-00 hours which occurred within seven years of her marriage and that you thereby committed an offence punishable under Section 304B of the Indian Penal Code and within my cognizance."

In support of its case, the prosecution examined Kasiammal (PW-1), Amudha (PW-2), Arumugham (PW-3), Seethapathy (PW-6), Amaravathi (PW-7), Chandrakantha (PW-8) and Jaya (PW-9) .

In this case three witnesses were also examined on behalf of the prosecution who instead of supporting its case directly or indirectly supported the case of the appellant herein. PW-1 is the mother of the appellant. PW-2 is a neighbour and PW-3 was a teacher of the village, who himself had even, according to prosecution witnesses, been demanding dowry. We would refer to their depositions before the court a little later.

We would, however, at this stage notice the deposition of those witnesses who supported the case of the prosecution completely.

PW-7 is the mother of the deceased. She was, presumably her best friend. It is expected that the deceased would share her agonies with her mother only.

Three periods are involved in this case. The marriage took place on 04.09.1992. The deceased stayed with her husband for about seven months, i.e., upto February 1994. According to PW-7 they were living happily during that period. The deceased went back to her mother's place for delivery of a child. She delivered a child in a hospital. According to the deceased's mother the appellant came and saw the child. She was later on discharged from the hospital after informing the appellant. The deceased stayed with her mother from March 1993 to February 1994.

The incident took place on 14.03.1994.

So far as demand of dowry is concerned, allegedly a demand was made of 8 sovereign of gold. One witness PW-9, Jaya, however, states that

the accused party demanded 9 sovereigns. It was stated by other prosecution witnesses that 6.5 sovereign of gold was given at the time of marriage, whereas according to PW-9 only five sovereign of gold was given. Another demand by way of dowry was said to be in the form of a silk saree as it was missing at the time of marriage and the groom's family wanted them to purchase a new saree.

We may notice that no witness stated that the demand of dowry was made by the appellant himself. Evidence brought on record by the prosecution as regard the alleged demand of dowry is : (i) PW-3 Arumugham had been demanding dowry; (ii) a demand was made also by the brother of the accused; and (iii) the hearsay evidence of PWs that the deceased herself told that she was being harassed for demand of dowry.

It is of some significance to note that the mother of the deceased categorically stated. :

"\005The accused has not demanded for the jewels and saree. The teacher only demanded. The teacher is responsible for my daughter's death."

It is furthermore of some significance to note that a categorical statement was made by PW-7 that when PW-3 had visited her house and demanded a silk saree and jewels, she had told him that she would ask her son-in-law regarding the same which demonstrate that she had confidence in him. It is not her case that at any point of time she had asked the appellant as regard any demand of dowry made by him.

PW-6 is the maternal uncle of the deceased. His evidence cannot at all be relied upon as what he stated in his deposition had not been stated by him before the investigating officer or before the Deputy Tehsildar. He, in his deposition, went beyond the prosecution case. According to him, the accused and his family demanded TVS Moped, Cot, Bureau, Grinder and vessels made of stainless steel. No such case was made out by the family members of the deceased. According to him, when he visited the deceased six months after the marriage, she had allegedly informed him about being beaten by the appellant and demanding of remaining 1.5 sovereign of gold jewels. He spoke about giving of = sovereign of gold during Valaikappu function.

The said function is indisputably held when the woman is about seven months' pregnant. It may, therefore, be that = sovereign of gold might have been given as a customary gift. He is said to have been informed that it was PW-3 alone who came to his sister's house and demanded the balance of jewels and a silk saree which had been missing at the time of marriage. Even this witness, thus, did not say that the said teacher was making any demand on behalf of the appellant.

As noticed hereinbefore, according to PW-7, she believed that the cause of death of the deceased was the demand of dowry made by PW-3.

PW-8 is the sister of the deceased. She visited her sister three months after marriage and was allegedly told by her that her in laws had been demanding the balance of jewels which had been agreed to by them. At that time admittedly no allegation was made by her as regard harassment meted out to her by anybody far less the appellant herein.

PW-9 is the aunt of the deceased. She was examined by the Superintendent of Police three months after the death of the deceased Davamani. She of course told about the alleged torture meted out to the deceased by the appellant for not giving the balance jewels but her evidence, in our considered view, is not reliable. Evidence led by prosecution, thus, failed to establish involvement of the Appellant as regards the alleged demand of dowry.

We may now scrutinize the evidence led by the prosecution as regards the alleged harassment of the deceased.

The mother of the deceased did not depose that she had ever been intimidated by the deceased about harassment meted out to her. She is said to have received the information from her son who was not examined. Her evidence, thus, being hearsay in nature is inadmissible in evidence. She allegedly came to know about the alleged harassment through her son and daughter only. PW-8, however, does not say that she had ever stated the same to her mother. PW-7's statement as regard harassment, thus, is not admissible at all.

We have noticed hereinbefore that when PW-8 visited the deceased for the first time, i.e., three months after the marriage, she did not speak about any harassment. Only when she allegedly came to see her sister after the delivery of the child and asked as to how she was, she allegedly cried stating that she was in apprehension of danger to life. She is said to have made a similar statement before the police also but in relation thereto no date or month was mentioned. She deposed that she allegedly had told the Tahsildar that the deceased was beaten up by the appellant; but no such statement appeared to have been made. She in her evidence categorically stated that :

"\005When I invited my sister to come to my house along with her husband, she told that her husband would come only after his mother in law come and go to his house\005."

The explanation offered by the accused is exactly the same. We for the reasons mentioned hereinbefore, do not intend to place any reliance on the statement of PW-9 even on this score.

We may at this juncture may notice the peculiar features of the case. PW-1, the mother of the accused and PW-3, the teacher, who were responsible for the demand of dowry had not been made accused in the case. They have been examined as prosecution witnesses. PW-1 has not even been declared hostile. She was examined by the prosecution, as presumably before the police because she had deposed against the accused and in support of the prosecution. As regards the suicide committed by the deceased, she offered an explanation not as a defence witness but as a prosecution witness stating that after a month of her coming back after delivery of child, the deceased had requested her son to permit her to go to her parents' house, but he had told her that she could do so only after her parents come to their house but despite the same she had been insisting to visit her parents. According to PW-1 she was a short tempered girl. She categorically stated that she committed suicide for not being allowed to go to her parents house by the appellant and there was no other reason therefor. PW-2 is another witness, who was examined by the prosecution. She was the last person to see the deceased. According to her at about 12.30 p.m., she visited her house. She was in normal mood. She also bears testimony that the couple had been leading a happy life. She had also not been declared hostile by the prosecution.

PW-3 is the teacher, who according to PW-7 was solely responsible for causing her daughter's death. He was declared hostile. He had been examined by the police as also by the Superintendent of Police. He categorically stated that there had never been any problem as regard dowry nor any complaint was made by the appellant to the deceased's family about missing of the silk saree. Although he was declared hostile, only some suggestions were given to him. In fact he had not been cross-examined in the true sense of the term. His attention had not been drawn to his earlier statements, if any, before the police or before the Deputy Tahsildar. Why he was examined as a prosecution witness and why he was declared hostile is

not known.

In the aforementioned factual backdrop, we have to consider as to whether a case has been made out for conviction of the appellant under Section 304-B of the Indian Penal Code, which reads as under :

"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, 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) Whosoever 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."

The essential ingredients of the said offence, therefore, are (i) death of a woman must have been caused by any burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have been occurred within seven years of marriage (iii) soon before her death she was subjected to cruelty or harassment by her husband or relative of her husband; (iv) such cruelty or harassment must be in connection with the demand of dowry; and (v) such cruelty is shown to have been meted out to the woman soon before her death.

The significant words are "soon before her death". Here, it was, thus, necessary for the prosecution to establish that the deceased must have been subjected to cruelty or harassment by her husband or relative of her husband soon before her death.

It is now well-settled in view of a catena of decisions of this Court that what would constitute 'soon before her death' depends upon the facts and circumstances of each case.

We would examine some of them.

In State of A.P. v. Raj Gopal Asawa and Another [(2004) 4 SCC 470], it is stated :

"10. Section 113-B of the Evidence Act is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:

"113-B. Presumption as to dowry death.\027When 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.\027For the purposes of this section 'dowry death' shall have the same meaning as in Section 304-B

of the Indian Penal Code (45 of 1860)."

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10-8-1988 on "Dowry Deaths and Law Reform". Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of "dowry death" in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for, or in connection with, the demand for dowry". Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

(1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC.)

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with, any demand for dowry.

(4) Such cruelty or harassment was soon before her death."

[See also Harjit Singh v. State of Punjab [(2006) 1 SCC 463]

In Kamesh Panjiyar alias Kamlesh Panjiyar v. State of Bihar [(2005) 2 SCC 388], this Court opined :

"12. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman is required to be established in order to bring home the application of Section 498-A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498-A. Substantive Section 498-A IPC and presumptive Section 113-A of the Evidence Act have been inserted in the respective statutes by the Criminal Law (Second Amendment) Act, 1983. It is to be noted that Sections 304-B and 498-A IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to Section 498-A gives the meaning of "cruelty". In Section 304-B there is no such explanation about the meaning of "cruelty". But having regard to the common background to these offences it has to be taken that the meaning of "cruelty" or "harassment" is the same as prescribed in the Explanation to Section 498-A under which "cruelty" by itself amounts to an offence. Under

Section 304-B it is "dowry death" that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498-A. If the case is established, there can be a conviction under both the sections. (See Akula Ravinder v. State of A.P.1) Period of operation of Section 113-A of the Evidence Act is seven years, presumption arises when a woman commits suicide within a period of seven years from the date of marriage."

In the decision of this Court in Sudhakar and Another v. State of Maharashtra [(2000) 6 SCC 671] whereupon Mr. R. Sundaravardan relied, this Court opined that the proximity test is one of the tests which must be held to be applicable for the purpose of consideration as to whether such a statement of a deceased should be relied upon or not. Therein, Sethi, J., speaking for a 3-Judge Bench of this Court held that only because allegedly the deceased made a statement giving out circumstances in which she was allegedly raped by two accused, which was recorded by police 11 days after the occurrence whereas she committed suicide about 5-1/2 months thereafter, it would not lead to the conclusion that rape upon her was the reason for commission of her committing suicide, stating:

"11. There is no legal evidence on record that the prosecutrix at or about the time of making the statement had disclosed her mind for committing suicide allegedly on account of the humiliation to which she was subjected to on account of the rape committed on her person. The prosecution evidence does not even disclose the cause of death of the deceased. The circumstances stated in Exhibit P-59 do not suggest that a person making such a statement would, under the normal circumstances, commit suicide after more than five-and-a-half months. The High Court was, therefore, not justified in relying upon Exhibit P-59 as a dying declaration holding that the said statement was in series of circumstances of the transaction which resulted in the death of the deceased on 21-12-1994. The conviction of the persons accused of offences cannot be based upon conjectures and suspicions. Statement Exhibit P-59 if not treated as a dying declaration, there is no cogent and reliable evidence which can connect the accused with the commission of the crime\005"

The said decision is, therefore, of no assistance to the prosecution.

The conduct of the family members of the deceased, in the aforementioned backdrop, assumes importance. They did not make any complaint themselves. It was the appellant who lodged the first information report. On the basis of the said first information report, an investigation must have been commenced. It was stated to be a case of unnatural death. However, an enquiry was made by the Tahsildar. Before him only for the first time, some statements had been made by some of the prosecution witnesses. We have noticed hereinbefore that the members of the Panchayat did not state anything about the cause of the death. The Tahsildar in his report mentioned about an injury "on the right hand side of the neck" of the deceased. No such injury was found in the post mortem report. He in his evidence as PW-14 categorically stated :

"\005In my report, I have examined some witnesses who have not stated that Dawamani was ill-treated by her mother-in-law..."

His evidence in this behalf is not very clear, when he stated :

"\005I have not received any information when I examined 5 persons who are residing in the local area that the death might not have been happened due to dowry..."

He further stated :

"\005In my enquiry, Chandrakantha has stated that Dawamani was beaten up by her husband demanding = sovereign of gold Jhimki. Chandrakantha went to her sister house 10 days before the death and she was told by her sister that she was well. In my report, I have not stated that Chandrakantha was told by her sister Dawamani that she was well while weeping. When I examined Seethapathy he has not stated that Dawamani was ill treated and beaten up by her husband for dowry. In the examination of Amarvathy, she has not stated that Dawamani returned to her mother-in-law's house for one month and she was ill treated for dowry\005"

It, therefore, appears that no cogent evidence had been adduced by the prosecution to establish that the appellant had demanded any dowry. It would bear repetition to state that according to the mother of the deceased, PW-7 only PW-3 demanded dowry and only he was responsible for the death of her daughter. If that be so, he should have also been prosecuted.

The trial court has not given any cogent reason for disbelieving the evidence of PW-1; upon whom even the prosecution placed reliance. The statement of PW-1 that the deceased was short tempered girl has not been discarded. The statement of PW-2 that even = hour before committing suicide the deceased behaved normally had also not been taken into consideration. The prosecution did not cross-examine PW-3, except making some suggestions; although he was declared hostile. Even the trial court did not discard the explanation given by the accused as regard suicide of the deceased. It proceeded on the basis that there was no evidence either directly or indirectly as regard harassment or cruelty committed by the appellant against his wife and there are only circumstantial evidence therefor. The necessary ingredients of circumstantial evidence for holding the appellant guilty of commission of the offence had not been deliberated upon either by the trial court or by the High Court. Even an attempt had been made to show that the accused had on an earlier occasion tried to murder the deceased but the same was found to be false by the trial court holding that there was no evidence that the "accused had already attempted to burn away his wife". The trial court opined :

"\005The fact that the deceased was living with her mother for about eight months after delivery would speak volumes of the misunderstanding between the accused and his wife\005."

If it was a case of misunderstanding between the accused and the deceased, the same would not automatically lead to the conclusion that the appellant had committed an offence under Section 304-B of the Indian Penal Code. The law does not raise any such presumption

The trial court proceeded on the basis that as if PW-3 was acting as a messenger, although there was no evidence in this behalf. It was held by the trial court that 'the insistence of the PW-3 revealed that what was demanded by PW-3 was a dowry demand'. We fail to understand as to how a so-called misunderstanding or a hypothesis could be made the basis for conviction.

There was no reason to disbelieve that the defence version that the cause of death was that she had insisted to go to her mother's house but she was not allowed, was plausible.

Having regard to the peculiar features of the case, we are of the opinion that demand of dowry or any harassment being the cause for the death of the deceased, cannot be said to have been established beyond all reasonable doubt.

For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed. The appellant shall be set at liberty forthwith unless wanted in connection with any other case.

JUDIS