

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No. 636 of 2009

Devinder @ Kala Ram & Ors. Appellants

Versus

The State of Haryana Respondent

J U D G M E N T

A. K. PATNAIK, J.

This is an appeal by way of special leave under Article 136 of the Constitution of India against the judgment dated 28.02.2008 of the High Court of Punjab and Haryana in Criminal Appeal No.157-SB of 1997.

2. The facts very briefly are that an FIR was lodged by Chhotu Ram (the informant) in P.S. Gannaur on 07.08.1992 at 4.45 P.M. In the FIR, the informant stated thus: He got his daughter Krishna married to Devinder @ Kala Ram of village Rajpur on 19.05.1989. From after a month of the

marriage, Krishna kept coming to the house of the informant at village Tihar Malik complaining of demands of dowry and harassment by the members of the family of Devinder. On 06.08.1992, Jai Beer Singh informed the informant that Krishna was dead. The informant came straightway to the hospital at Sonapat and found Krishna dead because of burns. A case was registered in P.S. Gannaur under Section 304B/341 of the Indian Penal Code (for short 'the IPC'). Investigation was conducted and charge-sheet was filed against Devinder, his mother Chand Kaur and his brother's wife Roshni. The appellants were put on trial in the Court of learned Sessions Judge, Sonapat. At the trial, amongst other witnesses the informant Chottu Ram was examined as PW-2, his wife Smt. Shanti was examined as PW-3 and his two sons, namely, Balraj and Jai Beer, were examined as PW-4 and PW-5 respectively. By the judgment dated 06.02.1997, the Sessions Court held all the three appellants guilty of the offences under Sections 498A as well as 304B, IPC. By order dated 08.02.1997, the Sessions Court sentenced them to undergo rigorous imprisonment for a period of three

years each and to pay a fine of Rs.1,000/- each and in default to undergo rigorous imprisonment for one year for the offence under Section 498A, IPC, and for ten years rigorous imprisonment and a fine of Rs.2,000/- each and in default to undergo rigorous imprisonment for two years for the offence under Section 304B, IPC, and directed that the sentences shall run concurrently. Aggrieved, the appellants filed Criminal Appeal No.157-SB of 1997 before the High Court, but by the impugned order the High Court maintained the convictions and sentences under Sections 498A and 304B, IPC.

3. At the hearing of this appeal, learned counsel for the appellants submitted that Dr. B.D. Chaudhary, the Medical Officer of the Civil Hospital, who was examined as PW-7, has said in his evidence that Krishna was brought to the hospital by her husband Kala Ram and there was smell of kerosene in the body of Krishna when she was brought to the hospital. He also referred to Ext. DD, which is the bed-head ticket pertaining to Krishna in the hospital in which PW-7 has endorsed that the patient had told him that she has sustained the burns while

cooking meals on a stove. He submitted that Devinder has stated in his statement under Section 313 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') that on the day of the alleged occurrence Krishna caught fire while she was preparing tea and he extinguished the fire and as a result he received burn injuries and he immediately brought her to the hospital. He submitted that this is, therefore, a case of the deceased getting burnt by kerosene from a stove and the appellant no.1 had rushed the deceased to the hospital with a view to save her and this is not a case of an offence under Section 304B, IPC.

4. Learned counsel for the appellants next submitted that PW-1, PW-2, PW-3, PW-4 and PW-5 are all near relatives of the deceased and are interested witnesses and their evidence on the demands of dowry and harassment and cruelty to the deceased ought not to have been believed by the Sessions Court and the High Court. He argued that the evidence of these interested witnesses moreover are only bald statements and are not supported by any material. He submitted that in the absence of any

material produced to show that the deceased was subjected to electric shock, the Trial Court and the High Court could not have held that the prosecution has proved beyond reasonable doubt that the appellants had subjected the deceased to cruelty soon before her death. He relied on the decision of this Court in *Durga Prasad & Anr. v. State of M.P.* [2010 CRL. L. J. 3419] in which it has been held that cruelty or harassment soon before death must be proved not just by bald statements, but by concrete evidence to establish the offences under Section 304B and Section 498A, IPC. He submitted that although the prosecution cited Umed Singh, Tara Chand, Randhir Singh and Dariya Singh as its witnesses in the charge-sheet, these witnesses have not been examined in Court and, thus, an adverse inference should not be drawn by the Court against the prosecution.

5. Learned counsel for the appellants finally submitted that the appellant no.3, Roshni, was the wife of the brother of Devinder, namely, Attar Singh, and the case of the defence before the Sessions Court was that Roshni lived separately with her husband Attar Singh in another

house. He submitted that PW-8, the Investigating Officer, has admitted in his evidence that he had come to know that Roshni had been living separately with her husband in another house. He argued that there was absolutely no evidence before the Court that Roshni, appellant no.3, was living in the family house of the appellant nos. 1 and 2 and she has been falsely implicated as an accused in this case.

6. In reply, learned counsel for the State submitted that the High Court has held in the impugned judgment that PW-7 before making any endorsement was required to certify that Krishna was fit and conscious to make a statement, but PW-7, while making the endorsement in Ext. DD that the patient herself told her that she sustained burn injuries while cooking meals on a stove, has not given this certificate. He submitted that the High Court has, therefore, held that the endorsement was wrongly made so as to ensure that the truth did not come to the surface. He submitted that the High Court has further taken note of the scaled map (Ext. PC) of the place where Krishna was preparing tea on the stove which has an

open courtyard and had she caught fire while preparing tea on the stove in the open courtyard, she would have certainly run for safety and the flames of the fire would not have engulfed her to such an extent as to cause 95% burns. He vehemently argued that Section 113B of the Indian Evidence Act, 1872 is clear that when the question as to whether a person has committed 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. He argued that in this case, as there was sufficient evidence brought before the Court through PW-2 and PW-3 that Krishna was being subjected to cruelty or harassment for and in connection with demand for dowry, there is a presumption of dowry death caused by the appellants and this presumption has not been rebutted by the appellants. He submitted that the Trial Court and the High Court are, therefore, right in holding the appellants

guilty of the offences under Section 498A as well as Section 304B, IPC.

7. The first question that we have to decide is whether the Trial Court and the High Court are right in convicting the appellants under Section 498A of IPC. We have gone through the evidence of PW-2, PW-3, PW-4 and PW-5 and we find that the evidence therein fully support the finding of the High Court that from a few days after marriage till her death, the deceased was subjected to harassment in connection with the demand of dowry by all the three appellants. We find from the evidence of PW-2, PW-3, PW-4 and PW-5 that the deceased was subjected to harassment by the appellants in connection with demands of TV, sofa set, electric press, sewing machine, tables and chairs, utensils and cash of Rs.20,000/- for recruitment of Devinder and Rs.15,000/- for construction of house. In the lengthy cross-examinations of PW-2, PW-3, PW-4 and PW-5, their evidence with regard to such demands of dowry and harassment has not been shaken. Moreover, in this case, there is evidence to show that Roshni, the appellant No.3, also caused harassment to

the deceased in connection with demand of dowry. Therefore, the fact that she was living separately with her husband even if true, does not make her not liable for the offence under Section 498-A, IPC. Hence, the Sessions Court and the High Court, in our considered opinion, have rightly held the appellants guilty of the offence under Section 498A, IPC.

8. The second question that we have to decide is whether the Sessions Court and the High Court were right in holding the appellants guilty of the offence under Section 304B, IPC. Section 304B of the IPC and Section 113B of the Indian Evidence Act, 1872 are to be read together and are quoted hereinbelow:

“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 subsection, “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.”

“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).”

9. On a plain reading of Section 304B of the IPC, it is clear that where the death of a woman is caused by any burns or bodily injury 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 husband shall be deemed to have caused dowry death. Thus, where death of a woman has been caused by burns as in the present case, the prosecution

has to show: (i) that such death has taken place within seven years of her marriage and (ii) that soon before her death she has been subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. Once these two facts are established by the prosecution, the husband or the relative shall be “deemed” to have caused the dowry death of the woman. The word “deemed” in Section 304B, IPC, however, does not create a legal fiction but creates a presumption that the husband or relative of the husband has caused dowry death.

10. Section 113B of the Indian Evidence Act, 1872 also provides that once it is shown that soon before her death a 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. The expression “shall presume” has been defined in Section 4 of the Indian Evidence Act, 1872, relevant part of which is extracted hereinbelow:

“Shall presume’.—Whenever it is directed by this Act that the Court shall presume a fact, it

shall regard such fact as proved, unless and until it is disproved.”

Thus, Section 113B read with Section 4 of the Indian Evidence Act, 1872 would mean that unless and until it is proved otherwise, the Court shall hold that a person has caused dowry death of a woman if it is established before the Court 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.

11. Section 3 of the Indian Evidence Act, 1872 states that unless a contrary intention appears from the context, the word “disproved” would mean a fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. Thus, if after considering the matters before it, the Court believes that the husband or the relative of the husband has not caused dowry death, the Court cannot convict such person or husband for dowry death under Section 304B of the IPC. Section 304B, IPC,

and Section 113B of the Indian Evidence Act, 1872, in other words, only provide what the Court shall presume if the ingredients of the provisions are satisfied, but if the evidence in any case is such that the presumptions stand rebutted, the Court cannot hold that the accused was guilty and was punishable for dowry death.

12. In the facts of the present case, we find that PW-7, the Medical Officer of the Civil Hospital, examined the case of the deceased on 06.08.1992 at 6.30 A.M. and he has clearly stated in his evidence that on examination she was conscious and that there were superficial to deep burns all over the body except some areas on feet, face and perineum and there was smell of kerosene on her body. He also stated in his evidence that the deceased was brought to the hospital by her husband Kala Ram (appellant no.1). He has proved the bed-head ticket pertaining to the deceased in the hospital (Ext. DD) as well as his endorsement at Point 'A' on Ext. DD, from which it is clear that he was told by the patient herself that she sustained burns while cooking meals on a stove. This statement of the deceased recorded by PWs is relevant under Section 32 of the Indian Evidence

Act, 1872 which provides that statements, written or verbal, of relevant facts made by a person who is dead, are themselves relevant facts when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Moreover, the appellant no.1 in his statement under Section 313, Cr.P.C., has stated:

“On that day of the alleged occurrence Krishna deceased was preparing tea and incidentally caught fire. I extinguished the fire, as a result of which I received burn injuries and immediately brought her to General Hospital, Sonapat, and on the advice of the M.O. I was taking her for better treatment to Delhi but unfortunately she died.”

13. The evidence of PW-7 and the endorsement marked 'A' in Ext. DD are evidence produced by the prosecution before the Court and such evidence produced by the prosecution before the Court supports the explanation of the appellant no.1 in his statement under section 313, Cr.P.C., that the deceased caught fire while she was preparing tea on the stove. The presumption in Section

304B of the IPC and Section 113B of the Indian Evidence Act, 1872 that they had caused dowry death of the deceased, thus, stood rebutted by the evidence in this case. We find that the High Court has disbelieved the evidence of PW-7 and the endorsement marked 'A' in Ext. DD merely on suspicion and has ignored the relevant provisions of the Indian Evidence Act, 1872, which we have discussed.

14. In the result, we allow this appeal in part, set aside the conviction and sentences for the offence under Section 304B, IPC, and sustain the conviction and sentences under Section 498A, IPC. The appellant no.2 is already on bail. If appellant nos.1 and 3 have already undergone the sentence under Section 498A, IPC, they shall be released forthwith.

.....J.
(A. K. Patnaik)

.....J.
(Swatanter

Kumar)
New Delhi,
October 18, 2012.

SUPREME COURT OF INDIA



JUDGMENT