

CASE NO.:
Appeal (crl.) 1027 of 2006

PETITIONER:
Kailash

RESPONDENT:
State of M.P.

DATE OF JUDGMENT: 09/10/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) No. 5592 of 2005)

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment rendered by a learned single Judge of the Madhya Pradesh High Court at Jabalpur dismissing the appeal of the appellant and maintaining his conviction and sentence as recorded by the trial Court.

Appellant faced trial for alleged commission of offences punishable under Section 498-A and 304-B of the Indian Penal Code, 1860 (in short the 'IPC') relating to the death of He was found guilty by the trial Court and was sentenced to undergo rigorous imprisonment for ten years for the offence relating to Section 304-B IPC but no separate sentence was imposed for the offence relating to Section 498-A IPC though he was found guilty of the said offence. Smt. Shyam Bai who faced trial with the appellant was acquitted by the trial Court.

Prosecution case in a nutshell is as follows:

Appellant got married with the deceased on 4.5.1997. Acquitted accused Smt. Shyam Bai is the aunt of appellant. In the wee hours of 18.3.1999 the dead body of deceased was found floating in a well located in the house of the appellant. Thus, the death of Uma Devi occurred otherwise than under normal circumstances. The deceased was subjected to cruelty or harassment by her husband and acquitted accused in connection with demand for dowry.

Inquest was conducted and the dead body of Uma Devi was sent for post mortem examination. The post mortem examination was conducted by Dr. R.G. Kotia (PW1) who found an anti-mortem lacerated wound on occipital region of the body and blood was oozing out from the wound. Dr. Kotia opined that cause of death of Uma Devi was asphyxia due to drowning. In his opinion approximate time of death was within 12 to 24 hours of the post-mortem examination. Ex.P-1 is the report of Dr. Kotia. During investigation a rope and one steel gund were recovered from the spot. Jamuna Prasad (PW-

3), Mainda Bai (PW4), Desh Raj (PW5) Sheel Kumar (PW6), Parwati (PW7), Mukundi (PW8) and Dashrath (PW9) were examined to prove the dowry demand, harassment and torture. Placing reliance on their evidence, trial Court convicted the appellant. Matter was carried in appeal before the High Court. Before the High Court, it was contended that the evidence was not sufficient to prove the dowry demand, torture or harassment. The High Court did not accept the plea and affirmed the conviction and sentence.

In support of the appeal learned counsel for the appellant submitted that the evidence of the witnesses who were examined to prove alleged dowry demand, torture and harassment, is not sufficient to prove commission of offence by the appellant. It is full of exaggerations and trial Court and the High Court should not have placed reliance on them. It was submitted that the sentence, as imposed, is high. With reference to the material on record it is submitted that the accused has already undergone nearly eight years of the sentence.

Learned counsel for the respondent-State on the other hand supported the order.

On reading of the evidence of the witnesses who have spoken about dowry demand, torture and harassment nothing substantially discrepant can be noticed. The 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 trial Court and the High Court was justified in holding the accused guilty.

In *Kans Raj v. State of Punjab* (2000 (5) SCC 207) a three-Judge Bench of this Court dealt with the presumption available in terms of Section 113-B of the Evidence Act, 1872 (in short "the Evidence Act") and its effect on finding persons guilty in terms of Section 304-B IPC. It was noted as follows: (SCC p. 217, para 9)

"9. The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such death shall be punishable under Section 304-B. In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:

(a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;

(b) such death should have occurred within 7 years of her marriage;

(c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;

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

(e) to such cruelty or harassment the deceased should have been subjected soon before her death."

The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such death shall be punishable under Section 304-B. In order to seek a Conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:

- (a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;
- (b) such death should have occurred within 7 years of her marriage;
- (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;
- (d) such cruelty or harassment should be for or in connection with the demand of dowry; and
- (e) to such cruelty or harassment the deceased should have been subjected soon before her death.

No presumption under Section 113-B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty or harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the victim. This is so because the expression used in the relevant provision is "soon before". The expression 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. The expression is pregnant with the idea of proximity test. It cannot be said that the term "soon before" is synonymous with the term "immediately before". This is because of what is stated in Section 114 Illustration (a) of the Evidence Act. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link [see *Hira Lal v. State (Govt. of NCT), Delhi* (2003 (8) SCC 80)].

The factual position of the present case goes to show that the death was not in normal circumstances. The expression "normal circumstances" apparently means natural death. In other words the expression "otherwise than under normal circumstances" means death not being in the usual course but apparently under suspicious circumstances if not caused by burns or bodily injury. This position was noted before this Court in *Shanti v. State of Haryana* (1991 (1) SCC 371).

These aspects were highlighted in *Thakkan Jha v. State*

of Bihar (2004 (13) SCC 348).

The conviction as maintained by the High Court needs no interference. Coming to the question of sentence, on considering the background facts, it would be appropriate to reduce the custodial sentence to eight years which the appellant claims to have undergone including remissions. If the appellant had already undergone custodial sentence including remission for eight years, he shall be immediately released from custody unless required to be in custody in connection with any other case.

The appeal is partly allowed so far as it relates to quantum of sentence.

JUDIS