

S.B.Criminal Leave to Appeal No.309/2006.

State of Rajasthan.

vs.

Kanhiyalal and others.

Date : 30.3.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. HR Soni, P.P.

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Heard learned public prosecutor.

This leave to appeal has been preferred against the judgment of Additional Sessions Judge No.2, Udaipur dated 3.8.2006 by which the accused respondents were acquitted from the charges under Sections 498A and 304B IPC and under Section 4 of the Prevention of Dowry Act (for short 'the PD Act').

Brief facts of the case are that complainant Shankar Lal, father of deceased Pushpa, lodged a F.I.R. in Police Station, Rishabdeo on 23.5.2004 alleging that his daughter Pushpa aged 22 years was married with Kanhiyalal s/o Motiram. The deceased was kept well by her husband for about 1½ years and thereafter, his

daughter came to the complainant and told him that her husband demanded Rs.20,000/- and for that her husband told her that her father since has retired and got retiral benefits, therefore, he can easily give this amount. Since the complainant did not pay the said amount at that time, then again after 15 days, the complainant's daughter came to him and told that her father-in-law Motiram, mother-in-law Smt. Parwati Bai and her husband Kanhiyalal are ill-treating her. It is alleged that about 20 days ago the date of incident i.e. date of death of Pushpa in suspicious circumstances, her father-in-law and her mother-in-law further encouraged the accused husband to force her to bring money. As per the prosecution case, the complainant got information on 22.5.2004 that his daughter died during treatment. On these allegations, a written complaint was submitted by the complainant upon which a case under Sections 498A and 304B IPC read with Section 4 of the PD Act was registered.

In the trial court, witnesses PW1 Shankar Lal, PW2 Dhuliram, PW3 Hiralal, PW4 Bhagwanlal, PW5 Bhagwan Singh, PW6 Parwati Bai, PW7 Smt. Pemi, PW8 Sharad Choudhary and PW9 Ashfaq Ahmed were examined by the prosecution. FIR, post mortem report, FSL report apart from other documents were produced by the prosecution.

In defence, the accused produced DW1 Madhav Giri and DW2 Dr. Vishal Saxena.

It will be relevant to mention here that the dying declaration was also recorded wherein the deceased stated that on 18.5.2004 at about 10:00 AM, she gave beating to her child upon which her husband scolded her, therefore, she went to the market and purchased two injection type ambush (wherein some pesticide - some medicine which is kept in wheat for protection from pest) and consumed it. Immediately, she fell sick and when her husband asked her, she told that she has consumed medicine upon which her husband took her to the hospital. She also mentioned that she consumed medicine in anger and there is no fault of her husband, mother-in-law and father-in-law and she herself is responsible for the event. The statement was recorded in the presence of Dr. Vishal Saxena who was produced by the accused as defence witness. Dr. Vishal Saxena certified that the deceased was in fit condition to give statement.

The trial court, after considering the evidence of the prosecution and defence witnesses, held that it is admitted case that deceased Pushpa was never harassed by the accused persons at any point of time. So far as demand of dowry of Rs.20,000/- is concerned, that fact has also not been proved by the prosecution witnesses. It appears from the statement of PW1, father of deceased, that in cross examination, he admitted that

immediately after the victim consumed poison, he was informed on the same day and his daughter died after four days. He also admitted that his daughter's inlaws never directly demanded any money from him. He also admitted that even in the marriage, he gave clothes for her daughter and at that time also, no money was paid to his daughter's inlaws. No injury was found on the person of the deceased which is clear from the post mortem report.

So far as demand of dowry through the deceased is concerned, for that also, there are serious contradictions in the statement of the prosecution witnesses apart from the fact that in fact, in the allegations, there is no consistency nor the period is clear when such demand was raised.

In view of the above, the trial court relied upon the dying declaration wherein the victim narrated the circumstances under which she consumed poison and I do not find any illegality in the order of the trial court acquitting the accused persons.

In view of the above, this leave to appeal deserves to be dismissed, hence, dismissed.

(PRAKASH TATIA), J.

S.Phophaliya