

A

DASRATH

v.

STATE OF M.P.

(Criminal Appeal No. 1645 of 2009)

B

JULY 29, 2010

[V.S. SIRPURKAR AND DR. MUKUNDAKAM SHARMA,
JJ.]

Penal Code, 1860:

C

s.304B – Dowry death – Appellant-husband and other accused allegedly poured kerosene on deceased and lit fire, which resulted in her death – Conviction of appellant u/s.304B – Held: Appellant was rightly held guilty u/s.304B – Deceased died unnatural death within seven years of marriage – Report of chemical analyser that kerosene residues found in the clothes of deceased – Evidence of witness that the demands were made on account of dowry and deceased was subjected to cruelty and harassment by her in-laws soon before her death – Presumption u/s.113B of Evidence Act also fully established the case of prosecution – Necessary ingredients of s.304B – Discussed – Evidence Act, 1872 – s.113B – Crime against women.

D

E

F

s.201 – Unnatural death of wife of appellant – Hurried cremation – Neither police informed nor the parents of the deceased – Offence u/s.201 made out.

G

Prosecution case was that the deceased was married to the appellant and she was subjected to cruel treatment by the appellant and his family members. On the fateful day, the brother of the deceased (PW-8) went to the matrimonial home of the deceased on the occasion of rakhi and came to know that the deceased was set on fire by her in-laws by pouring kerosene and was in

H

hospital. He returned and informed his father (PW-4) about the incident. The father alongwith the co-villagers proceeded to the hospital. On the way, one person informed them about the death of the deceased. By the time, they reached the village of appellant, the cremation of the deceased was conducted. A chargesheet was filed against the appellant, his father, the accused no.1 and his sister, the accused no.3 under Sections 302, 304B and 201 IPC. Trial Court convicted the appellant and accused no.1 under Section 304B IPC and under Section 201 IPC; however it acquitted accused no.3. High Court upheld the order of conviction of appellant. Accused no.1 died during pendency of appeal and his appeal abated. Aggrieved appellant filed the appeal.

Dismissing the appeal, the Court

HELD: 1. There can be no dispute that the deceased had died an un-natural death. In fact there was enough evidence to suggest that she suffered the burn injuries. It was not the defence of the accused that she died a natural death. Both the courts below specifically held that the deceased suffered burn injuries and died because of the same. In fact PW-8 was specific in his evidence that the deceased was burnt on account of the kerosene poured on her body. No doubt, this witness was disbelieved and rightly so, insofar as his evidence about the accused deliberately burning the deceased was concerned. Again, it is clear from the report of the chemical analyzer that the kerosene residues were found from Packet-A which contained the clothes of the deceased which were seized during the investigation. Therefore, it is clear that the death was caused because of the burns and not in the normal circumstances. The finding of the trial Court and the appellate Court in that behalf was correct. The argument of the defence cannot be accepted that in the absence of *corpus delicti*, the

A conviction would not stand. Similarly, there can be no dispute that the deceased died within seven years of her marriage. PW-1 specifically asserted that the marriage was performed 3-4 years prior to the incident. Though this witness was declared hostile, at least the fact that marriage had taken place 3-4 years prior to the incident could be safely accepted. According to PW-2, also the marriage had taken place within 5-6 years prior to trial. Again even this witness was declared hostile. However, that claim remained un-controverted. Third witness PW-3, asserted that the marriage was performed 6-7 years earlier to the date of his evidence. His evidence was in May, 1997 and even taking that the marriage took place somewhere in the year 1990, it would still be within seven years. The father of the deceased also said that the marriage took place 6-7 years prior to the date of his evidence which was again 30.09.1997. According to his evidence, even if the marriage could date back to the year 1987, it would still put the death of the deceased within seven years of her marriage. Therefore, it is certain that the deceased died an un-natural death by burning within seven years of her marriage. The evidence shows that there were demands of buffalo made to the father of the deceased who did not accept that demand. He also specifically stated in his evidence that after 1-½ years of the marriage when he went to the house of the deceased, door was closed and the appellants were beating the deceased and that the floor was smeared with blood and blood was also oozing out from the mouth of the deceased. He also asserted about the demand of a large size television as the television which was given in marriage was a small colour television. This evidence of torture was well supported by the evidence of PW-6, PW-7 and PW-9. In view of this, the trial court and the courts below recorded that the deceased died an un-natural death because of burning within seven years of her marriage and that she was subjected to cruelty and

harassment by her husband and/or relatives in connection with the demand for dowry and that she was subjected to cruelty soon before her death. [Paras 10, 11] [274-B-H; 275-A-G] A

2. As regards the offence under Section 201, IPC, it was incumbent upon the accused persons to first inform the police about the un-natural death of the deceased. They did not do so. On the other hand, even after her death, they did not inform either the police or even the relatives like her father etc., though they could have done so. Instead they hurriedly conducted the funeral thereby causing destruction of evidence. In this case, funeral was conducted in the evening. From all this, the prosecution not only proved the offence under Section 304B, IPC with the aid of Section 113B, Indian Evidence Act but also the offence under Section 201, IPC. All the three ingredients of Section 304B, IPC viz. that the death of a woman has been caused by burns or bodily injury or occurs otherwise than under normal circumstances; that such death has been caused or has occurred within seven years of her marriage; and that soon before her death the woman was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry." as also the presumption under Section 113B of the Evidence Act were fully established the case of prosecution. Both the courts below fully considered all the aspects of the matter. The judgments of courts below are confirmed. [Paras 14, 15, 16] [276-D-H; 277-A-B] B C D E F

State of Rajasthan v. Jaggu Ram 2008 (12) SCC 51 – referred to. G

Case Law Reference:

2008 (12) SCC 51 referred to Para 13

H

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1645 of 2009.

B From the Judgment & Order dated 03.08.2007 of the High Court of Madhya Pradesh Judicature at Jabalpur, Gwalior Bench in Criminal Appeal No. 505/2001.

Dr. J.N. Singh, Jai Prakash Pandey for the Appellant.

Aishwarya Bhati, Rashid Khan, C.D. Singh for the Respondent.

C The Judgment of the Court was delivered by

D **V.S. SIRPURKAR, J.** 1. The present appeal is directed against the judgment of the High Court dismissing the appeal of the appellant Dasrath. He was convicted by the Trial Court of the offence under Section 304B, Indian Penal Code (IPC) and was sentenced to suffer rigorous imprisonment for 10 years and pay a fine of Rs. 5,000/- and in default directed to suffer further imprisonment for one year. He was also convicted for the offence under Section 201, IPC and was directed to suffer rigorous imprisonment for one year with a fine of Rs.1,000/- and in default to suffer three month's further imprisonment.

F 2. Initially, as many as three accused persons came to be tried by the Sessions Judge, they being accused No.1, Kalyan, accused No.2, Dasrath and accused No.3, Smt. Usha. While accused No.2, Dasrath is the present appellant, accused No.1, Kalyan Singh and accused No.3, Smt. Usha are his father and sister, respectively. The Trial Court had also convicted Kalyan Singh for the same offence. However, it acquitted accused G No.3, Smt. Usha from all the charges. Both the accused had filed an appeal challenging their conviction and the sentences before the High Court. However, during the pendency of the appeal, accused No.1 Kalyan Singh expired and his appeal, thus, abated. The appeal of Dasrath, the present appellant H

came to be dismissed by the High Court and that is how he is before us. A

3. Shortly stated, the prosecution story was that Dasrath was married to Pinki who died under suspicious circumstance of burning. An intimation regarding death came to be given to the Police Station Pandhokhar, Distt. Gwalior. The said intimation was given by the complainant Vadehi Saran s/o Ramanand Kaurav who was none else but the father of the deceased Pinki. It was, *inter alia*, stated that on that day i.e. 12.8.1992 in the morning his son Jitendra Singh had gone to village Saujna for Rakhi festival to his daughter Pinki's house. But he returned at about 7 p.m. and told him that Pinki had caught fire and was sent to Daboh for treatment. Vadehi Saran further stated that on hearing the news, he along with some co-villagers went to Daboh. However, one Santosh belonging to his village met him near Dugdha Dairy and told him that Pinki had died. Then Vadehi Saran along with others went to village Saujna. But by the time they reached there, Pinki's cremation was over. It was because of this that they came to the Police Station and further action was requested on the basis of the death report. B
C
D
E

4. On this basis, a First Information Report was got registered on 16.8.92 wherein it was recorded that the death intimation was given on 12.8.92 at 23.15 hours orally about the death of Pinki. It was recorded on a preliminary inquiry made by Head Constable Jaswir Singh by visiting village Saujna and the Station House Officer R.S. Purohit had also made inquiries relating to the death. The place of occurrence was examined by SDOP R.K. Hirodia and inquiry was made from the deceased's father Vadehi Saran, uncle Uttam Singh, brothers Janved Singh and Jitendra Singh, mother Vidya Devi and sister Pratibha. During this inquiry, it was found that the deceased was married 2 years prior to the date of incident and because of the non-payment of dowry, her husband Dasrath, father-in-law Kalyan Singh and Sister-in-law Usha were harassing her. The F
G
H

- A earlier statement given by Vadehi Saran was repeated. It was then mentioned that on 12.8.1992 the sister-in-law Usha, husband Dasrath caught hold of Pinki and father-in-law Kalyan Singh poured kerosene oil on her and set her on fire because of which she got burnt. The accused thereafter cremated her and cleaned the place where occurrence had taken place.

5. On the basis of this, further investigation ensued and after its completion, a charge-sheet came to be filed in the Court for offences under Sections 302, 304 B and 201 IPC. The accused were charged accordingly. The prosecution, during the trial, examined as many as 11 witnesses. The accused persons abjured the guilt and as stated earlier only two of them came to be convicted, namely, Kalyan Singh and Dasrath. However, due to the death of Kalyan Singh during the pendency of the appeal, the appeal filed by Dasrath alone is to be considered.

6. Learned Senior Counsel, Dr. J.N. Singh appearing on behalf of the accused attacked the judgment of both the Courts below, firstly, contending that conviction under Section 304B, IPC and Section, 201, IPC was wholly incorrect as it was not proved that Pinki had died a suspicious or un-natural death within the seven years of her marriage nor was her body found. He also contended that there was no question of demanding any dowry as no complaint was ever made for dowry nor was there any evidence regarding the demands of dowry. Lastly, he suggested that there was no question of any offence having been committed. He pointed out that the Trial Court had acquitted all the accused of the offence under Section 302, IPC though a charge was also framed under that Section and there was no appeal by the State Government against the acquittal under Section 302, IPC. Under such circumstances, it was clear that the accused persons could not be held responsible for the death of Pinki.

7. As against this, Ms. Aishwarya Bhati, Learned Counsel

appearing on behalf of the respondent pointed out that it could not be said that the death did not take place within seven years of marriage as the accused himself had admitted that the marriage had taken place six years prior to the trial. She further pointed out that there was a clear assertion made by the witnesses in their evidence. More particularly, Vadehi Saran (PW 4), Janved Singh (PW-5), Pratibha (PW-6) and Jitendra Singh (PW-8) had clearly asserted that the dowry was asked for by the accused persons. Learned Counsel further contended that if Pinki had died of burning, a report ought to have been made for un-natural death which the accused did not bother to make, instead they had cremated the body of Pinki without even intimating the relatives of the deceased and also without waiting for the police. This was the most suspicious circumstance which pointed towards the guilt of the accused.

8. It is on the basis of these rival versions that it is to be seen as to whether the appellant Dasrath was rightly convicted for the offence.

9. The first contention raised by the Learned Counsel for the defence regarding the *corpus delicti* not being found was countered by Ms. Bhati by saying that there can be no dispute about the death of Pinki. It is not the defence of the accused that Pinki was still living. On the other hand, the accused persons admittedly had cremated her body on the fateful day. Therefore, this is not a case, according to her, of *corpus delicti* not being found and, therefore, there being a serious suspicion about the death having taken place at all. The question is, in the absence of *corpus delicti*, could it be presumed that the accused persons alone were responsible for the death of Pinki. We must hasten to add here that the accused persons have already been acquitted of the murder charge. What remains to be seen is as to whether Pinki died an un-natural death within seven years of her marriage and whether her death was attributable to the demand of dowry and further whether she

- A was dealt with cruelly soon before her death. If these ingredients are proved by the prosecution then the conviction of the accused under Section 304B, IPC will be complete.

10. There can be no dispute that Pinki had died an un-natural death. In fact there is enough evidence to suggest that Pinki suffered the burn injuries. It is not the defence of the accused that she died a natural death. Both the Courts have very specifically held that Pinki suffered burn injuries and died because of the same. In fact Jitendra Singh (PW-8) was specific in his evidence that Pinki was burning on account of the kerosene having been poured on her body. In fact it is apparent from his cross-examination that when Pinki shouted, neighbours rushed to her house. There can be no dispute that this witness has been dis-believed and rightly so, insofar as his evidence about the accused deliberately burning Pinki is concerned. However, there can be no dispute that Pinki was burnt and it was clear that she had died an un-natural death. Again, it is clear from the report of the chemical analyzer that the kerosene residues were found from Packet-A which contained the clothes of Pinki which were seized during the investigation. Therefore, it is clear that Pinki's death was caused because of the burns and not in the normal circumstances. The finding of the Trial Court and the appellate Court in that behalf is correct. For this reason we are not impressed by the argument of the Learned Counsel that in the absence of *corpus delicti*, the conviction could not stand. Similarly, there can be no dispute that Pinki died within seven years of her marriage. Gandharv Singh (PW-1) had specifically asserted that the marriage was performed 3-4 years prior to the incident. Though this witness was declared hostile, at least the fact that marriage had taken place 3-4 years prior to the incident can be safely accepted. According to PW-2, Bhagwati Saran also the marriage had taken place within 5-6 years prior to trial. Again even this witness was declared hostile. However, that claim remained un-controverted. Third witness PW-3, Hari

H

Saran asserted that the marriage was performed 6-7 years earlier to the date of his evidence. His evidence was in May, 1997 and even taking that the marriage took place somewhere in the year 1990, it would still be within seven years. Vadehi Saran, the father also said that the marriage had taken place 6-7 years prior to the date of his evidence which was again 30.09.1997. Therefore, according to his evidence even if the marriage could date back to the year 1987, it would still put the death of Pinki within seven years of her marriage.

11. Therefore, it is certain that Pinki died an un-natural death by burning within seven years of her marriage. As regards dowry, Learned Counsel for the defence pointed out that there was no specific evidence nor was any allegation made in the First Information Report. We are not much impressed as we have seen from the evidence that there were demands of Buffalo made to Vadehi Saran, father of Pinki who did not accept that demand. Vadehi Saran has also specifically stated in his evidence that after 1 ½ years of the marriage when he went to the house of Pinki in the month of *Shravan*, door was closed and the appellants were beating Pinki and that the floor was smeared with blood and blood was also oozing out from the mouth of Pinki. He also asserted about the demand of a large size television as the television which was given in marriage was a small colour television. This evidence of torture is well supported by the evidence of Pratibha (PW-6), Anant Ram Singh (PW-7) and Uttam Singh (PW-9). In view of this, the Trial court and the appellate Court have recorded that, firstly, Pinki died an un-natural death because of burning within seven years of her marriage and, secondly concluded that she was subjected to cruelty and harassment by her husband and/or relatives in connection with the demand for dowry and that she was subjected to cruelty soon before her death.

12. Similar is the case as regards the offence under Section 201, IPC. In fact it was incumbent upon the accused

- A persons to firstly, inform the police about the un-natural death of Pinki. They did not do so. On the other hand, even after her death, they did not inform either the police or even the relatives like her father etc., though they could have done so. In stead they hurriedly conducted the funeral thereby causing destruction of evidence.

- B
13. In *State of Rajasthan v. Jaggu Ram* [2008 (12) SCC 51], this Court has considered the circumstance about the non-information to the parents and the hurried cremation. This was also a case where accused persons were tried for offence under Section 304B, IPC, where the accused, after the death of the unfortunate lady did not bother to inform her parents. In paragraph 26, this Court took a serious note of the manner in which the body was disposed of. The Court observed "*the disposal of the dead body in a hush-hush manner clearly establishes that the accused had done so with the sole object of concealing the real cause of death of Shanti @ Gokul.*"

14. In that case, the funeral was conducted in the wee hours. In this case, funeral was conducted in the evening.

- E
15. From all this, it is clear that the prosecution has not only proved the offence under Section 304B, IPC with the aid of Section 113B, Indian Evidence Act but also the offence under Section 201, IPC. We are satisfied that all the three ingredients of Section 304B, IPC, they being:

- F
1. that the death of a woman has been caused by burns or bodily injury or occurs otherwise than under normal circumstances;
- G
2. that such death has been caused or has occurred within seven years of her marriage; and
3. that soon before her death the woman was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry."

H

as also the presumption under Section 113B of India Evidence Act are fully established the case of prosecution. A

16. We have gone through the judgments of the Trial Court as well as the appellate Court carefully and we find that both the Courts have fully considered all the aspects of this matter. We, therefore, find nothing wrong with the judgments and confirm the same. The appeal is, therefore, dismissed. B

D.G.

Appeal dismissed.