[2024] 8 S.C.R. 796 : 2024 INSC 665

Chabi Karmakar & Ors.
v.
The State of West Bengal

(Criminal Appeal No.1556 of 2013)

29 August 2024

[Sudhanshu Dhulia and J.B. Pardiwala, JJ.]

Issue for Consideration

The appellants have been convicted u/ss.498A, 304B and 306 r/w.s.34 of the IPC. The Trial Court had convicted sister-in-law (appellant no.1), husband (appellant no.2) and mother-in-law of the deceased and sentenced them to suffer life imprisonment, 3 years R.I and 10 years R.I for offences u/ss.304B, 498A and 306 of IPC respectively, along with fine and other default stipulations. Both the conviction and the sentence of the present appellants have been upheld in appeal and the High Court.

Headnotes†

Penal Code, 1860 – s.498A, 304B and s.306 r/w. s.34 – Evidence Act, 1872 – s.113 – Victim-deceased committed suicide by hanging herself in her matrimonial house – The deceased was alone at the time of the incident and the appellant No. 2, the husband was not in the house at the time of the incident – The case of the prosecution is that there was a harassment of deceased which was connected to the demand of dowry, which led the deceased to commit suicide:

Held: During the pendency of the appeal, one of the appellants i.e. appellant no. 3 (mother-in-law of the deceased) had passed away and the case against her stands abated – From the evidence which has been placed by the prosecution, there are certain facts that have been proved beyond any doubt which are: (i) That the deceased died within seven years of marriage; (ii) The death was by suicide in her matrimonial house; and (iii) There was harassment at the hands of her in-laws and particularly by the husband; (iv) And that there was marital discord between husband and wife – As far as appellant no.1 (sister-in-law of deceased) is concerned, she is a married woman and at the relevant point of time, admittedly, she was residing with her

family at her matrimonial home – There is no specific evidence that has come in the form of any of the prosecution witnesses that may connect appellant no. 1 to the commission of the crime – After going through the evidence of PW-1, PW-3, PW-4 and P16 (who are the brother, father, mother and cousin of the deceased respectively), it becomes clear that the deceased faced cruelty and harassment at the hands of her husband (appellant no.2) which compelled her to commit suicide – However, these witnesses did not state that such cruelty and harassment was in connection with the demand for dowry – Trial Court raised a presumption u/s. 113B of Evidence Act to convict the appellants u/s. 304B of IPC – In the instant case, it has not been proved by the prosecution that the deceased was subjected to cruelty soon before her death in connection with the demand of dowry and hence it is not a case of dowry death u/s.304B of the IPC – After having considered all the relevant aspects of the matter, and the evidence of the prosecution, this Court is of the opinion that a case of abetment of suicide u/s.306 of IPC and cruelty u/s. 498A of IPC is made out against the appellant No. 2, although the offence u/s.304B is not made out and consequently, the conviction of appellant no.2 u/s.304B of IPC is set aside – With respect to the offences u/ss.306 and 498A, the appellant No. 2 is convicted and sentenced to undergo three years of rigorous imprisonment and a fine of Rs. 25000/- on each count – Also, appellant no.1 is acquitted for all the offences. [Paras 4, 9]

Case Law Cited

Charan Singh alias Charanjit Singh v. State of Uttarakhand [2023] 3 SCR 511 **: 2023 SCC OnLine SC 454;** *Rajinder Singh v. State of Punjab* [2015] 2 SCR 835 **: (2015) 6 SCC 477;** *State of Madhya Pradesh v. Jogendra & Anr.* [2022] 2 SCR 295 **: (2022) 5 SCC 401 – referred to.**

List of Acts

Penal Code, 1860; Evidence Act, 1872.

List of Keywords

Section 498A of Penal Code, 1860; Section 304B of Penal Code, 1860; Section 306 of Penal Code, 1860; Presumption u/s. 113B of Evidence Act; Matrimonial house; Marital discord; Cruelty; Suicide by hanging; Dowry; Harassment.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1556 of 2013

From the Judgment and Order dated 29.06.2012 of the High Court of Calcutta in CRA No. 414 of 2009

Appearances for Parties

Ms. Arundhati Katju, Ms. Shristi Borthakur, Ms. Ritika Meena, Ms. Pinki Aggarwal, Sailesh Kumar Gupta, Mrs. Priya Puri, Advs. for the Appellants.

Srisatya Mohanty, Ms. Astha Sharma, Abhijit Pattanaik, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Order

1. The appellants have been convicted under Sections 498A, 304B and 306 read with Section 34 of the Indian Penal Code. The Trial Court had convicted sister-in-law (appellant no.1), husband (appellant no.2) and mother-in-law of the deceased and sentenced them to suffer life imprisonment, 3 years R.I and 10 years R.I for offences under Sections 304B, 498A and 306 of IPC respectively, along with fine and other default stipulations. Both the conviction and the sentence of the present appellants have been upheld in appeal and the High Court has dismissed the appeal. During the pendency of the appeal, one of the appellants i.e. appellant no. 3 (Sova Rani Karmakar, the mother-in-law of the deceased) had passed away and the case against her stands abated.

2. The brief case of the prosecution is as follows:

   The deceased, Sonali Karmakar, and the appellant No. 2, Samir Karmarkar were married in March 2003, and out of the wedlock, there is a son who was born on 4.9.2004 (Now 20 years of age). On 2.5.2006 the deceased committed suicide by hanging herself in her matrimonial house. The deceased was alone at the time of the incident and the appellant No. 2, the husband was not even in the house at the time of the incident. The appellant no. 2 was informed and the deceased had been taken to the Krishnanagar hospital

where she was declared dead. An inquest report was conducted at the hospital and a post-mortem was conducted on 03.05.2006 by Dr. Ajit Kumar Biswas (PW-15). Post-mortem report shows that there were ligature marks around the neck of the deceased and the nature of the ligature marks shows that it is a case of suicide. Apart from the ligature marks, there were no other ante-mortem injuries on the body of the deceased. The report also showed that the deceased was 22 years of age at the time of her death.

An FIR was lodged by the brother of the deceased at Krishnaganj Police Station, Nadia on 07.05.2006 i.e. after 5 days of the incident, alleging that his sister i.e. the deceased was being harassed by her in-laws on demand of dowry made prior to her death. A case was registered under sections 498A/304B/34 and a chargesheet was filed. Thereafter, Trial Court vide order and judgment dated 5.6.2009 convicted the present appellants and mother-in-law under Sections 498A, 304B, 306 read with Section 34 of the Indian Penal Code. The case of the prosecution is that there was a harassment of deceased which was connected to the demand of dowry, which led the deceased to commit suicide.

3. Prosecution witnesses PW-1, 3 and 16 have all deposed that there was a demand of dowry about which they were informed when the deceased had come to her maternal house soon before her death. The learned counsel for the State would argue that there is evidence in the form of PW-4 that appellant no. 2 was also having an extramarital affair with another woman which led to frequent discord between the deceased and appellant no. 2 and this was another cause of her harassment.

The learned counsel for the appellants would, however, argue that this cannot be construed as a demand for dowry and would not come within the definition of dowry as defined under Section 2 of the Dowry Prohibition Act, 1961 which reads as under:

> "Definition of 'dowry' – In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly –
>
> (a) By one party to a marriage to the other party to the marriage; or

> (b) By the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,
>
> At or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dowry or *mahr* in the case of persons to whom the Muslim Personal Law (*Shariat)* applies."

The point which is made by learned counsel for the appellants would be that although a demand can be made either before or "any time after the marriage", it should be in connection with the marriage of the said parties. The counsel for the appellants further argued that the demand for dowry has not been fully established by the prosecution hence the death as occurred on 02.05.2006 cannot be termed as a dowry death.

4. We have heard arguments and counterarguments from both parties and have gone through the material on record. From the evidence which has been placed by the prosecution, there are certain facts that have been proved beyond any doubt which are:

   (i) That the deceased died within seven years of marriage;

   (ii) The death was by suicide in her matrimonial house; and

   (iii) There was harassment at the hands of her in-laws and particularly by the husband;

   (iv) And that there was marital discord between husband and wife.

5. As far as appellant no.1 (sister-in-law of deceased) is concerned, we are of the view that the prosecution has failed to place any credible evidence for the involvement of appellant no. 1 i.e. the sister of appellant no. 2 and sister-in-law of the deceased. Moreover, appellant no. 1 is a married woman and at the relevant point of time, admittedly, she was residing with her family at her matrimonial home. There is no specific evidence that has come in the form of any of the prosecution witnesses that may connect appellant no. 1 to the commission of the crime and the Trial Court as well as the appellate Court have not considered this aspect as it should have been considered on the weight of the evidence which was placed by the prosecution.

Now, the only question left to be determined is regarding the guilt of appellant no.2 (husband).

6. After going through the evidence of PW-1, PW-3, PW-4 and P-16 (who are the brother, father, mother and cousin of the deceased respectively), it becomes clear that the deceased faced cruelty and harassment at the hands of her husband (appellant no.2) which compelled her to commit suicide. However, these witnesses did not state that such cruelty and harassment was in connection with the demand for dowry. With respect to the demand for dowry, they have just made some general statements which are not sufficient to convict the appellants under section 304B of IPC.

7. Trial Court raised a presumption under section 113B of Evidence Act to convict the appellants under section 304B of IPC. The High Court did not go into the question of whether the trial court was right in relying upon section 113B of the Evidence Act.

In *Charan Singh alias Charanjit Singh vs. State of Uttarakhand 2023 SCC OnLine SC 454,* where there were allegations against the husband that he was subjecting the deceased therein on the demand of a motorcycle and some land, this Court in relation to Section 113B of Evidence Act and section 304B of IPC, had noted that:

> "21.....It is only certain oral averments regarding demand of motorcycle and land which is also much prior to the incident. The aforesaid evidence led by the prosecution does not fulfil the pre-requisites to invoke presumption under Section 304B IPC or Section 113B of the Indian Evidence Act.....
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> 22. XXXXXXX
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> 23. On a collective appreciation of the evidence led by the prosecution, we are of the considered view that the prerequisites to raise presumption under Section 304B and Section 113B of the Indian Evidence Act having not being fulfilled, the conviction of the appellant cannot be justified. Mere death of the deceased being unnatural in the matrimonial home within seven years of marriage will not be sufficient to convict the accused under Section 304B and 498A of IPC."

Similarly, in the case at hand, it has not been proved by the prosecution that the deceased was subjected to cruelty soon before her death in connection with the demand of dowry and hence we are of the opinion that this is not a case of dowry death under Section 304B of the Indian Penal Code. PW-1 and PW-3 had only stated that deceased used to tell them about her torture. PW-4 (mother of the deceased) did not speak about any demand of dowry after marriage. Moreover, this witness had said that appellant no.2 used to assault her deceased daughter as the deceased had objections to the illicit relation of appellant no.2 with another woman. PW-16, who is the cousin of the deceased, had deposed in court almost a year after the testimony of PW-1, 3 & 4 and his deposition regarding the physical assault of the deceased in connection with the demand of dowry is also not believable. Considering the aforesaid, in our view, the trial court erred in raising a presumption under Section 113B of the Indian Evidence Act, even though the demand for dowry was not established.

8. On the other hand, the learned counsel for the State of West Bengal would rely on two judgments of this Court, seeking appellants' conviction under Section 304B of IPC, both of which were decided by Three Judges' Bench of this Court: *Rajinder Singh vs. State of Punjab* (2015) 6 SCC 477 and *State of Madhya Pradesh v. Jogendra & Anr.* (2022) 5 SCC 401.

The facts in *Rajinder Singh (Supra)* were entirely different. In that case, the deceased had died due to consumption of poison and there were specific allegations against in-laws in the form of evidence from the deceased's father, who had given credible evidence that the in-laws were demanding money for the construction of the house. There was also evidence of giving a she-buffalo to pacify the in-laws. Father of the deceased therein further deposed how the Sarpanch and Ex-Sarpanch of their village went to the matrimonial home of the deceased for reconciliation where the father of deceased had promised to give money after harvest of crops.

Jogendra (Supra) was decided by taking into account the peculiar facts of that case where the evidence of PW-1 therein contained specific allegations of constant demand for dowry. It was stated that deceased was asked to raise Rs.50,000 for the construction of house.

He further stated that there was even an attempt by the 'people of society' to settle the matrimonial discord between the parties.

In paragraph 9 of *Rajinder Singh (Supra)*, this Court had discussed the ingredients of Section 304B of IPC as follows:

> "9. The ingredients of the offence under Section 304-B IPC have been stated and restated in many judgments. There are four such ingredients and they are said to be:
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> (*a*) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;
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> (*b*) such death must have occurred within seven years of her marriage;
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> (*c*) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and
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> (*d*) such cruelty or harassment must be in connection with the demand for dowry."

The evidence placed before us, in the case at hand, is not sufficient to prove the fourth ingredient i.e. cruelty or harassment in connection with the demand for dowry, as laid down by the abovementioned case.

9. All the same, having considered all the relevant aspects of the matter, and the evidence of the prosecution, we are also of the opinion that a case of abetment of suicide under Section 306 of IPC and cruelty under Section 498A of IPC is made out against the appellant No. 2, although the offence under Section 304B is not made out and consequently, we set aside the conviction of appellant no.2 under Section 304B of IPC. With respect to the offences under Section 306 and 498A, we convict the appellant No. 2 and sentence him to undergo three years of rigorous imprisonment and a fine of Rs. 25000/- on each count. Both the sentences shall run concurrently and in default of fine, he shall undergo further imprisonment of 3 months. Further, we direct that the fine payable shall be paid to the nearest relative of the deceased within a period of 3 months from today. The appellant no.2 shall surrender before the concerned Court within four weeks from today and undergo the remaining sentence.

Also, we allow the appeal with respect to appellant no. 1 by acquitting her for all offences in present case. As she is presently on bail, so she need not surrender.

The Appeal is disposed of accordingly.

Pending application(s), if any, shall stand(s) disposed of.

Result of the case: Appeal disposed of.

†*Headnotes prepared by:* Ankit Gyan