

Shanti and Another

Vs

State of Haryana

Criminal Appeal No. 368 of 1990

(S.R. Pandian, K. Jayachandra Reddy JJ)

13.11.1990

JUDGMENT

K. JAVACHANDRA REDDY, J.:-

1. This is a case of dowry death. The deceased by name of Smt. Kailash was the daughter of Hari Bhagwan, P.W. 1 of Jonala. She was married to one Sat Pal of Mundhaliya Village about 9 kilometres away from Jonala. The marriage took place on 18th April, 1987, Sat Pal the husband at the relevant time was serving in the Army. His father namely the father-in-law of deceased was employed in Railways. Accused No. 1 Smt. Shanti is the mother of Sat Pal, and the mother-in-law of the deceased. The other appellant Smt. Krishna wife of the brother of Sat Pal was another inmate. After marriage the deceased was living in her matrimonial home with accused Nos. 1 and 2, the two appellants herein. It is alleged that these two women were harassing the deceased all the while after the marriage for not bringing Scooter and Television as part of the dowry and she was treated cruelly. The marriage of one Munni, a cousin of the deceased was fixed for 30th April, 1988. Her brother went to Mundaliya village twice for bringing the deceased but the accused only taunted him and sent him away without sending the deceased. Ultimately, P.W. 1, the father himself went to the home of his daughter, the deceased on 25th April, 1988. The two appellants misbehaved with him saying that if he was fond of his daughter he ought to have arranged Scooter and Television as part of the dowry and he was insulted and pushed out of the house. On 26th April, 1988 at about 11 p.m. P.W. 1 came to know that the deceased had been murdered and was cremated by the two ladies with the help of another three persons. A report was given and the police could recover only bones and 'ashes. After investigation, the charge-sheet was laid.

2. The Additional Sessions Judge, who tried all the five accused convicted the appellants under Section 304B, I.P.C. and sentenced each of them to life imprisonment and under Section 201, I.P.C., sentenced them to undergo imprisonment for one year and to pay a fine of Rs. 2000/- each and also under Section 498-A, I.P.C. to two years rigorous imprisonment and to pay a fine of Rs. 3000 / -. The sentences were directed to run concurrently The other accused were acquitted. These two appellants preferred an appeal to the High Court and the same was dismissed. The High Court, however, set aside the conviction under Section 498-A, I.P.C. The present appeal, pursuant to the leave granted by this Court, has been preferred against the judgment of the High Court.

3. Mr. Lalit, learned counsel for the appellants submitted that there is no direct evidence in this case and that all the ingredients of an offence under Section 304B, I.P.C. are not made out. According to him, it is not conclusively proved that the two appellants subjected the deceased to cruelty or

harassment and the very fact that the High Court has acquitted the appellants of the offence punishable under Section 498-A would itself indicate that the prosecution case regarding cruelty is not accepted and consequently the death cannot be one of "dowry death". On merits, he submitted that in the absence of clear proof of the cause of death one cannot presume that the death occurred in unnatural circumstances.

4. Section 304B, I.P.C. reads as follows:

"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 a death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purposes of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961.

(2) Who ever 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."

This Section was inserted by the Dowry Prohibition (Amendment) Act, 1986 with a view to combat the increasing menace of dowry deaths. It lays down that 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 the death of the woman she was subjected to cruelty or harassment by her husband or his relations for or in connection with any demand for dowry, such death shall be called "dowry death" and the husband or relatives shall be deemed to have caused her death and shall be punishable with imprisonment for a minimum of seven years but which may extend to life imprisonment. As per the explanation to the Section, the "dowry" for the purposes of this Section shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 which defines "dowry" as follows:

"2. 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 parents 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 dower or mahr in the_ case of persons to whom the Muslim Personal Law (Shariat) applies."

Keeping in view the object, a new Section 113-B was introduce in the Evidence Act to raise a presumption as to dowry death. It reads as under :

"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 had 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."

One another provision which is relevant in this context is S. 498-A, I.P.C. which reads as under :

"498-A. Husband or relative of husband of a woman subjecting her to cruelty
Whoever being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation- For the purposes of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or any person related to her to meet such demand."

A careful analysis of S. 304B shows that this section has the following essentials :

"(1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;

(2) Such death should have occurred within seven years of her marriage;

(3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(4) Such cruelty or harassment should be for or in connection with demand for dowry."

Section 113B of the Evidence Act lays down that if soon before the death such woman has been subjected to cruelty or harassment for or in connection with any demand for dowry, then the Court shall presume that such person has committed the dowry death. The meaning of "cruelty" for the purposes of these sections has to be gathered from the language as found in S. 498-A and as per that section "cruelty" means "any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life etc. or harassment to coerce her or any other person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand." As per the definition of "dowry" any property or valuable security given or agreed to be given either at or before or any time after the marriage, comes within the meaning of "dowry". With this background of the provisions of law we shall examine the facts in the instant case.

5. Both the Courts below have held that the two appellants did not send the deceased to her parent's house and drove out the brother as well as the father of the deceased complaining that scooter and television have not been given as dowry. We have carefully examined this part of the prosecution case and we are satisfied that the prosecution has established beyond all reasonable doubt that the appellants treated the deceased cruelly and the same squarely comes within the meaning of "cruelty" which is an essential, under S. 304-B and that such cruelty was for demand for dowry. It is an admitted fact that death occurred within seven years of the marriage. Therefore three essentials are satisfied. Now we shall see whether the other essential namely whether the death occurred otherwise than under normal circumstances is also established? From the evidence of P.W. 1, the father, P.W. 2 the brother, and P.W. 3 the mother, it is clear that they were not even informed soon about the death and that the appellants hurriedly cremated the dead body. Under these circumstances, the presumption under S. 113B is attracted. The accused examined defence witnesses to rebutt the presumption and to show that the deceased suffered heart-attack. We have examined the evidence of D.Ws. 2 and 3 and we agree with the Courts below that this theory of natural death cannot be accepted at all. No material was placed to show that the deceased suffered any such attack previously. if it was natural death, there was no need for the appellants to act in such unnatural manner and cremate the body in great and unholy haste without even informing the parents. Because of this cremation no postmortem could be conducted and the actual cause of death could not be established clearly. There. is absolutely no material to indicate even remotely that it was a case of natural death. It is nobody's case that it was accidental death. In the result it was an unnatural death; either homicidal or suicidal. But even assuming that it is a case of suicide even then it would be death which had occurred in unnatural circumstances. Even in such a case, S. 304B is attracted and this position is not disputed. Therefore, the prosecution has established that the appellants have committed an offence punishable under S. 304B beyond all reasonable doubt.

6. Now we shall consider the question as to whether the acquittal of the appellants of the offence punishable under S. 498-A makes any difference. The submission of the learned counsel is that the acquittal under S. 498-A, I.P.C. would lead to the effect that the cruelty on the part of the accused is not established. We see no force in this submission. The High Court only held that S. 304D and S. 498-A, I.P.C. are mutually exclusive and that when once the cruelty envisaged in S. 498-A, I.P.C. culminates in dowry death of the victim, S. 304B alone is attracted and in that view of the matter the appellants were acquitted under S. 498 A, I.P.C. It can therefore be seen that the High Court did not hold that the prosecution has not established cruelty on the part of the appellants but on the other hand the High Court considered the entire evidence and held that the element of cruelty which is also an essential of S. 304B, I.P.C. has been established. Therefore the mere acquittal of the appellants under S. 498-A, I.P.C. in these circumstances makes no difference for the purpose of this case. However, we want to point out that this view of the High Court is not correct and Ss. 304B and 498-A cannot be held to be mutually exclusive. These provisions deal with the two distinct offences. It is true that "cruelty" is a common essential to both the sections and that has to be proved-. The Explanation to S. 4.98-A gives the meaning of "cruelty". In S. 304B there is no such explanation about the meaning of "cruelty" but having regard to the common back- ground to these offences we have to take that the meaning of "cruelty or harassment" will be the same as we find in the explanation to S. 498-A under which "cruelty" by itself amounts to an offence and is punishable. Under S. 304B as already noted, it is the "dowry death" that is punishable and such death should have occurred within seven years of the marriage. No such period is mentioned in S. 498-A and the husband or his relative would be liable for subjecting the woman to "cruelty" any time after the marriage. Further it must also be borne in mind that a person charged and acquitted under S. 304B can be convicted u/ S. 498-A without charge being there, if such a case is made out. But from the

point of view of practice and procedure and to avoid technical defects it is necessary in such cases to frame charges under both the sections and if the case is established they can be convicted under both the sections but no separate sentence need be awarded under S. 498-A in view of the substantive sentence being awarded for the major offence under S. 304B.

7. These are all the submissions and we do not find merit in any of them. Therefore, we confirm the convictions.

8. Now coming to the sentences, accused No. 2, the wife of the husband's brother is a young lady of 20 years at the time of the trial. As already mentioned, there is no evidence as to the, because of death but as discussed above, the cruelty on the part of these two appellants is established but in bringing about the death, there is no evidence as to the actual part played by accused No. 2. Further both the appellants are women. Under these circumstances, a minimum sentence of seven years' rigorous imprisonment would serve the ends of justice. Accordingly the convictions are confirmed but the sentence of imprisonment for life under S. 304B, I.P.C. of each of the accused appellant is set aside and instead each of them is sentenced to undergo seven years' rigorous imprisonment. The appeal is disposed of accordingly.

Order accordingly.

</html