SUPREME COURT OF INDIA

Vidhya Devi

Vs.

State of Haryana

Crl.A.No.846 of 1997

(Doraiswamy Raju and S. B. Sinha JJ.)

20.01.2004

JUDGEMENT

D. Raju, J.

1. The above appeal has been filed against the decision dated 26-11-1996 of a learned single Judge of the Punjab and Haryana High Court in Criminal Appeal No. 180-SB of 1995, whereunder the conviction of the appellants under S. 304-B, I.P.C. and the sentence of seven years R.I. each, in addition to the payment of fine of Rs. 1,000/- each, came to be affirmed. The case of the prosecution was that the marriage of the deceased-Satyawati took place with A-5, Kuldeep, about six years prior to the date of occurrence; that they started living at Rohtak, i.e., at the house of her husband, who himself was living in joint family with his father A-4, Puran Mal, and others; that all the accused started harassing and torturing the deceased for want of more dowry and the manner of torture included even physical beating. About 1½ years after the marriage, the deceased gave birth to a male child and though her parental side brought certain gifts, the accused were not satisfied both with reference to their quality and quantity and on that also they tortured the deceased-Satyawati. On 27-7-1993, about four months before the death of Satyawati, a demand was made for a sum of Rs. 20,000/- as further dowry and for not complying with the demand, the deceased was not only tortured by physical beating but was said to have been locked in a room for four days from where she managed to escape and reached the house of her sister Krishna, in the same place. Thereupon, the sisters called their mother Misri Devi and a written complaint in Ex. PO was said to have been lodged with the Police through the Deputy Commissioner and on the said complaint, the husband and father-in-law of the deceased were arrested and taken to the Police Station. Both of them were said to have apologized to the complainant party and then a compromise was said to have been effected and reduced into writing as Ex. PO/1, which was also attested by the Police Officer in Ex. PO/2 and thereafter the deceased was brought back to the house of her-in-laws. About four months thereafter on 16-11-1993 at about 10.30 a.m. when the husband Kuldeep and father-in-law Puran Mal were away, the A-1, her mother-in-law by name Vidhya Devi, caught hold of the deceased by her hands on her back and Mina Devi, the daughter of Vidhya Devi, sprinkled kerosene on the deceased and then A-2, the son of A-1 and A-4 by name Harish Kumar, set her ablaze. After she caught fire, her

hands were said to have been freed on which she was said to have jumped into a water tank and raised alarm which attracted a front door neighbour by name Kalawati, who was said to be the eye-witness for the occurrence including the catching hold of hands by Vidhya Devi, sprinkling of kerosene by Mina Devi and setting her ablaze by Harish. Thereupon, those three accused were said to have pulled her out from the water tank and put her on a cot stating that no treatment will be given and she would, in the normal course, die of the burns. At that stage, the neighbour Kalawati was said to have approached the sister of Satyawati, by name Krishna, in the office of Deputy Commissioner, where Krishna was said to be working and she brought her mother Misri Devi from Jind and then Misri Devi was said to have taken the injured to the Medical College and Hospital, Rohtak.

2. The Medical Officer was said to have sent an information to the Police Station of the admission of Satyawati in the Hospital as a burn case and when the Police Officer went to the Hospital after collecting the necessary information, the Medical Officer attending on her appears to have opined that she was not fit to make the statement and when in the evening the Police Officer again contacted the Doctor with a written request Ex. PC, he obtained his opinion and that she was declared to be fit to make the statement. When the Police Officer contacted the Magistrate to record a dying declaration of the injured, the Magistrate seems to have declined stating that the Police Officer must first register the case and at that stage the Police Officer contacted the injured Satyawati and recorded Ex. PD, the statement, in the course of investigation to the effect that all the five accused had been harassing her for want of more dowry and that she was set ablaze by the three accused, noticed above. The victim ultimately died at 11.30 a.m. on 20-11-1993. After completing the formalities of the investigation such as FIR, recording of statement, inspection of the place of occurrence, inquest and conduct of post-mortem and obtaining Medico Legal Opinion, the five accused, noticed above, were charged under Ss. 498-A, 304-B, 302 read with S. 34 of I.P.C. In support of the prosecution case, about 14 witnesses were said to have been examined, which included the Investigating Officers, P.W. 11 who claimed to be an eye-witness to the occurrence, P.W. 13 the mother of the victim, the Doctors who attended on her and the Doctor who conducted the post-mortem examination. For the defence, two witnesses were examined, besides examination of the accused under S. 313, Cr. P.C. and on consideration of the materials on record, the learned trial Judge by his judgment dated 9-2-1995 in Sessions Case No. 15 of 1994 convicted the appellants for offence punishable under S. 304-B, I.P.C. on the view that there was direct and substantial evidence against them though in respect of the other offences these accused and the remaining three accused in respect of all offences were found not guilty. The challenge made to the veracity and validity of the dying declaration recorded by the Investigating Officer was also repelled by the learned trial Judge.

3. Aggrieved, the appellants pursued the matter on appeal and as noticed above, the High Court affirmed the conviction and sentence recorded by the learned trial Judge.

4. The learned counsel for the appellants strenuously contended, while reiterating the stand taken before the Courts below, that the neighbour by name Kalawati, who claimed to be an eye-witness to the occurrence, could not be believed as having been present at that time at the place of occurrence and that the other materials on record were not sufficient to bring

home the guilt of the accused. It was also contended that in the light of the acquittal of the other accused, the same norms and standards of appreciation should have been extended while considering the case of the appellants as well and they should have been also acquitted. While attacking the dying declaration Ex. PD, which was really the statement of deceased recorded by the Police Officer on 17-11-1993 in the presence of the Medical Officer attending on the patient, it was contended that having regard to the nature and extent of the burns the deceased could not have been in a fit and proper condition to give the statement or sign the same and in any event the so-called statement was not shown to have been recorded in the presence of the Doctor. The authenticity of the statement was also challenged on the ground that it was a got up statement and not really one made in the normal course and no reliance can be placed on the same. The further plea on behalf of the appellants was that the requirements of S. 304-B have not been properly substantiated to warrant conviction of the appellants under the said provisions of law. Per contra, the learned counsel for the respondent-State justified the judgments of the Courts below by adopting the reasoning of the learned Judges in the Courts below.

5. We have carefully considered the submissions of the learned counsel appearing on either side. In our view, the acquittal of the other accused, except the appellants, on the ground of absence of any direct and substantial evidence against them cannot be relied upon as basis for a claim to project the case for acquittal of the appellants against whom and as to the role played by them there were ample materials as noticed, analysed and ultimately found the appellants guilty. The strained relationship between parties and also the harassment of the deceased for not bringing further dowry and not complying with the demands made on the deceased stood sufficiently substantiated on the basis of the indisputable material in the shape of complaint before the Police therefor as well as the compromise which came to be signed also by Puran Mal, Bimla (the in-laws of the deceased) Krishna, Vidhya Devi as well as by Om Prakash, Jagdamba, Raghbir Singh, Pawan Kumar, Bhupinder Kumar and attested by the Police Officer also. So far as the challenge made to the dying declaration recorded, though no doubt by the Police Officer concerned, the evidence of PW-3, Dr. Krishan Kumar, who not only opined that the deceased was in a fit state of mind to make the statement but present when the statement was recorded and that the said statement was signed by the deceased Satyawati in token of its correctness adds credibility to the same and consequently involvement of the accused-appellants and the respective role played by them in having the deceased killed, remains firmly established by concrete and sufficient material and the findings in this regard concurrently arrived at by both the Courts below are not shown to suffer from any infirmity whatsoever to call for our interference.

6. So far as the contention raised on the scope and applicability of Section 304-B, IPC, to the case on hand and as to the facts found established are concerned, it may be seen that Section 304-B, IPC, was mainly introduced having regard to the increasing menace of dowry deaths by burns and bodily injury or otherwise than under normal circumstances and the insufficiency of the existing provisions of law to combat them effectively and also with the laudable object of curbing the menace of dowry deaths with a firm hand. In order to attract Section 304-B, IPC, the Court must be satisfied that (i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances; (ii) such

death must have occurred within seven years of her marriage; (iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband; (iv) such cruelty or harassment must be for or in connection with demand for dowry; and (v) such cruelty or harassment is shown to have been meted out to be woman soon before her death meaning thereby the proximity in point of time and not too remote or stale in point of time and relevance. The legislature has also taken care to enact a statutory presumption as to dowry death by inserting Section 113B to the Indian Evidence Act, 1872 to the extent that 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 has 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. The materials on record in this case amply prove, as noticed supra, that soon before her unnatural death, which took place within seven years of her marriage, she was subjected to cruelty and harassment both for and in connection with a demand for dowry and that the facts brought on record further prove the existence of a proximate and live link between the effect of cruelty related to dowry demand and the concerned death. The expression 'soon before' is a relative term which requires to be construed in the context of specific circumstances of each case and no hard and fast rules of any universal application can be laid down by fixing any time limit.

7. What is the periphery of the word 'Dowry' came to be considered by this Court in the decision in *Pawan Kumar and others v. State of Haryana*[1] and in the teeth of the extended definition and meaning of the term as brought about by the *Criminal Law (Second Amendment) Act, 1983* (Central Act 46 of 1983) w.e.f. 19-11-1986 the earlier meaning confining and limiting the same to the time at or before the marriage got enlarged and extended even to the period after the marriage and that there be no need to also show any agreement for the payment of such dowry to make it punishable as an offence. The plea on behalf of the appellants to the contrary does not merit to be countenanced in our hands.

8. For all the reasons stated above, we find no merit in the challenge to the conviction of the appellants and the sentence also cannot be said to be so unreasonable as to call for our interference in this appeal. The appeal fails and shall stand dismissed.

Appeal dismissed.

[1]*(1998) 3 SCC 309*