

Rammurti & Another

v.

State of M.P

(Supreme Court Of India)

HON'BLE MR. JUSTICE H.L. DATTU HON'BLE MR. JUSTICE ANIL R. DAVE

Criminal Appeal No. 1171 Of 2003 | 21-03-2012

1. This appeal is directed is directed against the judgment & order passed by the High Court of Madhya Pradesh in Criminal Appeal No.102 of 1991 dated 24.01.2003. By the impugned judgment & order, the High Court has reversed the findings & the conclusion reached by the learned Sessions judge, who had acquitted the appellant from charges under Section 304-B, 498-A, 306 & 201 of the Indian Penal Code ('the IPC' for short) & under Section 4 of the Dowry Prohibition Act, 1961 (the "Act" for short).

2. In this appeal, we have Rammurti (A2) & Chandrabhan Singh (A.4) as appellants before us. They are calling in question the judgment & order passed by the High Court of Madhya Pradesh convicting them & sentencing them under Section 304-B of the IPC.

3. The case of the prosecution which has been substantially accepted by the High Court runs as under:-

a. Rammurti is the husband of the Raj Kumari (deceased). Chandrabhan Singh is the younger brother of Rammurti. The marriage between Rammurti & the deceased was solemnised on 10.05.1984. Her death has taken place on 21.05.1987, viz., within seven years from the date of the marriage

b. The Death of Raj Kumari, under the suspicious circumstance, was brought to the notice of the jurisdictional police authorities by one Sri. Mansingh, chowkidar of the village. In his information of the police, he had specifically stated that on his way back to home from his daughter-in law's place, he was

told by one Mr. Pratap Sing, that wife of Rammurti has expired. He has also stated that Pratap Singh did not tell him about the cause of the death of rammurti's wife. He does not stop there. He continues by adding that Pratap Singh had told him that the wife of Rammurti was being cremated.

c. Based on the information so furnished, the investigation agency had carried on the investigation by seizing the burnt has, blood-stained soil & other reminiscences that were at the place where the deceased was cremated.

d. After cremation of the body of the deceased by Rammurti, Chandarbhan Singh & others, information was sent to the parents of the deceased who were living at a distance of but 100 kms. After coming to know about the death of her daughter, PW-9, who is none other than the father of the deceased, had requested his elder brother to go over to the place of the deceased & to find out the cause of the death of the deceased. The information was also furnished to PW-10, who is none other then the mother of the deceased.

e. Since PW-9's brother did not return from the place of the deceased, P.W-9 was constrained to go to the village of the deceased. After coming to know the cause & the manner of the death of the deceased, PW-9 lodged the police complaint before the jurisdictional police authorities.

4. After investigation, the police charge- sheeted Rammurti, Chandrabhan Sing young brother of the accused & other close relatives of Rammurti.

5. Since the offence was triable by the Sessions Judge, the Learned Magistrate placed the case before the learned Sessions Judge for trial. Learned judge, on the basis of the allegations made in the charge-sheet, framed the charges under Section 304-B read with Section 498-A, & in the alternate, under Section 306 & 201 of the IPC, & under Section 4 of the Act which appellants denied. Since the accused persons did not plead guilty, learned judge commenced the trial.

6. In order to prove the charges, the prosecutions examined 18 witnesses in support of their case. The accused persons did not lead any evidence, whatsoever. The learned Sessions Judge, after recording the statement of the accused persons under Section 313 of the Code of Criminal Procedure, after considering the evidence on record, has come to the conclusion the prosecution has failed to prove the charges against accused person &, accordingly, acquitted the accused.

7. The State, being aggrieved by the order so passed by the learned Sessions judge, had carried the matter in appeal before the High Court.

8. The High Court, after perusing the entire evidence on record, found it fit not to accept the conclusion of acquittal arrived by the learned Sessions Judge with regard to acquittal of the present accused, namely Rammurti & Chandrabhan Singh. Accordingly, has passed & order convicting the appellants under Section 304-B of the IPC & sentencing them 7 years of rigorous imprisonment.

9. Feeling aggrieved by the judgment of conviction & of sentence passed by the High Court, the present appellants-accused are before us.

10. Shri. Varinder Kumar Sharma appears for the appellant & Ms. Vibha Datta Makhija appears for the State, Shri, Sharma principally urges three points: firstly, that there is a discrepancy & material contradiction in the evidence adduced by the prosecution in support of its case, Secondly, he contends that the ingredients borne out in Section 304B of the IPC are & made out as against the appellant. Thirdly, Shri. Sharma states that it appears on the record that the prosecution never alleged harassment of the deceased for the dowry prior to giving their testimony in the trial.

11. Shri. Sharma took us through the evidence of brother of deceased (PW.4), father of deceased (PW9) & the mother of deceased (PW 10) & state that the allegation of the dowry harassment has been stated for the first time in their evidence before the Trial Court & no any time earlier. He further, submits that there is no evidence on record to suggest that the deceased was, at any time, harassed by the appellants for dowry. Shri. Sharma also emphasises on the

unnatural conduct of the father of the deceased (PW.9), when he was informed about the unnatural death of the deceased, he chose not to visit to the place of the deceased but had asked his elder brother to enquire about the cause of the death of the deceased. In support of his submissions, Shri, Sharma pointed out from the evidence on record & also relied on the dicta of this Court.

12. Per contra Ms. Vibha Dutta Makhija, would refer to Section 304-B of the I PC & Contend that for the application of 304-B, the following conditions are required to be met- a) that there should be a death of a woman which should be a death of a woman which should be caused by a burn or bodily injury or under any other suspicious circumstances. b) Such death should be caused within 7 years of her marriage. c) It should be shown that soon before her death she was subject to cruelty or harassment by her husband or his relatives. d) Such harassment must be with regard to the demand of dowry. Further, Ms.Makhija contends, that, if these 4 ingredients are present, then, by virtue of Section 113B of the Indian Evidence Act, there is a presumption against the accused, Ms. Makhija also brought to out notice that the deceased was married to Rammurti on 10th May, 1984, however, she visited her matrimonial house twice, after the performance of ceremony of ‘Gona’ on 14.3.1986, till her death. Ms. Makhija takes us through the Statement recorded under Section 161 of the Code to counter the arguments of Shri. Sharma that there was no allegation of demand for dowry.

13. It has come out in the evidence of Keshav Singh (PW 4), the brother of the deceased that the accused-Rammurti had come to their house on more than one occasion demanding for a TV & a Motor Cycle in dowry. He also testified that about 5-6 days, prior to the death of the deceased, he along with Sayeed Khan (PW-5) went to the house of the deceased where the deceased told him, in the presence of Sayeed Khan that the accused use to beat her for dowry & also threatened to kill her, if the demands were not satisfied. The same is corroborated by Sayeed Khan. It has come out in the evidence of Baldebhan Singh (PW 9), the father of the deceased that at the time of ‘Gona’ the accused-Rammurti had demanded a TV & a Motor Cycle as dowry & there were altercation with regard to this. He also mentioned a letter that the deceased has written alleging the harassment for the dowry. He also testified that when he got the news of the death of her daughter, he requested his elder brother to find out as to what had happened, he has also stated that he had never lodged the complaint with regard to harassment for dowry.

14. Kusum Bai, the mother of the deceased (PW 10) has testified that the accused demanded a TV & a Motor Cycle as dowry & when the deceased had returned home after 'Gona' Ceremony, the deceased informed her that Rammurti has assaulted her for non fulfillment of dowry demand. She has state that when the deceased came to visit her paternal house for the second time after the 'Gona' she war again threatened, by appellants, to fulfil the demand of dowry or face death. She also testified that altercation had taken place with regard to demand for dowry between her husband & the appellants.

15. Shri, Bharat Singh (PW11), uncle of deceased has testified that he was aware of the dowry demand made by the accused & the latercation between the accused & his brother, the father of the deceased (PW 9). He state that the deceased had even complained to him of the demand for dowry & torture that she was subject to, in that regard. He further stated that his brother (PW 9), on information from Parmal (accused before Trial Court) about the death of Raj Kumari, was asked to go & enquire as to what has happened. He further stated that he reached village Sawan & that on reaching there, accused persons asked him to write that he does not suspect any body.

16. On perusal of the statement under Section 161 of PW4. PW9 & PW10, we find that it is clear from the record that there was demand of dowry &, also there use to the altercation amongst the deceased & appellants, even prior to the recording of evidence in the trial. Therefore, in our opinion, Shri. Sharma's submission that the case was improved in the trial is devoid of merit.

17. It has been sufficiently established, before us, that the death of the deceased was caused under mysterious circumstances & not under normal circumstances. She died within 7 years of her marriage & there is enough evidence to substantiate that she underwent persistent cruelty & harassment meted out by her husband as well as by his parents in connection with demand for dowry, & in particular the demand for a TV & a Motor Cycle. One these facts stand established a presumption arises under Section 304-B IPC that it is a case of dowry death, & that her husband or relatives who subjected her to cruelty & harassment shall be deemed to have caused her death. Undoubtedly, it is a rebuttable presumption, but in the absence of any evidence in rebuttal, the Court may, with the aid of the presumption convict the accused of that charge.

In the present case, the defence has not proved by way of evidence, that, the death was not caused by them, or that the death took place in the normal course on account of any accident or ailment suffered by the deceased or the death took place in a manner with which they were not at all connected &, thereby, failed to rebut the presumption that arises under Section 304-B of IPC.

18. In *Yahsoda v. State of M.P.* (2004) 3 SCC 98, this Court has observed the once the ingredients or conditions of Section 304-B are satisfied or stand established in view of the facts of the matter, then the presumption will operate against the accused that they have caused the death. Thereafter, it is for the defence to rebut the presumption that arise under Section 304-B of IPC, by adducing the evidence. This Court has held thus:

“13. Once the prosecution proves the facts which give rise to the presumption under Section 304-B IPC, the onus shift to the defence & it is for the defence to produce evidence to rebut that presumption. The defence may adduce evidence in support of its defence or may make suggestions to the prosecution witnesses to elicit facts which may support their defence. The evidence produced by the defence may disclose that the death was not caused by them, or that the death took place in the normal course on account of any ailment or disease suffered by the deceased or that the death took place in a manner with which they were not at all connected. In the instant case if the defence wanted to prove that the deceased had suffered from diarrhoea & vomiting & that result in her death, it was for the defence to adduce evidence & rebut the presumption that arose under Section 304-B IPC. The defence could have examined the doctor concerned or even summoned the record from the hospital to prove that in fact the deceased has suffered such ailment & had also been treated for such ailment.”

19. As we have noticed above, the deceased was a young girl & there is no evidence even to suggest that she was suffering from any ailment. Fifteen days before her death she had gone to her matrimonial home in good health. Suddenly one day her parents came to know that she had died. Her death was therefore, clearly in circumstances which cannot be considered to be normal. If she had really died a natural or accidental death, the appellants were the best persons to disclose the relevant facts which were solely within their knowledge. Indeed when all the conditions of Section 304-B were fulfilled & a presumption

arose against the appellants they were required to rebut that presumption in order to successfully defend themselves. They did not do so. The evidence of DW 1 has been rightly discarded by the Courts below. In these circumstances & in the absence of any acceptable evidence whatsoever, to suspect that the death may have been accidental or on account of the natural causes, will be speculative. Law does not permit a Court to speculate or conjecture so as to imagine events about which there is absolutely no evidence on record. The manner in which the dead body was disposed of at night has further added to the incriminating circumstances proved against the appellants.”

19. Shri. Sharma has laid emphasis on the unnatural conduct of father of deceased (PW 9) of sending his brother, instead of going himself, to enquire about the incident, though we find this conduct may not be nature for a father, yet in the light of overwhelming evidence, we do not propose to engage ourselves to explain this conduct. Perhaps the reason for this was the illness of the mother of the deceased (PW 10) which has come in the statement under Section 161.

20. Let us now look at the case cited by Shri. Sharma in aid of his arguments canvassed before us. Shri. Sharma relies on *Sunil Bajaj v. State of MP.* (2001) 9 SCC 417, in support of his argument that the ingredients of Section 304 are not satisfied in the facts of present case. It would be revellent to note the observation of this Court.

“5. In order to convict an accused for an offence under Section 304-B IPC, the following essentials must be satisfied:

(1) the death of a woman must have been caused by burns or bodily injury or other wise than under normal circumstances; (2) such death must have occurred within 7 years of her marriage; (3) soon before her death, the woman must have been death, the woman must have been subject to cruelty or harassment by her husband or by relatives of her husband; (4) such cruelty or harassment must be for or in connection with demand of dowry.”

21. We are afraid, that judgment relied on would assist Shri, Sharma, for the reason that it has come on the record in the instant case, the deceased had died in abnormal circumstances within 7 years of her marriage. Soon before her death she was subject to cruelty & this cruelty was in connection to the demand for dowry. In the case cited, there was no evidence of demand of dowry or subjecting the deceased to cruelty for or in connection with dowry.

22. Shri. Sharma also relied on *Subhash v. State of Haryana*, (2011) 2 SCC 715, in support of his argument that the case was improved in Court during the Trial. In that case the Court found that the significant or material facts had been omitted from the statements, recorded under Section 161, of the witness which came out later, during the evidence in the trial. However, we have perused the Statements under Section 161 in the present case & there is no such discrepancy.

23. Shri. Sharma also relies on *Sanjiv Kumar v. State of Punjab*. (2009) 16 SCC 487, in aid of his submission that the presumption under Section 113-B is not applicable as it stands rebutted in view of evidence on the record that there was no demand of dowry. In that case, this Court has held:

16. Having regard to the evidence on record, the question arises as to whether the prosecution has proved its case beyond reasonable doubt. Under Section 304-B IPC the prosecution is required to establish that the death was caused by any burn or bodily injury or occurred otherwise than under normal circumstances, that such death took place within seven years of the marriage, & that it is shown that soon before her death the woman was subject to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand for dowry. If these facts are established by the prosecution, the presumption under Section 113-B, Evidence Act, 1872, arises & the Court shall presume that such person who had subjected the woman to cruelty or harassment in connection with any demand for dowry shall be presumed to have caused the dowry death. The presumption that in such cases may be rebutted by the accused.

17. If the accused successfully rebuts the presumption by pleading & proving a probable defence, the presumption under Section 113-B stands rebutted & the prosecution must prove its case without the aid of such presumption. It must logically follow that in a case where such presumption arises, the evidence, oral,

circumstantial or documentary, adduced in defence be examined by the Court with a view to find whether the presumption stands rebutted. It is essentially a matter or rebutted. It is essentially a matter of appreciation of evidence.

In the decision cited, there was no case made out for the demand of dowry in view of evidence. Therefore, we are afraid, that case would not come to the afraid, the case would not come to the rescue of he appellants.

24. In view of the above, we do not find any infirmity in the impugned judgment & order passed by the High Court. Accordingly, appeals are dismissed. Let the appellants herein be taken into custody forthwith to serve out the remaining period of he sentence imposed by the High Court.

25. Ordered accordingly.

26. Appeal dismissed.