

TUMMALA VENKATESWAR RAO
v.
THE STATE OF ANDHRA PRADESH
(Criminal Appeal No. 552 of 2011)

DECEMBER 17, 2013

[SUDHANSU JYOTI MUKHOPADHAYA AND
S.A. BOBDE, JJ.]

Penal Code, 1860 – s.304B – Dowry death – Conviction of appellant-husband – Justification – Held: On facts, justified – Evidence that not only the appellant made demand of dowry alongwith other accused but that he specifically and individually also made such demand – Appellant entrusted the deceased the work of servant maid and used to beat her for dowry – Sufficient evidence to hold that deceased was subjected to cruelty and harassment by appellant in connection with demand for dowry soon before her death – Moreover, no exculpatory evidence led in defence so as to rebut the presumption enacted by s.113-B of the Evidence Act – Evidence Act, 1872.

Penal Code, 1860 – s.304B – Term “soon before her death” – Meaning of.

The appellant's wife died due to consumption of a poisonous substance. The Courts below convicted the appellant under Section 304-B IPC and sentenced him to 7 years Rigorous Imprisonment for causing dowry death of the deceased, and hence the present appeal.

Dismissing the appeal, the Court

HELD: 1. There is evidence that not only the appellant made a demand of Rs. 2,00,000/- along with other accused but that the accused specifically and

A individually made demand for dowry. In his deposition, PW-1 – father of the deceased, stated that the deceased had informed that the appellant used to beat her for dowry when the deceased first went to cohabit with him after five months. Even after her return to matrimonial house for the second time, he deposed that on 23.10.2003 when he went to invite the appellant and his daughter for Diwali Festival all the accused asked him to take away his daughter as he did not pay the dowry and they wanted to perform marriage of the appellant with another lady. The father (PW1) has specifically stated that the appellant himself did not accept the invitation but asked him to send his daughter with cash. It is soon thereafter that the deceased expressed her intention to commit suicide since she came back alone narrating the harassment made by the accused. There is similar evidence in the depositions of PW-3, the sister of the deceased, who has deposed that the deceased expressed her grief that her husband did not come for Diwali for want of Rs.2,00,000/-. Whereupon, the deceased wept and expressed her intention not to live. PW-5– the maternal uncle of the deceased, has also deposed that the deceased informed that A1-appellant continued to demand dowry. These specific allegations in respect of the demand by the appellant are apart from the various statements of the witnesses that the accused, which term include the appellant, harassed her even when she went to cohabit for the first time. The appellant entrusted her the work of servant maid and he used to beat her for dowry. In fact, the accused informed the family of the deceased their intention to marry another lady for higher dowry. In view of the beating and humiliation meted out by the appellant, this Court is satisfied that the deceased was harassed and treated with cruelty in connection with a demand for dowry. [Para 3] [577-B-H; 578-A]

H 2. The term “soon before her death” in Section 304B

IPC has been employed by Parliament to refer to cruelty or harassment which was meted out in proximity to the death that has to be considered as the cause of the death. The provision does not employ the term “at any time before” nor “immediately before” and must be construed according to its true import. In the present case, there is sufficient evidence to hold that the deceased had been subjected to cruelty and harassment by her husband in connection with demand for dowry soon before her death. Moreover, no exculpatory evidence has been led in defence so as to rebut the presumption enacted by Section 113-B of the Indian Evidence Act, 1872. [Paras 9, 11 & 13] [581-B-C; 581-D; 582-B-C]

Kailash vs. State of Madhya Pradesh (2006) 12 SCC 667: 2006 (7) Suppl. SCR 45 and *Hira Lal vs. State (Govt. of NCT), Delhi* (2003) 8 SCC 80: 2003 (1) Suppl. SCR 734 – relied on.

Case Law Reference :

2006 (7) Suppl. SCR 45 relied on Para 6

2003 (1) Suppl. SCR 734 relied on Para 7

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.552 of 2011

From the Judgment and Order dated 09.08.2010 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal No. 272 of 2007.

Nagendara Rai, Allanki Ramesh, Manju Jana, Shilpi Gupta, C.S.N. Mohan Rao, G. Madhavi, R. Chandrachud for the Appellant.

Suchitra H., Amit Nair, D. Mahesh Babu for the Respondent.

A The Judgment of the Court was delivered by

S. A. BOBDE, J. 1. This appeal has been preferred by the appellant against the Judgment of a learned Single Judge of the High Court of Judicature at Andhra Pradesh dismissing his appeal against conviction and sentence under Section 304-B of the Indian Penal Code [hereinafter referred to as "IPC"] for 7 years Rigorous Imprisonment for causing dowry death of the deceased - Neelima. His mother, his sister and her husband were acquitted of the same charge.

C 2. The prosecution case is that the appellant was married to Neelima on 12.02.2003. She went to cohabit with him after five months in July 2003 but returned within four days informing her family that the accused used to harass her physically and mentally both for want of Rs. 2,00,000/- as additional dowry.

D Gandham Anuradha @ Chinni - A3 and Thummala Sreelakshmi - A-4, the sister and brother-in-law of the appellant, took her back for Varalakshmi Viratam. She was again harassed for the same demand. So, the father - PW1, brought her back to his house. At home, the deceased - Neelima, expressed her intention to commit suicide. The father invited the appellant to his house for Diwali on 23.10.2003 but he refused to come. At about 7.30 p.m. when the family was celebrating the festival, Neelima consumed pesticide in her bed room. She was found there on the bed with the pesticide tin next to her. The family shifted her to Elect Critical Care Hospital but she died. The father reported the matter to the police, who registered a First Information Report. The next day, the police recovered the pesticide tin, the bed sheet and the towel. The Mandal Revenue Officer (MRO) examined the father, who gave his statement. Hence, the prosecution.

G 3. We have heard the parties and examined the record. Shri Nagendara Rai, learned senior counsel for the appellant, submitted that the other accused, namely, the mother - Thummala Satyavani - A2; the sister - Gandham Anuradha - H A3; and Thummala Sreelakshmi - A-4 (husband of A3) having

been acquitted on the same evidence, the accused is also A
entitled for such an acquittal, in view of the fact no specific
allegation that the appellant demanded dowry has been made,
such allegation having been made in general in respect of all B
the accused. As rightly pointed out by the learned counsel for
the prosecution, there is no merit in this submission since there
is evidence that not only the appellant made a demand of Rs.
2,00,000/- along with other accused but that the accused
specifically and individually made demand for dowry. In his
deposition, PW-1 - father of the deceased, stated that the
deceased had informed that the appellant used to beat her for C
dowry when the deceased first went to cohabit with him after
five months. Even after her return to matrimonial house for the
second time, he deposed that on 23.10.2003 when he went to
invite the appellant and his daughter for Diwali Festival all the
accused asked him to take away his daughter as he did not D
pay the dowry and they wanted to perform marriage of the
appellant with another lady. The father (PW1) has specifically
stated that the appellant himself did not accept the invitation
but asked him to send his daughter with cash. It is soon
thereafter that the deceased expressed her intention to commit
suicide since she came back alone narrating the harassment E
made by the accused. There is similar evidence in the
depositions of PW-3 - K. Sudha Rani, the sister of the
deceased, who has deposed that the deceased expressed her
grief that her husband did not come for Diwali for want of F
Rs.2,00,000/-. Whereupon, the deceased wept and expressed
her intention not to live. PW-5 - Kothapalli Satyanarayana - the
maternal uncle of the deceased, has also deposed that Neelima
informed that A1-appellant continued to demand dowry. These
specific allegations in respect of the demand by the appellant G
are apart from the various statements of the witnesses that the
accused, which term include the appellant, harassed her even
when she went to cohabit for the first time. The appellant
entrusted her the work of servant maid and he used to beat her
for dowry. In fact, the accused informed the family of the
deceased their intention to marry another lady for higher dowry. H

A In view of the beating and humiliation meted out by the appellant we are satisfied that the deceased was harassed and treated with cruelty in connection with a demand for dowry.

B 4. From the evidence, it appears that the appellant considered himself justified in making a demand for higher dowry because prior to this disastrous marriage someone had agreed to pay him Rs. 15,00,000/- for marrying his daughter, which he had given up on seeing the deceased Neelima, and agreeing to marry her only for Rs.5,00,000/-.

C 5. It was next contended by Shri Rai that the so called harassment for dowry was not shown to have been made immediately before the death of Neelima as required by law for conviction. It is too late in the day to accept this contention since the term "soon before her death" has been consistently held by this Court not to mean immediately before the death.

D 6. This Court in the case of *Kailash versus State of Madhya Pradesh* (2006) 12 SCC 667 : AIR 2007 SC 107 has observed as under:

E "No presumption under Section 113-B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty or harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the victim. This is so because the expression used in the relevant provision is "soon before". The expression is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. The expression is pregnant with the idea of proximity test. It cannot be said that the term "soon before" is synonymous

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with the term "immediately before". This is because of what is stated in Section 114 Illustration (a) of the Evidence Act. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link [see *Hira Lal v. State (Govt. of NCT), Delhi*]."

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7. This Court in the case of *Hira Lal versus State (Govt. of NCT), Delhi* (2003) 8 SCC 80 has observed as under:

"A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304-B IPC and

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A Section 113-B of the Evidence Act is present with the idea
of proximity test. No definite period has been indicated
and the expression "soon before" is not defined. A
reference to the expression "soon before" used in Section
114 Illustration (a) of the Evidence Act is relevant. It lays
B down that a court may presume that a man who is in the
possession of goods "soon after the theft, is either the thief
or has received the goods knowing them to be stolen,
unless he can account for their possession". The
C determination of the period which can come within the term
"soon before" is left to be determined by the courts,
depending upon facts and circumstances of each case.
Suffice, however, to indicate that the expression "soon
before" would normally imply that the interval should not be
D much between the cruelty or harassment concerned and
the death in question. There must be existence of a
proximate and live link between the effect of cruelty based
on dowry demand and the death concerned. If the alleged
incident of cruelty is remote in time and has become stale
enough not to disturb the mental equilibrium of the woman
concerned, it would be of no consequence."

E 8. Section 304-B, IPC, reads as follows:

"Dowry death.- (1) Where the death of a woman is
caused by any burns or bodily injury or occurs otherwise
F 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 death shall be called "dowry
death", and such husband or relative shall be deemed to
G 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 (28 of 1961).

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(2) Whoever 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.]

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9. It is obvious from this provision that the term "soon before her death" has been employed by the Parliament to refer to cruelty or harassment which was meted out in proximity to the death has to be considered as the cause of the death as held supra. The provision does not employ the term "at any time before" nor "immediately before" and must be construed according to its true import.

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10. The post-mortem report and the post-mortem observations of PW 10 - Dr. Rajani Kumari confirmed that the deceased/Neelima had died due to consuming poisonous Endosulfan.

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11. We thus find that in the present case there is sufficient evidence to hold that the deceased had been subjected to cruelty and harassment by her husband in connection with a demand for dowry soon before her death. We have arrived at this conclusion even after excluding allegations of cruelty and harassment to which the deceased was subjected during the first period of her cohabitation; after which she had returned.

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12. Shri Rai, the learned counsel referred to the evidence of PW-13 - G Sambamurthy, the Mandal Revenue Officer, who carried out the inquest under Section 174 of the Code of Criminal Procedure Code, 1973 [hereinafter referred to as "the Code"] and attacked the credibility of the evidence of PW-5, the maternal uncle of the deceased. According to Shri Rai, the evidence of Mandal Revenue Officer shows that PW-5 did not state that the deceased Neelima has told him about her travails or harassment in connection with the demand for additional dowry and that he had accosted the appellant and advised him to withdraw his demand of Rs. 2,00,000/-. It was argued that the statements of PW-5 to that effect are therefore false and the same must be discarded. Apart from the fact that there is

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- A a difference in a statement appearing in the deposition of an officer conducting an inquest and a statement recorded by the police under Section 161 of the Code, we find that even without the deposition of PW-5, there is sufficient reliable evidence on record to hold that the deceased was subjected to cruelty and harassment in connection with a demand for dowry.

13. It may be noted no exculpatory evidence has been led in defence so as to rebut the presumption enacted by Section 113-B of the Indian Evidence Act, 1872, which reads as follows:

- C "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.

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E Explanation.- For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code."

14. In the circumstances, we find there is no merit in the appeal and the same is hereby dismissed.

Bibhuti Bhushan Bose

Appeal dismissed.