

INDRAJIT SURESHPRASAD BIND & ORS.

v.

STATE OF GUJARAT  
(Criminal Appeal No. 613 of 2007)

MARCH 18, 2013

[A.K. PATNAIK AND SUDHANSU JYOTI  
MUKHOPADHAYA, JJ.]

*Penal Code, 1860 - ss.304B, 498A and 306 - Suicide by married woman - Conviction of appellants (husband and in-laws) - Justification - Held: Not justified - Letter allegedly written by victim to her brother (PW3) was the only evidence produced by the prosecution to prove that the appellants had subjected the victim to harassment and cruelty in connection with demand for dowry - But since there were grave doubts as to the whether the said letter was actually written by the victim or not, conviction of appellants only on the basis of the said letter would be unsafe - Prosecution unable to prove beyond reasonable doubt that the appellants subjected the victim to cruelty or harassment - Further, letter written by PW3 to the victim three weeks before the incident made it clear that PW3 was satisfied that the victim was living happily and was not being misbehaved with - No other material having come in evidence to establish that the appellants instigated the victim to commit suicide, it cannot be held that the appellants had in any way abetted the suicide by the victim.*

**The wife of appellant No.1 committed suicide by pouring kerosene on her body. She died out of burn injuries. It was alleged by the prosecution that appellant no.1 and his parents (appellant nos.2 and 3) had subjected the deceased to cruelty and harassment for dowry and had instigated her to commit suicide. The trial court convicted the appellants under Sections 304B,**

A 498A and 306 IPC. The conviction was affirmed by the High Court and, therefore, the present appeal.

Allowing the appeal, the Court

B HELD: 1. The letter dated 16-02-2004 allegedly written by the deceased (Ext. 49) to her brother (PW-3) from her matrimonial home at Ahmedabad is the only evidence produced by the prosecution to prove that the appellants had subjected the deceased to harassment and cruelty in connection with demand for dowry. But, this Court has grave doubts as to whether the said letter dated 16-02-2004 (Ext. 49) was at all written by the deceased to PW 3. The said letter dated 16-02-2004 is alleged to have been written by the deceased from Ahmedabad. However, PW3 has not stated in his evidence specifically that on 16-02-2004 the deceased was at Ahmedabad. Further, the evidence of DW1 supported by Ext. 44 makes it probable that the deceased was not at Ahmedabad but at Chaksiriya village in Bihar on 16-02-2004 when she is alleged to have written the letter (Ext. 49) alleging demand of dowry and ill-treatment by the appellants towards her. Moreover, from a reading of Ext. 49 which is in Hindi, it is found that at many places the author of the letter has used words in 'puling' instead of 'striling', which raises serious doubts as to whether the letter has been written by a woman or by a man. Since there are grave doubts as to whether the letter (Ext. 49) was actually written by the deceased or not, conviction of the appellants only on the basis of the said letter (Ext. 49) for the offences under Sections 304B, 498A and 306, IPC is unsafe. [Para 4] [935-H; 936-A-C, E-H]

G 2.1. Ext. 31, a letter dated 25-04-2004 is admitted by PW 3 to have been written by him from Chaksiria in Bihar to the deceased at Ahmedabad. From the contents of the letter dated 25-04-2004, it is clear that after talking to the deceased on telephone, PW3 was satisfied that the

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deceased was living happily and was not being misbehaved with. This letter is dated 25-04-2004 and was most proximate to 18-05-2004 when the deceased committed suicide by pouring kerosene on her body and this letter is evidence of the fact that the deceased was happy and was not being misbehaved with by anybody. This being the evidence, there are reasonable doubts in the story of the prosecution that the appellants had subjected the deceased to cruelty or harassment soon before her death. [Para 5] [937-A, F-G]

2.2. On a reading of Ext. 31, it is difficult for the Court to record a definite finding that there was a demand of Rs.33,000/- or Rs.43,000/- towards dowry as alleged by the State. In any case, even if there was such demand of dowry of Rs.33,000/- or Rs.43,000/-, mere 'demand of dowry' without proof of 'cruelty' or 'harassment' caused to the deceased by the appellants cannot make the appellants liable for the offences under Sections 304B, 498A or 306, IPC. [Para 6] [938-B-C]

3. To establish the offence of dowry death under Section 304B, IPC the prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the deceased to cruelty or harassment in connection with demand of dowry soon before her death. Similarly, to establish the offence under Section 498A, IPC the prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the victim to cruelty as defined in Clauses (a) and (b) of the Explanation to Section 498A, IPC. In the present case, the prosecution has not been able to prove beyond reasonable doubt that the appellants have subjected the deceased to any cruelty or harassment. Further, It is noticed from Ext. 31 written by PW 3 to the deceased on 25-04-2004 that after talking to the deceased on telephone, he was satisfied that she was living happily and was not

A being misbehaved with. No other material having come in evidence to establish that the appellants instigated the deceased to commit suicide, it is difficult to hold that the appellants had in any way abetted the suicide by the deceased on 18-05-2004. [Para 7] [938-D-G]

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 613 of 2007.

C From the Judgment & Order dated 04.12.2006 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 1822 of 2006 with Criminal Misc. Application No. 11771 of 2006.

Haresh Raichura, Saroj Raichura, Kalp Raichura, Ranvir Singh, Rajat Vats for the Appellants.

D Hemantika Wah, Pinky Behara, Shubhade Deshpande for the Respondent.

The Judgment of the Court was delivered by

E A.K. PATNAIK, J. 1. This is an appeal against the judgment dated 04-12-2006 of the Gujarat High Court in Criminal Appeal No. 1822 of 2006.

F 2. The facts very briefly are that Anitha @ Rinkudevi got married to the appellant No. 1 in the year 2002. Appellant Nos. 2 and 3 are the father and mother respectively of appellant No. 1. On 18-05-2004, Rinkudevi poured kerosene over her body and died out of burns. Her brother Munnakumar lodged a complaint on 21-05-2004 before the Assistant Police Commissioner, 'J' Division, Ahmedabad City in which he alleged that Rinkudevi had written to him that the appellants were harassing her since two years after the marriage for not bringing dowry such as table, chair, sofa set, bed, scooter, colour T.V. and along with the complaint he produced xerox copy of a letter dated 16-02-2004 said to have been written by Rinkudevi. In the complaint, Munnakumar further alleged that G H the appellants were using slangs against Rinkudevi and used

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to beat her and were giving physical and mental harassment to her for not bringing dowry and instigated her to commit suicide by sprinkling kerosene on her body. The complaint was registered as FIR and after investigation, a charge sheet was filed against the appellants under Sections 304B, 498A and 306 read with Section 114, IPC. A  
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3. At the trial, amongst other witnesses, Munnakumar was examined as PW3 and he proved not only his complaint (Ext. 25) but also the letter dated 16-02-2004 (Ext. 49) said to have been written by the deceased to him from Ahmedabad. The appellants led defence evidence through DW 1 who is said to have written a letter dated 23-02-2004 (Ext. 44) and the defence of the appellants was that the deceased was in Chaksiriya village with her brother's family in Bihar and was not at Ahmedabad on 16-02-2004 from where the letter (Ext. 49) is said to have been written by her to PW 3. The further case of the appellants in defence was that the deceased was a minor when she got married to the appellant No. 1 and she committed suicide because she wanted to remain with her parents in Chaksiriya village and did not want to live with the appellants at Ahmedabad. The Trial Court disbelieved the defence evidence and convicted the appellants under Sections 304B, 498A and 306, IPC on the basis of the evidence of PW 3 and Ext. 49 written by the deceased to PW 3 and Ext. 31 written by PW 3 to the deceased. The appellants challenged the findings of the Trial Court in the High Court in the Criminal Appeal, but the High Court maintained conviction of the appellants. C  
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4. After hearing Mr. Haresh Raichura, learned counsel for the appellants, and Ms. Pinky Behara, learned counsel for the State, at length, we find that besides Ext. 49, there is no other evidence of a prosecution witness to establish that the appellants had, in any way, subjected the deceased to cruelty or harassment. In other words, the letter dated 16-02-2004 alleged to have been written by the deceased (Ext. 49) to PW G  
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A 3 is the only evidence produced by the prosecution to prove that the appellants had subjected the deceased to harassment and cruelty in connection with demand for dowry. But, we have grave doubts as to whether the said letter dated 16-02-2004 (Ext. 49) was at all written by the deceased to PW 3 for various reasons. The said letter dated 16-02-2004 is alleged to have been written by the deceased from Ahmedabad. PW 3 has not stated in his evidence specifically that on 16-02-2004 the deceased was at Ahmedabad. On the other hand, DW 1 has stated in his evidence that on 15-02-2004, his wife and he had gone to Chaksiriya village which was the home of his wife and they stayed at Chaksiriya up to 21-02-2004 and everyday they used to meet Munnakumar (PW 3) and the deceased and PW 3 wanted to send the deceased to Ahmedabad but the deceased was not willing to go to Ahmedabad and she used to say that if she is sent to Ahmedabad, she will commit suicide. DW 1 has further stated in his evidence that he had written an inland letter dated 23-02-2004 (Ext. 44) to appellant No. 2 and he has also stated that the handwritings and signature in the letter marked as Ext. 44 were his. We find that Ext. 44 is an inland letter and bears the postal stamp of not only the post office of 'dispatch' in Bihar but also the post office of 'receipt' in Ahmedabad. The evidence of DW 1 supported by Ext. 44 thus makes it probable that the deceased was not at Ahmedabad but at Chaksiriya village in Bihar on 16-02-2004 when she is alleged to have written the letter (Ext. 49) alleging demand of dowry and ill-treatment by the appellants towards her. Moreover, from a reading of Ext. 49 which is in Hindi, we find that at many places the author of the letter has used words in 'puling' instead of 'striling', which raises serious doubts as to whether the letter has been written by a woman or by a man. Since there are grave doubts as to whether the letter (Ext. 49) was actually written by the deceased or not, conviction of the appellants only on the basis of the said letter (Ext. 49) for the offences under Sections 304B, 498A and 306, IPC is unsafe.

H 5. Coming now to Ext.31, we find that the letter (Ext. 31)

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is dated 25-04-2004 and is admitted by PW 3 to have been written by him from Chaksiria in Bihar to the deceased at Ahmedabad. Relevant portions from this letter (Ext. 31) are extracted hereinbelow:

"....."

The main reason for writing this letter is that since when you have gone (sic) I have been waiting for your letter. But unfortunately, I have not received even a single letter. But after talking to you on telephone, I am satisfied that this time you are living happily and not being misbehaved.

... ..

Further, I have to say that you have not to think anything about Rs.33,000/- as to from where your Bhaiya will manage the amount. Regarding it, I want to convey you that I have so much self confidence and high thinking that not to talk of Rs.33,000/-, I would have paid even Rs.43,000/- provided that you are alright. You should not face further problems. What more should I write. It is better to write less and understand more."

From the aforesaid contents of the letter dated 25-04-2004 of PW 3 to the deceased, it is clear that after talking to the deceased on telephone, PW 3 was satisfied that the deceased was living happily and was not being misbehaved with. This letter is dated 25-04-2004 and was most proximate to 18-05-2004 when the deceased committed suicide by pouring kerosene on her body and this letter is evidence of the fact that the deceased was happy and was not being misbehaved with by anybody. This being the evidence, there are reasonable doubts in the story of the prosecution that the appellants had subjected the deceased to cruelty or harassment soon before her death.

6. Learned counsel for the State, Ms. Pinky Behara, vehemently submitted that in Ext.31, there is also a mention that PW 3 will provide not just Rs.33,000/- but even Rs.43,000/-

A provided the deceased was alright so that the deceased did not face any problems. She submitted that this would show that there was some demand of dowry on PW 3 in connection with the marriage of the deceased. On a reading of Ext. 31, it is difficult for the Court to record a definite finding that there was a demand of Rs.33,000/- or Rs.43,000/- towards dowry. In any case, even if there was such demand of dowry of Rs.33,000/- or Rs.43,000/-, mere 'demand of dowry' without proof of 'cruelty' or 'harassment' caused to the deceased by the appellants cannot make the appellants liable for the offences under Sections 304B, 498A or 306, IPC.

7. To establish the offence of dowry death under Section 304B, IPC the prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the deceased to cruelty or harassment in connection with demand of dowry soon before her death. Similarly, to establish the offence under Section 498A, IPC the prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the victim to cruelty as defined in Clauses (a) and (b) of the Explanation to Section 498A, IPC. In the present case, the prosecution has not been able to prove beyond reasonable doubt that the appellants have subjected the deceased to any cruelty or harassment. Further, we have noticed from Ext. 31 written by PW 3 to the deceased on 25-04-2004 that after talking to the deceased on telephone, he was satisfied that she was living happily and was not being misbehaved with. No other material having come in evidence to establish that the appellants instigated the deceased to commit suicide, it is difficult for the Court to hold that the appellants had in any way abetted the suicide by the deceased on 18-05-2004.

8. For the aforesaid reasons, we set aside the impugned judgment of the High Court as well as the judgment of the Trial Court and allow the appeal. The appellants are on bail and their bail bonds are discharged.

B.B.B.

Appeal allowed.

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