

Dinesh Vs State of U.P.

Court: Allahabad High Court

Date of Decision: Oct. 9, 2015

Acts Referred: Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 162, 313

Dowry Prohibition Act, 1961 - Section 3, 4

Evidence Act, 1872 - Section 113A, 113-A

Penal Code, 1860 (IPC) - Section 304-B, 306, 498-A

Citation: (2015) 3 ACR 3181 : (2015) 11 ADJ 274 : (2016) 92 ALLCC 144

Hon'ble Judges: Om Prakash-VII, J.

Bench: Single Bench

Advocate: Satyaveer Singh, Yaseen and S.B. Singh, for the Appellant

Final Decision: Partly Allowed

Judgement

Om Prakash-VII, J.

Present appeal has been filed by the appellant Dinesh against the judgment and order dated 30.8.2011 passed by

Additional Sessions Judge/Special Judge (E.C. Act), Etah in Sessions Trial No. 407 of 2004 (State v. Hoti Lal and others) under Sections 498-A

, 304-B IPC and 3 /4 Dowry Prohibition Act, P.S. Kasganj, District Etah pertaining to case crime No. 339 of 2003 whereby the learned trial

Court has convicted and sentenced the accused-appellant for the offence under Section 498-A IPC to undergo three years rigorous imprisonment

and a fine of Rs. 1000/-, for the offence under Section 304-B IPC to undergo ten years rigorous imprisonment and for the offence under Section 4

of the Dowry Prohibition Act to undergo two years rigorous imprisonment and a fine of Rs. 1000/-. In default of payment of fine, appellant was

directed to undergo additional imprisonment. Prosecution story, in brief, is as follows:

On 28.10.2002, one Arun Kumar Singh (P.W. 4) son of Ajay Pal Singh resident of mohalla Chitragupt, Kasganj informed the local police through

an application Ex. Ka. 5 that in front of his house, there is the house of Hoti Lal, washer man. Hoti Lal and his family members had gone to the

Ghat for washing the clothes. On the day of incident, at about 9:00 a.m. in the morning, P.W. 4 saw the smoke coming out from the house of Hoti

Lal, whereupon P.W. 4 and other persons of the locality reached at the house of Hoti Lal and saw that Geeta Devi, aged about 20 years, wife of

Dinesh and the daughter-in-law of Hoti Lal, had committed suicide.

2. This information was entered into G.D. (Ex. Ka. 8) vide Rapat No. 27 dated 28.10.2002 at 11:45 a.m. S.S.I. Yogendra Pal Singh along other

police personnel reached at the spot and prepared the inquest report (Ex. Ka. 11) on the same day at 4:30 p.m. He also prepared the police

papers viz. challan nash (Ex. Ka. 13), letter to C.M.O. (Ex. Ka. 14), photo nash (Ex. Ka. 15) and sample seal. Keeping the dead body of the

deceased in a sealed cloth, it was sent for post-mortem through the constables.

3. Post-mortem on the body of the deceased was conducted on 29.10.2002 at 11:00 a.m. at District Hospital, Etah by Dr. Brijesh Rathore in the

presence of Dr. Pradeep Kumar Gupta (P.W. 6), who was posted as Child Specialist in District Hospital at that time. Dead body of the deceased

was brought by C.P. 252 Dharmendra Singh and C.P. 267 Jaggesh Babu in a sealed cover alongwith police papers for post-mortem. Time of

death was about one day. Deceased was of average built. Smell of kerosene oil was present over the body of the deceased. On examination,

following injuries were found:

Superficial to deep burn all over body. Hair were partially burnt. Tip of tongue was burnt. Margins of erythema were present at places.

Both the lungs, membranes, brain and liver were congested. Stomach was empty. In the opinion of the doctor, cause of death shown in the post-

mortem report (Ex. Ka. 5A) was due to shock as a result of ante-mortem injuries.

4. Later on, in the matter, P.W. 1, the informant Meena Devi, the mother of the deceased, moved an application under Section 156(3) Cr.P.C.

(Ex. Ka. 4) on 8.1.2003 before the Chief Judicial Magistrate, Farrukhabad alleging therein that her daughter Geeta had got married on 5.6.1997

with accused-appellant Dinesh. She had given sufficient dowry beyond her capacity in the marriage of her daughter, but from the very beginning,

the in-laws" of her daughter i.e. father-in-law, mother-in-law, devar, nanad were not satisfied with the dowry and used to taunt her and also used

to demand buffalo, T.V., golden ring, chain and scooter as dowry. Whenever her daughter expresses her inability, they beat her and caused cruelty

and harassment to her. This fact was narrated by the deceased on many occasions to the informant and her husband. On several occasions, the

husband of the informant alongwith other persons came at the in laws" house of the deceased and tried to conciliate the matter, but the accused

persons remained adamant on their demand. It was also mentioned that on many occasions, accused persons had beaten the deceased in her

parental house due to non-fulfillment of demand of dowry and told the informant to fulfill their demand. Lastly, they ousted her daughter from her

matrimonial house. At one point of time, informant and her husband warned the accused persons that they will take legal action against them, if they

would not leave the demand of dowry and would not stop harassing her daughter on account of demand of dowry. On 20.10.2002 at about 11:00

a.m., the father-in-law, mother-in-law, husband, nanad and devar of her daughter came at the house of the informant and told to send Geeta

(deceased) alongwith them and assured that the deceased will not be maltreated or harassed in future. They also told that they would not make any

further demand of dowry. Now their daughter will not make any complaint to them. On the assurance of the accused persons, informant sent her

daughter to her matrimonial house telling the accused persons to take back her daughter after two months, on which accused persons told her that

it is possible that she may come before two months. On 28.10.2002 at about 9:00 a.m., one Laxmi, the daughter of the informant's jeth, who was

married in the same village, telephonically informed that Geeta has burnt and died. On receiving the information, informant, her husband and other

family members reached at the in-laws' house of the deceased. They also moved a written report at the police station Kasganj, but the police did

not take any action against the accused persons, rather took the signatures of the informant and her husband on the blank papers alongwith the

photos and assured that their report will be registered and they will be intimated about the registration of the case.

5. It is also the case of the informant that when she came to know that local police was in connivance with the accused persons and the F.I.R. was

not lodged, then on 24.12.2002, she reached at Kasganj police station and came to know the conduct of the police. The local police and the

accused persons were threatening them. She was in apprehension of danger of live. Request was made to take legal action.

6. Concerned Magistrate, on the application under Section 156(3) Cr.P.C., vide order dated 21.1.2003 directed the concerned police to register

and investigate the matter.

7. On the basis of order passed on the application under Section 156(3) Cr.P.C., on 15.10.2003 at 19:00 hours, chick F.I.R. (Ex. Ka. 7) was

registered at the police station concerned. G.D. entry was also made as Ex. Ka. 8. Police inspected the spot, prepared the site plan (Ex. Ka. 9)

and interrogated the witnesses. After fulfilling the formalities, charge-sheet (Ex. Ka. 6) was submitted against the accused Hoti Lal, Smt. Jalshri,

Dinesh, Chhotey, Laxmi and Bhoori.

8. Concerned Magistrate took the cognizance in the matter and the case being exclusively triable by the Sessions Judge was committed to the

Court of Sessions for trial vide order dated 9.6.2004.

9. Upon considering the records and after hearing the submissions made on the side of the prosecution and also on behalf of the accused, charges

were framed for the offences under Sections 304-B , 498-A IPC and 3 /4 Dowry Prohibition Act against the accused persons. The accused

denied the charges, pleaded not guilty and claimed their trial.

10. In order to prove its case, prosecution examined P.W. 1 Meena Devi, the mother of the deceased (informant of the case), P.W. 2 Ramdeen,

the father of the deceased, P.W. 3 Smt. Laxmi Devi, the cousin sister of the deceased, P.W. 4 Arun Kumar Singh, who gave written information

to the police regarding the death of the deceased, P.W. 5 Rajesh, the cousin brother of the deceased, P.W. 6 Dr. Pradeep Kumar Gupta, in

whose presence the post-mortem was conducted, and P.W. 7 Circle Officer R.K. Singh, the investigating officer of the case.

11. Prosecution has also proved the compromise deed (Ex. Ka. 1), letters said to have been sent by the accused to P.W. 2 (Ex. Ka. 2), marriage

card (Ex. Ka. 3), application under Section 156(3) Cr.P.C. (Ex. Ka. 4), information given by Arun Kumar at initial stage (Ex. Ka. 5), post-

mortem report (Ex. Ka. 5A), chick F.I.R. (Ex. Ka. 7), G.D. Entry (Ex. Ka. 8) and site plan (Ex. Ka. 9).

12. After the completion of the evidence on the side of the prosecution, the accused were examined under 313 Cr.P.C. They stated the

prosecution evidence as false and reiterated their stand that they were not guilty of any offence. They specifically pleaded that the deceased was all

alone in the house at the time of incident. All the family members had gone to the Ghat for washing the clothes. Deceased committed suicide herself

as she was issue-less, therefore, she remained perturbed. Information was also given to the parents of the deceased. Inquest was also prepared in

their presence. No complaint was made at that time. The application under Section 156(3) Cr.P.C. was moved later on with ulterior motive, due

consultation and afterthought.

13. No oral or documentary evidence was adduced by the accused persons despite opportunity being given by the Court concerned.

14. The trial Court after hearing the parties and going through the record vide impugned judgment and order convicted and sentenced the accused-

appellant Dinesh for the offence under Sections 498-A , 304-B IPC and 4 Dowry Prohibition Act. The learned trial Court also came to the

conclusion that the charges under Sections 498-A , 304-B IPC and 3 /4 Dowry Prohibition Act as against the other accused namely Hoti Lal, Jal

Shree, Chotey, Laxmi and Usha were not proved beyond reasonable doubt and accordingly acquitted them of the above said charges.

15. No appeal on behalf of the State has been filed against the acquittal of the aforesaid accused persons, as has been stated at the Bar.

16. I have heard Sri Mohd. Yaseen and Sri S.B. Singh, learned counsel for the appellant and Sri Zafeer Ahmad, learned A.G.A. for the State.

17. Advancing arguments on behalf of the appellant, learned counsel submitted that the prosecution could not prove its case beyond reasonable

doubt. Offences under Sections 498-A , 304-B IPC and 4 Dowry Prohibition Act are not made out against the appellant from the prosecution

evidence, as the essential ingredients to constitute these offences were not proved. Similarly, the prosecution could not prove the factum of demand

of dowry. It was a clear case of suicide, as the deceased was issue-less and she remained perturbed, therefore she committed suicide. It was

further submitted that the First Information Report was lodged belatedly in this matter after a considerable period and no plausible explanation was

given regarding the delay. There are contradictory statements of the witnesses on the point of demand of dowry, cruelty and harassment caused to

the deceased. All the witnesses of fact have not supported the prosecution version, but the trial Court, on the basis of letter and compromise deed,

has illegally drawn inference against the appellant for committing the offence under Sections 498-A , 304-B IPC and 4 Dowry Prohibition Act.

The trial Court findings are perverse and illegal. The letters and compromise deeds relied on by the trial Court were never signed by the appellant.

It was further submitted that the trial Court committed grave error in convicting and sentencing the appellant for the aforesaid offences. Thus, the

judgment of the trial Court convicting and sentencing the appellant for the said offences could not be sustained in the eye of law. Lastly, it was

submitted that the appellant is languishing in jail for about five years.

18. Per contra, learned A.G.A. for the State argued that the accused-appellant himself had given assurance to the informant that he will not cause

any cruelty or harassment to the deceased, as is clear from Ex. Ka. 1 itself. All the essential ingredients were established by the prosecution. The

trial Court has rightly raised presumption for committing the offence under Sections 498-A , 304-B IPC and 4 Dowry Prohibition Act, as the

death of the deceased was due to burn injuries otherwise than under normal circumstances within seven years of her marriage. There is evidence

that accused-appellant was making demand of dowry persistently and in that connection he caused cruelty and harassment to the deceased soon

before her death. There is no illegality or infirmity in the impugned judgment and order.

19. The rival submissions made by the learned counsel for the parties were heard and this Court paid its anxious consideration to the same. The

materials available on record were also perused.

20. After close scrutiny of the entire evidence available on record and going through the finding recorded by the trial Court in consonance with the

submission raised by the parties, this Court is of the view that the argument advanced by the learned counsel for the appellant is only acceptable to

the extent that prosecution could not prove its case beyond reasonable doubt against the appellant for the offence under Sections 304-B IPC and

4 Dowry Prohibition Act, but from the prosecution evidence, offence under Section 498-A and 306 IPC is clearly proved. All the essential

ingredients to draw presumption for committing the offence by the accused-appellant under Section 306 IPC taking recourse of the provisions of

Section 113-A of the Evidence Act were proved on the following grounds:

(i) From the admission of accused-appellant in the statement under Section 313 Cr.P.C. death of the deceased was occurred within seven years of

her marriage. This fact is also established by the marriage card (Ex. Ka. 3).

(ii) Death of the deceased is not natural one, but she committed suicide as is clear from the medical evidence and also from the statements of P.W.

4 Arun Kumar Singh, P.W. 5 Rajesh, P.W. 6 Dr. Pradeep Kumar Gupta.

21. Now the only fact remains to be seen whether element of abetment for committing the suicide in the present matter was established by the

prosecution or not. Besides the element of abetment, other necessary ingredients will also be discussed at appropriate stage, but the Court

proceeds to discuss at first on the point of existence of the First Information Report.

22. From the perusal of record, it appears that the First Information Report was not lodged by the informant at initial stage. It also appear that

accused side were pressurizing the informant side. This observation finds support with the fact that a compromise deed was entered into between

the parties just after couple of days of the incident, in which it was mentioned that the informant would not initiate the prosecution against the

accused-persons. Offence, said to have been committed, was non-cognizable and non-compoundable offence, hence the compromise entered into

between the parties is meaningless and on the basis of prosecution evidence (Ex. Kha.-1), the finding recorded by the trial Court could not be

turned down. Certainly, the First Information Report was lodged belatedly. Application under Section 156(3) Cr.P.C. was moved on 8.1.2003 in

the Court of Chief Judicial Magistrate, Farrukhabad. The case was registered at P.S. Kasganj, District Etah. It means after passing the order, the

same was communicated to the concerned police for registration and investigation of the case. What circumstances occurred during that period

and why the informant did not lodge the First Information Report at initial stage, have been properly and satisfactorily explained in the application

under Section 156(3) Cr.P.C. Thus, in the present matter, it cannot be held that the First Information Report is delayed and suspicious document.

Delay has been properly explained by the prosecution hence on this score the prosecution case could not be disbelieved.

23. In the present matter, P.W. 1 Meena Devi, in her examination-in-chief, supported the prosecution case, but in her cross-examination, she did

not support the version stated in the examination-in-chief. Similar is the position of P.W. 2 Ramdeen, the father of the deceased. He also

supported the prosecution case in the examination-in-chief, but made contradictory statement in the cross-examination. P.W. 3 Laxmi did not

support the prosecution case and turned hostile. P.W. 4 Arun Kumar is the witness of only information given by him regarding the death of the

deceased. The same was given by him just to inform the police about the incident occurred on the day of incident. The same was entered in the

G.D. of the police station concerned and inquest was prepared. Post-mortem was also done. Since there was no allegation at that time regarding

commission of any offence, therefore, it appears that local police did not proceed to investigate the matter. So far as the submission raised by the

learned counsel for the appellant regarding application of provision of Section 162 Cr.P.C. is concerned, the information given by P.W. 4 Arun

Kumar is cryptic in manner and it does not contain the entire facts of the incident, therefore, application under Section 156(3) Cr.P.C. cannot be

termed to be hit by the provision of Section 162 Cr.P.C.

24. Ratio of law laid down in the case of Yanab Sheikh @ Gagu Vs. State of West Bengal, , is equally applicable to the present case. The object

and purpose of giving such cryptic information by P.W. 4 Arun Kumar was not to lodge the F.I.R., but to inform the concerned police to reach at

the place of occurrence. A mere information received by the police without any details as regards the identity of the accused or the nature of the

injuries, name of the culprits may not be treated as F.I.R. Thus, the contention raised by the learned counsel for the appellant in this regard is not

acceptable. The observation of the trial Court on this point is based on settled legal position and does not require interference by this Court.

25. A letter was also produced during course of examination by P.W. 1, which was said to have been written by the accused-appellant to P.W. 2

Ramdeen in the year 2000 and it was received by P.W. 2 few days before the deposition in the Court. If the writing and signatures of this letter are

compared with the signatures made on the statement recorded under Section 313 Cr.P.C. by the accused-appellant, the said inland letter becomes

doubtful and suspicious. As far as the contents of document Ex. Ka. 1 written by appellant Dinesh Kumar is concerned, this document was proved

by P.W. 1, but execution of this document was not challenged by the appellant in the cross-examination. Even P.W. 1 in the cross-examination

admitted the execution of the document by the appellant. Perusal of the contents of this document i.e. Ex. Ka. 1 clearly goes to show that there

was no demand of dowry made on the part of the appellant Dinesh, but some sort of cruelty or harassment was being caused on part of the

appellant Dinesh, therefore, for assurance, this document was executed by the appellant. If the contents of this document is taken as a whole, it

clearly emerge that some sort of cruelty or harassment was being caused by the accused-appellant to the deceased before the execution of this

document. Thus, the contention raised by the learned counsel for the appellant is not acceptable. Essential ingredients to draw the presumption

taking recourse of the provision under Section 113A of the Evidence Act for the offence under Section 306 IPC were established by the

prosecution.

26. The fact of causing cruelty and harassment to the deceased before the incident is also established from the statement of P.W. 1 and P.W. 2

itself. The trial Court taking aid of these documents and the statements made in the examination-in-chief by P.W. 1 and P.W. 2, held that the

deceased was subjected to cruelty and harassment in connection with the demand of dowry soon before her death by the accused-appellant within

seven years of her marriage.

27. I am not in agreement with this observation as Ex. Ka. 1 proved by P.W. 1 itself does not contain any fact of demand of dowry. There is self-

contradictory statement at the level of examination-in-chief and cross-examination of P.W. 1 Meena Devi and P.W. 2 Ramdeen on this point.

Thus, in my considered view, at the most, in the present matter, on the strength of evidence available on record, it can be held that prosecution was

able to establish the offence under Sections 498-A for causing cruelty and 306 IPC for causing abetment of suicide against the accused-appellant.

28. Section 498-A IPC, under which the appellant's conviction has been made by the trial Court is extracted hereinbelow:

498A. 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 willful 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 is on account of failure by her or any person related to her to meet such demand.

It will be clear from the language of Section 498-A IPC that if a husband subjects his wife to cruelty, he shall be punished with imprisonment for a

term which may extend to three years and shall also be liable to fine. The Explanation under Section 498-A IPC defines ""cruelty"" for the purpose

of Section 498-A IPC to mean any of the acts mentioned in clause (a).

29. Section 306 IPC runs as follows:

306. Abetment of suicide.--If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of

either description for a term which may extend to ten years, and shall also be liable to fine.

30. Section 113A of The Indian Evidence Act, 1872 is as follows:

113A. Presumption as to abetment of suicide by a married woman--When the question is whether the commission of suicide by a woman had

been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the

date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all

the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

31. ""107. Abetment of a thing.--A person abets the doing of a thing, who

First.--Instigates any person to do that thing; or

Secondly.--Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place

in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.--Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.--A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily

causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

32. In the instant case, on perusal of the above mentioned legal provisions, it could easily be drawn that there was an element of abetment in the

form of causing cruelty and harassment, which had driven the deceased to commit suicide, as is clear from Ex. Ka. 1.

33. Since prosecution could not prove the offence under Section 304-B IPC and Section 4 Dowry Prohibition Act beyond reasonable doubt,

therefore, on the basis of foregoing discussion, appeal is liable to be partly allowed setting aside the conviction and sentence of the appellant for the

offence under Section 304-B IPC and Section 4 Dowry Prohibition Act, modifying the conviction of the accused-appellant for the offence under

Sections 498-A and 306 IPC.

34. The maximum punishment provided for the offence under Section 306 IPC is of 10 years imprisonment and accused shall also be liable to fine.

In the present matter, accused-appellant is in jail for the last about five years.

35. Considering the sentencing policy, the nature of the offence, the period already undergone by the accused-appellant and in the facts and

circumstances of the case, I am of the opinion that the ends of justice would be sub-served by convicting and sentencing the accused-appellant for

the offence under Section 306 IPC to undergo five years rigorous imprisonment and a fine of Rs. 2000/- and in default of payment of fine, he has

to undergo three months" additional imprisonment Conviction and sentence imposed upon the accused-appellant for the offence under Section

498-A IPC is not changed. All the sentences shall run concurrently.

36. Under the facts and circumstances, the appeal is partly allowed. Conviction and sentence imposed upon accused-appellant Dinesh for the

offence under Sections 498-A , 304-B IPC and 4 Dowry Prohibition Act is modified to the offence under Sections 498-A and 306 IPC.

Accused-appellant Dinesh is punished for the offence under Section 306 IPC to undergo five years rigorous imprisonment and a fine of Rs. 2000/-

. In default of payment of fine, he will undergo additional imprisonment of three months. Accused-appellant Dinesh is acquitted for the charge

under Sections 304-B IPC and 4 Dowry Prohibition Act. The punishment imposed for the offence under Section 498-A IPC will be the same as

imposed by the trial Court. All the sentences shall run concurrently. The record of the trial Court alongwith copy of the judgment be sent to the

Court concerned and Chief Judicial Magistrate concerned for immediate compliance. Compliance report be also submitted to this Court.