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Lakhan Vishwakarma Vs The State of Jharkhand

Criminal Appeal (SJ) No. 596 of 2002

Court: Jharkhand High Court

Date of Decision: Sept. 8, 2014

Acts Referred:
Constitution of India, 1950 â€" Article 20#Criminal Procedure Code, 1973 (CrPC) â€" Section 313#Dowry Prohibition Act, 1961 â€" Section 3, 4#Evidence Act, 1872 â€" Section 113B#Penal Code, 1860 (IPC) â€" Section 304B, 34, 498A

Citation: (2015) 1 AJR 79 : (2014) 4 JLJR 153

Hon'ble Judges: Harish Chandra Mishra, J

Bench: Single Bench

Advocate: Rohit, Advocate for the Appellant; S.S. Sahay, A.P.P, Advocate for the Respondent

Judgement

Harish Chandra Mishra, J.
Heard learned counsel for the appellant and learned counsel for the State.

2. The appellant is aggrieved by the Judgment of conviction and Order of sentence dated 3.9.2002, passed by the learned Additional Sessions

Judge, F.T.C. No.-IV, Dhanbad, in Sessions Trial No. 202 of 2000, whereby the appellant has been found guilty and convicted for the offences

under Sections 304-B and 498-A of the Indian Penal Code. Upon hearing on the point of sentence, the appellant has been sentenced to undergo

rigorous imprisonment for a period of ten years for the offence under Section 304-B of the Indian Penal Code. However, no sentence has been

passed against the petitioner for the offence under Section 498-A of the Indian Penal Code.

3. The prosecution case was instituted on the basis of the fardbeyan of Krishna Lal, who is the father of the deceased, which was recorded on

14.2.2000 at Central Hospital, Jagjivan Nagar, in the District of Dhanbad. It is stated in the fardbeyan that the daughter of the informant was

married to the appellant on 21.5.1997 according to the Hindu rites. There is allegation against the appellant and his family members to have

subjected the deceased to cruelty and torture for demand of dowry, even though the informant used to give some articles at times as per the desire

of the husband and in-laws, and even the demand of money by them used to be fulfilled at times as per the capacity of the informant, but the

atrocities on the deceased never stopped. It is stated in the FIR that at one point of time, while both the wife and husband were going on a

motorcycle, with the intention to kill his wife, the appellant caused his wife to fall down from his motorcycle, in which she was injured.

Subsequently, in the night between 13/14.2.2000, the appellant informed the informant on phone that his daughter had received some burn injuries

and asked the informant to send his son Pradeep. Upon getting the information, the informant along with his wife, son, other family members and

neighbouring persons went to Alakhdiha at the house of the appellant, where they were informed that the appellant and his family members had

burnt the deceased. Thereafter the informant came to Central Hospital and found the dead body of his daughter in the burnt condition. With these

allegations, the FIR was lodged, on the basis of which Jharia (Tisra) P.S. Case No. 64 of 2000 corresponding to G.R. No. 477 of 2000, was

instituted for the offences under Sections 498-A, 304-B/ 34 of the Indian Penal Code, and investigation was taken up. After investigation, the

police submitted the chargesheet against the accused persons and ultimately, after taking cognizance, the case was committed to the Court of

Session and the accused persons were put to trial, in which the appellant was convicted for the offences as aforesaid, but the other co-accused

persons were acquitted of the charge by the Trial Court below.

4. It appears from the record that in course of trial, charges were framed against the appellant and the other co-accused persons on 25.1.2001, for

the offences under Sections 304-B/ 34, 498-A/ 34 of the Indian Penal Code and Sections 3/ 4 of the Dowry Prohibition Act and upon denial of

the charge and claiming to be tried, they were put to trial. In course of trial, the prosecution has examined 17 witnesses in all and has proved the

documents, which were marked as Exhibits. After recording the statements of the accused persons under Section 313 of the Cr.P.C., two defence

witnesses were also examined.

5. P.W. 10 Krishna Lal is the informant and the father of the deceased and P.W. 11, Roti Devi is the mother of the deceased. Both these

witnesses have fully supported the prosecution case and have stated that after the marriage, their daughter was being subjected to cruelty and

torture for demand of dowry and intermittently other articles and cash were also given to the accused persons on their demand. The informant has

also stated about the deliberate fall of the deceased from the motorcycle with the intention to kill her and they have also stated that they were

informed that the accused persons had burnt the deceased, whereupon they went to the Central Hospital and found the dead body of the deceased

in the burnt condition. P.W. 11, who is the mother of the deceased, has stated that she was always informed about the cruelty and torture for

demand of dowry by her daughter on phone. They have stated that the deceased was burnt to death due to non-fulfillment of the demand of

dowry. P.W. 10, the informant has also proved the signatures on the fardbeyan which were marked Exhibits 3 and 3/A, and he has also produced

some photographs of the deceased, which were marked X Srs., for identification. Both these witnesses were subjected to cross-examination in

detail by the defence.

6. P.W. 2, Anil Kumar Vishwakarma, P.W. 4 Pradeep Kumar, P.W. 5 Jugnu Vishwakarma and P.W. 6 Sunil Kumar Vishwakarma are the

brothers of the deceased and they have also fully supported the prosecution case in their evidence. P.W. 4 Pradeep Kumar has also proved his

signature and the signature of P.W. 1 Vishwanath Vishwakarma on the Inquest Report of the dead body, which were marked as Exhibits 2 and

2/1 respectively. P.W. 1 Vishwanath Vishwakarma is the nephew of the deceased, who has also supported the prosecution case, stating that he

was informed by the informant that he had received the information on phone that his daughter was injured by burning, whereupon he had also

gone along with other family members to the Central Hospital, and found the dead body of the deceased in the burnt condition. He has also stated

that the accused persons had burnt the deceased due to non-fulfillment of the demand of dowry. P.W. 7 Suman Kumar has also supported the

prosecution case and this witness is the friend of P.W. 4 Pradeep Kumar, the brother of the deceased. He has also stated about the occurrence

and he had also gone to the Central Hospital, where he had seen the dead body of the deceased.

7. P.W. 3, Dr. Shailendra Kumar had conducted the post-mortem examination on the dead body of the deceased and he has proved that the

death of the deceased was caused due to shock, as a result of cent percent kerosene oil burn injuries. He has also stated that the burnt portions of

the cloth on the dead body, scalp and hairs were emitting strong smell of kerosene oil. He has proved the post-mortem report to be in his pen and

signature, which has been marked as Exhibit-1.

8. P.W. 17 Sitara Khan, is the Investigating Officer of the case and he has also deposed about the investigation made by him. He has given the

description of the place of occurrence where he had also found burnt articles and a broken lamp in the room. This witness proved the fardbeyan,

which was marked as Exhibit-4 and also proved the formal FIR, which was marked as Exhibit-5. The inquest report of the dead body was also

proved by this witness and the same was marked as Exhibit 6. In his cross-examined, he has stated that he was informed by some of the witnesses

that the other co-accused persons were living separately in the same house and the appellant was living separately with his wife. Some minor

contradictions from the statement of the witnesses have also been taken from this appellant, which are not of much importance.

9. The other witnesses P.W. 8 Jitendra Kumar Vishwakarma, who is the own brother of the appellant, P.W. 9 Deepak Vishwakarma, P.W. 12

Dashrath Vishwakarma, P.W. 13 Shankar Vishwakarma, P.W. 14 Sumitra Devi, P.W. 15 Sarita Devi and P.W. 16 Meera Devi, have not

supported the prosecution case.

10. The two witnesses examined by the defence have only come to state that the deceased was accidentally burnt and she was brought to hospital

where she died.

11. Learned counsel for the appellant has submitted that the appellant has been falsely implicated in this case and the prosecution is not able to

prove the charge against the appellant beyond all reasonable doubts. It is submitted that the other co-accused persons, facing the trial have been

acquitted after trial, but only the appellant, being the husband of the deceased, has been convicted for the offence under sections 498-A and 304-

B of the Indian Penal Code. Learned counsel has further submitted that the prosecution case has been supported only by the interested witnesses,

who are the informant and his family members, but the independent witnesses have not supported the prosecution case. Learned counsel has

accordingly, submitted that much reliance cannot be placed on the evidence of the interested witnesses and in view of the fact that the independent

witnesses have not supported the prosecution case, it is a fit case for acquittal of the appellant. Learned counsel, however, could not point out any

contradiction in the evidence of the witnesses proving the prosecution case, so as to discredit their testimony. It is further submitted by learned

counsel for the appellant that in any event, there is no evidence on record to show that soon before her death, the deceased was being subjected to

cruelty and torture for demand of dowry and as such no offence can be said to be made out against the appellant for the offence under Section

304-B of the Indian Penal Code. In support of his contention, learned counsel for the appellant has placed reliance upon the decision of the

Supreme Court of Kashmir Kaur and Another Vs. State of Punjab, . Learned counsel has accordingly, submitted that the impugned Judgment of

conviction and Order of sentence passed by the Trial Court below cannot be sustained in the eyes of law.

12. Learned counsel for the State, on the other hand, has submitted that the witnesses examined by the prosecution have fully supported the

prosecution case. P.W. 8, Jitendra Kumar Vishwakarma, who has not supported the prosecution case, is the own brother of the appellant. The

other witnesses who have not supported the prosecution case, are only the neighbours of the appellant and accordingly, in order to save the

appellant, they have not supported the prosecution case during trial. However, according to these witnesses also, deceased had died due to

burning. Learned counsel has accordingly, submitted that the prosecution has been able to prove the charge against the appellant beyond all

reasonable doubts and has rightly been held guilty, convicted and sentenced by the Trial Court.

13. After having heard learned counsels for both the sides and upon going through the record, I find that the witnesses, though they are the family

members of the deceased, have fully supported the prosecution case. They have also stated that the deceased was being subjected to cruelty and

torture for demand of dowry and she was burnt to death due to non-fulfillment of the demand of dowry. The marriage had taken place only on

21.5.1997 and the deceased was done to death on in the night between 13/14.2.2000, i.e., within the period of three years. The witnesses were

subjected to cross-examination in detail by the defence, but nothing could be taken so as to discredit their testimony. Though some witnesses have

not supported the prosecution case, but one of them is the own brother of the appellant, and the others are the neighbouring persons of the

appellant, but according to these witnesses also, deceased had died due to burning.

14. Though, the witnesses have not specifically stated that soon before her death of the deceased, she was subjected to any cruelty and torture for

demand of dowry, but it is the settled principle of law that the expression ''soon before'' is a relative term and it would depend upon the

circumstances of the each case and no straight jacket formula can be laid down as to what would constitute the period of soon before the

occurrence. In Kaliyaperumal and Another Vs. State of Tamil Nadu, , it has been laid down as follows:-

5. 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 the ""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 in 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 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. ----------.

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 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.

(Emphasis supplied).

15. This decision has taken note of by the Apex Court in Kashmir Kaur"s case (supra), relied upon by the learned counsel for the appellant,

wherein taking into consideration the other decisions also on the point, the Apex Court has laid down as follows:-

16. From the above decisions the following principles can be culled out:

(a) To attract the provisions of Section 304-B, IPC the main ingredient of the offence to be established is that soon before the death of the

deceased she was subjected to cruelty and harassment in connection with the demand of dowry.

(b) The death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal.

(c) Such death occurs within seven years from the date of her marriage.

(d) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband.

(e) Such cruelty or harassment should be for or in connection with demand of dowry.

(f) It should be established that such cruelty and harassment was made soon before her death.

(g) The expression (soon before) is a relative term and it would depend upon circumstances of each case and no straightjacket formula can be laid

down as to what would constitute a period of soon before the occurrence.

(h) 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.

(i) Therefore, the expression ""soon before"" would normally imply that the interval should not be much between the concerned cruelty or harassment

and the death in question. There must be existence of a proximate or life link between the effect of cruelty based on dowry demand and the

concerned death. In other words, it should not be remote in point of time and thereby make it a stale one.

(j) However, the expression ""soon before"" should not be given a narrow meaning which would otherwise defeat the very purpose of the provisions

of the Act and should not lead to absurd results.

(k) Section 304-B is an exception to the cardinal principles of criminal jurisprudence that a suspect in the Indian Law is entitled to the protection of

Article 20 of the Constitution, as well as, a presumption of innocence in his favour. The concept of deeming fiction is hardly applicable to criminal

jurisprudence but in contradistinction to this aspect of criminal law, the legislature applied the concept of deeming fiction to the provisions of

Section 304-B.

(l) Such deeming fiction resulting in a presumption is, however, a rebuttable presumption and the husband and his relatives, can, by leading their

defence prove that the ingredients of Section 304-B were not satisfied.

(m) The specific significance to be attached is to the time of the alleged cruelty and harassment to which the victim was subjected to, the time of her

death and whether the alleged demand of dowry was in connection with the marriage. Once the said ingredients were satisfied it will be called

dowry death and by deemed fiction of law the husband or the relatives will be deemed to have committed that offence.

16. From a bare perusal of these decisions it is apparent that the expression "soon before" is a relative term and it would depend upon the

circumstances of each case and no straight jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It

has been held that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be an

existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. In the present case, I find

that the witnesses have been able to prove that after the marriage, the deceased was being subjected to cruelty and torture at the hands of the

husband and in-laws for the demand of dowry and there is also proof of consistent demand of dowry and subjecting her to cruelty and torture for

that demand until her death by burning, and it is also alleged that at one point of time, the appellant had tried to kill the deceased by a deliberate fall

from the motorcycle, in which also she was injured. Even if this is taken to be an accidental fall from the motorcycle, but even thereafter there is

evidence of subjecting the deceased to cruelty and torture for demand of dowry and ultimately she was done to death by burning within a period of

three years of her marriage.

17. In my considered view, there is an existence of proximity in the cruelty and torture, based on the demand of dowry and the unnatural death of

the deceased. As such the deeming fiction under Section 304-B of the Indian Penal Code and Section 113-B of the Indian Evidence Act, shall

come into play against the appellant, and the defence has failed to rebut the presumption against him. I am of the considered view that the

prosecution has been able to prove the charges against the appellant for the offence under Sections 304-B and 498-A of the Indian Penal Code

beyond all reasonable doubts, and the appellant has been rightly found guilty and convicted for the same. I also find that upon hearing the appellant

on the point of sentence, appropriate sentence has been passed against him. There is no scope of any interference in the impugned Judgment of

conviction and Order of sentence by this Court.

18. In view of the aforementioned discussions, I do not find any illegality in the impugned Judgment of conviction and Order of sentence dated

3.9.2002, passed by the learned Additional Sessions Judge, F.T.C. No.-IV, Dhanbad, in Sessions Trial No. 202 of 2000. There is no merit in this

appeal and the same is accordingly, dismissed. The appellant is on bail, and his bail bond, is hereby, cancelled and the Court below is directed to

take immediate steps for taking the appellant into custody for serving out of the rest of his sentence.

19. Let the Lower Court Records be sent back forthwith.