

[2013] 10 S.C.R. 443

STATE OF RAJASTHAN
v.
GIRDHARI LAL
(Criminal Appeal No. 1186 of 2008)

OCTOBER 7, 2013

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

Penal Code, 1860 - ss.306 and 304B - Death of married woman due to burn injuries within 7 years of marriage - Deceased was daughter of PW1 - Trial court convicted accused-husband (respondent) u/s.304B IPC and sentenced him to undergo life imprisonment - On appeal, High Court converted the conviction from s.304B IPC to s.306 IPC and reduced the sentence from life imprisonment to five years imprisonment - Justification - Whether death of PW1's daughter was an instance of dowry death or she was driven to commit suicide by respondent - Held: No specific allegation as to whether respondent demanded dowry - No evidence on record to come to the definite conclusion that soon before her death, the deceased was subjected to cruelty or harassment by respondent for, or in connection with any, demand of dowry - In absence of such ingredient, presumption that respondent had caused the dowry death cannot be drawn - However, it is established from ocular and documentary evidence that deceased was subjected to cruelty and harassment by respondent - As a result of such treatment of cruelty and harassment, she was driven to meet the suicidal death - Appellate Court (High Court) rightly presumed, having regard to all other circumstances of the case, that such suicidal act had been abetted by respondent and convicted him u/s.306 IPC - Evidence Act, 1872 - ss.113A and 113B.

Penal Code, 1860 - s.304B - Offence under - Main ingredient - Held: The main ingredient of the offence under

A s.304B IPC which is required to be established by the State
 is whether "soon before her death" the deceased was
 subjected to cruelty and harassment by her husband, "for or
 in connection with demand of dowry", to allege "dowry death"
 - Period which can come within the term "soon before" cannot
 B be put within the four corners of time frame - It is left to the
 Court for its determination depending upon the facts and
 circumstances of each case - Words and Phrases - Term
 "soon before" - Meaning of.

C The daughter of PW1 was married to respondent.
 She died of burn injuries within 7 years of her marriage.
 It was alleged that the deceased had been tortured and
 harassed by her in-laws in connection with demand for
 dowry from the initial days of her marriage.

D The trial court convicted the respondent under
 Section 304B IPC and sentenced him to undergo life
 imprisonment. On appeal, the High Court converted the
 conviction from Section 304B IPC to 306 IPC and reduced
 the sentence from life imprisonment to five years
 E imprisonment.

In the instant appeal by the State, the question which
 arose for consideration was whether the death of PW1's
 daughter was an instance of dowry death or whether she
 was driven to commit suicide by her husband
 F (respondent).

Dismissing the appeal, the Court

HELD: 1. The main ingredient of the offence under
 Section 304B IPC which is required to be established by
 G the State is whether "soon before her death" the
 deceased was subjected to cruelty and harassment by
 her husband, "for or in connection with demand of
 dowry", to allege "dowry death". The period which can
 H come within the term "soon before" cannot be put within

the four corners of time frame. It is left to the Court for its determination depending upon the facts and circumstances of each case. [Paras 8, 11] [448-E; 449-H; 450-A]

2. In the present case, father and mother of the deceased (PW.1 and PW.7 respectively) made ominous statements regarding demand of dowry that after the marriage, demand of dowry was made by the in-laws of the deceased. It is not made specific as to whether respondent demanded dowry. [Para 11] [450-B]

3. Section 113B of the Indian Evidence Act, 1872 deals with the presumption as to dowry death. In the present case there is no evidence on record to come to the definite conclusion that soon before her death, the deceased was subjected to cruelty or harassment by her husband, respondent for, or in connection with any, demand of dowry. In absence of such ingredient the presumption that respondent had caused the dowry death cannot be drawn. The prosecution thereby cannot take advantage of Section 113B of the Indian Evidence Act, 1872. [Para 12] [450-C, F-G]

4. Section 113A of the Indian Evidence Act, 1872 relates to presumption as to abetment of suicide by a married woman. In the instant case, it is established from the ocular and documentary evidence that the deceased was subjected to cruelty and harassment. As a result of such treatment of cruelty and harassment, she was driven to meet the suicidal death. She had committed suicide within a period of 7 years from her marriage and that her husband had subjected her to cruelty. Therefore, the Appellate Court rightly presumed, having regard to all other circumstances of the case, that such suicidal act had been abetted by her husband-respondent and convicted him for the offence under Section 306 IPC. [Para 13] [450-G; 451-D-E]

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1186 of 2008.

From the Judgment and Order dated 14.03.2007 of the
High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur
B in D.B. Criminal Appeal No. 472 of 2000.

Archana Pathak Dave, Milind Kumar for the Appellant.

Satendar Sing Gulati, Kamaldeep Gulati for the
Respondent.

C The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. This
appeal has been preferred by the State of Rajasthan against
the judgment and order dated 14th March, 2007 passed by the
D Division Bench of the Rajasthan High Court, Jaipur Bench. By
the impugned judgment, the Division Bench partly allowed the
appeal filed by the respondent-Girdhari Lal, modified the
sentence and convicted him under Section 306 IPC instead of
E 304B IPC. For the said offence, the Division Bench sentenced
him to undergo five years rigorous imprisonment and fine of
Rs.1000/-, in default he has to further suffer six months rigorous
imprisonment. Since the respondent-Girdhari Lal had already
undergone imprisonment for a period of more than six years,
the High Court directed to release him forthwith, if not required
F to be detained in any other case.

2. The case of the prosecution in nutshell is that:

The informant-Jugal Kishore(PW.1) - father of the
deceased Babita in his written complaint on 11th August, 1998
G informed that his daughter-Babita (since deceased) was
married to respondent-Girdhari Lal four years back. Her in-laws
were harassing Babita in connection with demand for dowry
from the initial days of her marriage. Earlier also the in-laws of
Babita made attempt to set her ablaze and neighbours
H rescued her. Later, the in-laws assured her parents that they

will not harass Babita, but she was burnt to death on 10th August, 1998. A

3. On the said complaint a case under Section 304B and 498A IPC was registered and investigation was commenced. After the investigation chargesheet was filed. In due course, the case came up for trial to the Additional Sessions Judge, Jhunjhunu. The charge under Section 304B IPC framed against the respondent was denied by him who claimed trial. Altogether 9 witnesses were examined in support of the case of the prosecution. In his explanation under Section 313 Cr. P.C., the respondent claimed innocence. Two defence witnesses were also examined. The trial court on appreciation of evidence and on hearing the parties convicted the respondent under Section 304-B IPC and sentenced him to undergo life imprisonment. B C

On appeal, as noticed above, the Division Bench of the High Court partly allowed the appeal, convicted the respondent under Section 306 IPC instead of 304B IPC and sentenced him to undergo five years rigorous imprisonment with fine of Rs.1,000/-, in default he has to further suffer six months rigorous imprisonment. D E

4. Learned counsel for the appellant-State submitted that the deceased-Babita died within 7 years of her marriage under unnatural circumstances and respondent did not inform the parents of the deceased regarding the incident. The burden to prove innocence lies on the respondent after the prosecution has proved that the deceased died under the unnatural circumstances within seven years of marriage. Further, according to the learned counsel for the State, the High Court has failed to appreciate that Jugal Kishore (PW.1), Nand Lal (PW.4) and Smt. Bimla (PW.7) have made statements regarding harassment and torture by the in-laws of the deceased in relation to the demand for dowry which has been corroborated by the statement of other witnesses and the documents on record. The aforesaid facts were not properly appreciated by the High Court while converting the conviction H

A from Section 304B IPC to 306 IPC and reducing the sentence from life imprisonment to five years imprisonment.

5. Learned counsel appearing for the respondent on the other hand supported the decision rendered by the High Court.

B 6. We have heard the learned counsel for the parties and gone through the materials on record.

C 7. Coming to the evidence adduced at the trial, we notice that Babita died of burn injuries within 5 to 6 years of her marriage with respondent-Girdhari Lal, thereby the death occurred otherwise than under normal circumstances. A bare look at the postmortem report (Ext.P-6) shows that the deceased died because of the extensive burns. Therefore, the question that arises for determination is whether Babita's death is an instance of dowry death or whether she was driven to commit suicide by her husband?

D 8. The main ingredient of the offence under Section 304B which is required to be established by the State is whether "soon before her death" Babita was subjected to cruelty and harassment by her husband, "for or in connection with demand of dowry", to allege "dowry death".

E Jugal Kishore (PW.1) is himself the complainant and is the father of the deceased-Babita. He stated that his daughter was married to Girdhari Lal about 6 or 7 years back. The said statement was recorded on 12th June, 2000 and the incident occurred on 10th August, 1998. Shyam Lal Mahajan, another resident of the Village Chhavsari, where the marriage of Babita was solemnised, by his statement stated that the marriage of Babita was solemnised with accused Girdhari Lal in the year 1992-93. Similar was the statement made on 12th June, 2000 by Jagdish Prasad (PW.3) and he stated that the marriage of Babita was solemnised with the accused Girdhari Lal about 6 or 7 years back. Therefore, it is clear that the death of Babita happened within 7 years of her marriage.

H

9. The death of Babita was caused by the burn injuries and thereby death occurred otherwise than under normal circumstances. The statement made by Dr. J.P. Bugalia (PW.6) proved the fact that death was caused due to the burns. He stated that on 10th August, 1998 he was working as Medical Jurist in B.D.K. Hospital, Jhunjhunu. He along with Dr. P.S. Sahu conducted the postmortem of Babita who was admitted in the Hospital on 10th August, 1998 at 1.50 p.m. and died during the treatment at 4.00 p.m. There were burn injuries all over her body.

10. So far as the harassment and cruelty are concerned, Rajender Prasad (PW.8) stated that Girdhari Lal used to beat her for dowry. Jugal Kishore(PW.1) has also supported the fact that she was being subjected to cruelty in connection with dowry demand by stating that Girdhari Lal used to beat and harass Babita for dowry after her marriage. Once he was asked not to do so but he did not mend his ways. He also stated that Girdhari Lal earlier tried to burn her alive by pouring kerosene by confining her in a room and when he came to know about this incident, he went to her in-laws house alongwith Shyam Lal, Phool Chand, Rajender, Jagdish, Neki Ram and Man Roop where Girdhari Lal and his father begged their pardon for their act of burning her alive and assured that they will not repeat the incident. Bimla Devi (PW.7), mother of the deceased stated in her statement that the accused Girdhari Lal and Babita came to their village Chhavsari one month prior to the incident and stayed there for one hour. Jugal Kishore was not present at the house at that time and Babita told her mother to send her father to her in-laws because Girdhari Lal used to harass her. This statement clearly indicates that Babita was being subjected to cruelty and harassment soon before the death.

11. Now, the question arises as to whether Babita was subjected to such cruelty and harassment by her husband soon before her death for, or in connection with the demand of dowry. The period which can come within the term "soon before"

A cannot be put within the four corners of time frame. It is left to the Court for its determination depending upon the facts and circumstances of each case.

B In the present case, Jugal Kishore (PW.1) and Bimla Devi (PW.7) has made ominous statements regarding demand of dowry that after the marriage demand of dowry was made by the in-laws. It is not made specific as to whether Girdhari Lal demanded dowry.

C 12. Section 113B of the Indian Evidence Act, 1872 which deals with the presumption as to dowry death reads as follows:

D *Section 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 has 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.*

E *Explanation.- For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code(45 of 1860).*

F In the present case there is no evidence on record to come to the definite conclusion that soon before her death, Babita Lal was subjected to cruelty or harassment by her husband, Girdhari Lal for, or in connection with any, demand of dowry. In absence of such ingredient the presumption that Girdhari Lal had caused the dowry death cannot be drawn. The prosecution thereby cannot take advantage of Section 113B of the Indian Evidence Act, 1872.

G 13. Section 113A of the Indian Evidence Act, 1872 relates to presumption as to abetment of suicide by a married woman which reads as follows:

H *113A. Presumption as to abetment of suicide by a*

married women.-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.

Explanation - For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).

In the instant case, it is established from the ocular and documentary evidence that Babita was subjected to cruelty and harassment. As a result of such treatment of cruelty and harassment she was driven to meet the suicidal death. She had committed suicide within a period of 7 years from her marriage and that her husband had subjected her to cruelty. Therefore, the Appellate Court rightly presumed, having regard to all other circumstances of the case, that such suicidal had been abetted by her husband Girdhari Lal and convicted him for the offence under Section 306 IPC. Hence, no interference is called for.

14. We find no merit in this appeal. The appeal is dismissed.

B.B.B.

Appeal dismissed.