

NON-REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.11 OF 2006

Sharad ... Appellant

Versus

The State of Maharashtra ... Respondent

JUDGMENT

Aftab Alam,J.

1. For causing “the dowry death” of his wife Savita, the appellant is convicted under section 304-B and is given the minimum statutory sentence of 7 years rigorous imprisonment and a fine of Rs.1,000/- with the default sentence of rigorous imprisonment for three months. He is additionally convicted under sections 306 and 498-A. Under these two sections he was sentenced to imprisonment for lesser periods and all the sentences were directed to run concurrently. He served out the sentences for the other two offences before he was released on bail by order dated January 3, 2006, passed in this appeal.

2. According to the prosecution case, in the marriage negotiation Savita's father had agreed to pay Rs.9,000/- as dowry to the appellant. At the time of

marriage, however, he was able to pay only Rs.4,000/- and the balance amount of Rs.5,000/- remained unpaid. It is the case of the prosecution that after marriage Savita had to face harassment and cruelty at the hands of her husband, the appellant, and his parents in connection with the demand for the unpaid amount of the dowry that was promised by her father. When Savita was unable to bear the harassment and cruelty meted out to her, she committed suicide by setting alight after dousing herself in kerosene oil. She suffered 100% burn injuries and died.

3. It is an admitted position that Savita died within two and a half years of her marriage with the appellant. It is also undeniable that her death was a case of suicide and it was caused by 100% burn injuries suffered by her. This takes us to the third ingredient of section 304-B and we find that too is fully satisfied by the evidences of her brother Dhanraj, (the complainant) PW.1, Pundalik (her uncle), PW.2 and Sau. Sheela, PW.3, one of the neighbours of Savita's father. All the three witnesses have consistently stated that out of the promised amount of dowry, the sum of Rs.5,000/- had remained unpaid at the time of marriage and during her visits to her father's place Savita used to tell them that the accused ill-treated her for non-payment of Rs.5,000/- as part of the agreed dowry. The appellant used to say

that he would beat her if she failed to bring the unpaid amount from her father.

4. Mr. Renjith B., counsel appearing for the appellant, submitted that though there may be some evidence of ill-treatment of the deceased in connection with the demand of dowry that alone would not be sufficient to bring home the charge of “dowry death” against the appellant unless it was shown that any harassment or cruelty was meted out to her in connection with that demand "soon before her death". Learned counsel submitted that any harassment or cruelty at a distant point of time, even though, in connection with the demand for dowry would not make out a case under section 304-B of the Penal Code and in order to bring the case under section 304-B of the Penal Code, it was incumbent upon the prosecution to establish that not only the harassment or cruelty was in connection with the demand for dowry but it was also soon before the death took place. In support of the submission learned counsel relied upon the decisions of this Court in *Durga Prasad and another v. State of Madhya Pradesh* (2010) 9 SCC 73, *Suresh Kumar Singh v. State of U.P.* , 2009 (7) SCALE 629 and *Tarsem Singh v. State of Punjab*, (2008) 16 SCC 155.

5. We find no merit in the submission and, in our view, the decisions relied upon by the counsel have no application to the facts of this case and do not advance the case of the present appellant in any way. PW.1 in his deposition before the court said that Savita last came to them to see her ailing father just two days before committing suicide. In that visit also she told her father that unless he paid Rs.5,000/-, she would not remain alive and it would be the end of her life. The following day, she left her father's place and went to her matrimonial home and in the evening of the same day she committed suicide. PW.3, who was one of the neighbours of Savita's parents, said that Savita came to see her ailing father on a Sunday and she went back on Monday. She had then told her that her father was ill and the accused were demanding dowry and ill-treating her. She also told her that she would not remain alive thereafter. On the next day, they got the message that Savita died due to burn injuries. We find it difficult to imagine a more proximate link between harassment and cruelty in connection with the demand of dowry and the death of the victim resulting from it.

6. Counsel for the appellant next tried to advance the plea that it was in fact a case of accidental burn and Savita caught fire by falling down on the *chulha*. It is seen above that Savita died from burn injuries within two and a half year of her marriage with the appellant. It is also established that soon

before her death she was subjected to cruelty or harassment by the appellant in connection with the demand for the unpaid amount of the dowry. All the three facts and circumstances put together clearly attracts the provision of section 113-B of the Evidence Act and the burden lay upon the appellant to prove the defence plea that it was a case of accidental burn. There is, however, no evidence on record even to remotely support the plea of accidental burn.

7. Counsel for the appellant submitted that the doctor who conducted post-mortem on the body of Savita was not examined as a witness and the appellant was thus denied the opportunity to put any question to him regarding the possibility of Savita catching fire by accident. Learned counsel also submitted that though the post-mortem report was not in the list of admitted documents and even though the doctor who conducted the post-mortem was not examined, yet it was marked as an exhibit and was referred to by the trial court and the High Court. This, according to him, vitiated the trial and rendered the appellant's conviction unsustainable. We find no merit in this submission either. The post-mortem report indeed indicates that Savita died as a result of shock due to 100% burns but it does not say, as, in fact, it can not say, whether it was a case of suicide or the catching of fire was accidental. But apart from the post-mortem report there is sufficient

evidence on record to show that Savita set herself on fire committing suicide and she did not catch fire accidentally. More importantly, in the charge against the appellant it was clearly spelled out that Savita committed suicide by setting herself on fire. Further, in course of his examination under section 313 of the Code of Criminal Procedure it was repeatedly put to the appellant that Savita committed suicide by setting herself on fire in face of his persistent demand for dowry (see question Nos. 15, 16, and 24). The appellant of course denied the accusation saying “it is false” but he never said before the trial court that Savita caught fire accidentally by falling down on the *chulha*. It is, thus, clear that the plea of accidental fire is being raised for the first time before this Court and hence, it can not be entertained.

8. In the result, we find no merit in the appeal, it is accordingly dismissed.

.....J.

(Aftab Alam)

.....J.

(Anil R. Dave)

New Delhi;
January 31, 2012.