

REPORTABLE**IN THE SUPREME COURT OF INDIA****CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.1186 OF 2008**

STATE OF RAJASTHAN ... APPELLANT

Versus

GIRDHARI LAL ...RESPONDENT

J U D G M E N T**SUDHANSU JYOTI MUKHOPADHAYA, J.**

This appeal has been preferred by the State of Rajasthan against the judgment and order dated 14th March, 2007 passed by the 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 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 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 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 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.

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.

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.

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 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.

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

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?

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".

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.

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" 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.

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.

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

1. **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.*

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).

In the present case there is no evidence on record to come to the definite conclusion that soon before her death, Babita 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.

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:

2. **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,

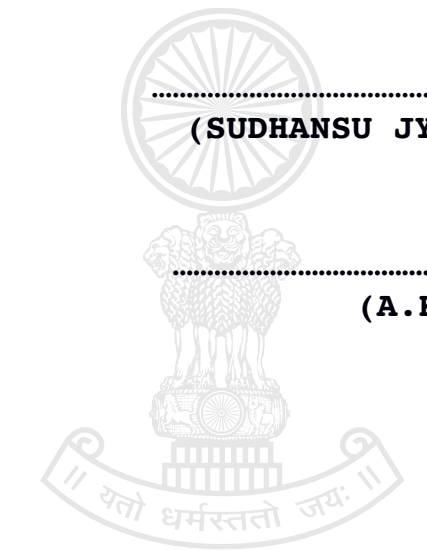
the Appellate Court rightly presumed, having regard to all other circumstances of the case, that such suicidal had been abetted by her husband Girdhari Lal and convicted him for the offence under Section 306 IPC. Hence, no interference is called for.

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

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.
(A.K. SIKRI)

NEW DELHI,
OCTOBER 7, 2013.



JUDGMENT