

Bachni Devi & Anr vs State Of Haryana Th. Secy. Home Dep on 8 February, 2011

Equivalent citations: (2011) 1 DMC 494, AIR 2011 SUPREME COURT 1098, 2011 (4) SCC 427, 2011 AIR SCW 1209, AIR 2011 SC (CRIMINAL) 562, 2011 (3) AIR JHAR R 286, 2011 (2) AIR KANT HCR 326, 2011 (2) AIR KAR R 326, 2011 (2) SCALE 265, 2011 ALL MR(CRI) 964, 2011 CRILR(SC MAH GUJ) 175, (2011) 99 ALLINDCAS 23 (SC), (2011) 1 CHANDCRIC 403, (2011) 1 MARRILJ 333, 2011 (2) SCC (CRI) 280, 2011 (2) KCCR 160 SN, 2011 (1) KER LT 115 SN, (2011) 4 BOMCR(CRI) 350, (2011) 1 RECCRIR 868, (2011) 1 ALLCRIR 661, (2011) 1 DLT(CRL) 525, (2011) 1 CRIMES 289, (2011) 1 CRILR(RAJ) 175, 2011 CRILR(SC&MP) 175, (2011) 2 GUJ LR 1557, (2011) 3 MAD LJ(CRI) 769, (2011) 48 OCR 871, (2011) 2 PAT LJR 54, (2011) 1 CURCRIR 403, (2011) 2 SCALE 265, (2011) 2 ALLCRILR 175, 2011 (1) ALD(CRL) 858, 2011 (73) ACC (SOC) 3 (JHA)

Author: R.M. Lodha

Bench: R.M. Lodha, Aftab Alam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 831 OF 2006

Bachni Devi & Anr.

...Appellants

Versus

State of Haryana

Through Secretary, Home Department

... Respondent

JUDGEMENT

R.M. LODHA, J.

The mother (A-1) and son (A-2) are in appeal as both of them have been convicted by the Additional Sessions Judge (I), Kurukshetra for the offence punishable under Section 304B of the Indian Penal Code (IPC) and sentenced to suffer rigorous imprisonment of seven years. The High Court of Punjab and Haryana affirmed their conviction and sentence and did not interfere with the judgment of the trial court.

2. Kanta died within 3 months of her marriage. On August 11, 1990, she was found dead by hanging from a ceiling fan in the appellants' house. Kanta hailed from a poor family. Her father, Pale Ram (PW-8) is a Rikshawpuller. A-2 and Kanta got married on May 12, 1990. About 20 days prior to Kanta's death, A-1 had gone to the house of PW-8 and told him that her son A-2 wanted to start milk vending business and for that a motorcycle is needed for carrying the milk to the city. She demanded a motorcycle for A-2 to be purchased by PW-8. PW-8 did not accede to her demand and told A-1 that he was not in a position to purchase motorcycle as demanded by her. A-1 warned PW-8 that if he failed to provide a motorcycle to A-2, then Kanta would not be allowed to stay in the matrimonial home. PW-8 called Amar Singh (PW-10) and Mam Chand (DW-

1) to his house and told them about the demand made by A-1.

A-1 reiterated the demand and warning in their presence and left the house of PW-8.

3. This was the beginning of Kanta's end. A-1 and A-2 started harassing and ill-treating her. Some five days prior to Rakshabandhan, A-2 brought Kanta to the house of PW-8. A-2 left Kanta there and returned to his house the same day. Kanta told PW-8 about harassment and ill-treatment being meted out to her by A-1 and A-2. Three days thereafter, A-2 went to the house of PW-8 and told him that he had come to take Kanta with him as there was engagement ceremony of his brother. A-2 assured PW-8 that he would bring Kanta on the day of Rakshabandhan. Kanta, however, was reluctant in going with A-2 as she knew that there was no engagement ceremony at her in-laws place. She had apprehension that if she went to her matrimonial home, her life would not be spared. PW-8 persuaded his daughter to go along with A-2 as she has to spend her entire life with him.

4. On the insistence of her father, Kanta went to her matrimonial home along with A-2. On the day of Rakshabandhan, PW-8 and the members of the family waited for Kanta for whole day but she did not come. After about eight days i.e. on August 12, 1990, PW-8 was informed by some villager that Kanta was dead. PW-8 then went to the house of A-1 and A-2 along with few persons and saw the dead body of Kanta lying in a room. It appeared to PW-8 that Kanta's death had occurred some 2/3

days earlier.

5. Kanta's death having taken place in unnatural circumstances, PW-8 reported the matter to the police immediately and a First Information Report (FIR) was registered on that very day (August 12, 1990) at Police Station Ladwa under Section 304B IPC. Karnail Chand (PW-11) started investigation, visited the spot and also sent the dead body of Kanta for post-mortem. Dr. P.K. Goel (PW-1) conducted postmortem on the dead body of Kanta. Upon completion of investigation and after committal, A-1 and A-2 were sent up for trial under Section 304-B IPC.

6. Besides PW-1, PW-8, PW-10 and PW-11, the prosecution examined seven other witnesses including the deceased's mother Premo (PW-9). In defence, the accused examined DW-1 and Amarjit Kaur (DW-2).

7. The trial court vide its judgment dated March 6, 1991 held that the prosecution has been able to establish that the death of Kanta was within seven years of her marriage and otherwise than under normal circumstances; that before her death she was subjected to cruelty and harassment by A-1 and A-2 in connection with the demand of motorcycle and that A-1 and A-2 were guilty of causing dowry death. A-1 and A-2 were convicted under Section 304-B IPC accordingly and sentenced to suffer seven years' rigorous imprisonment as noticed above. The High Court in the appeal preferred by the appellants concurred with trial court and dismissed their appeal.

8. Mr. V. Madhukar, learned counsel for the appellants submitted that it was highly improbable that a demand for a motorcycle would be made from PW-8 knowing well that it could not be fulfilled by him as he was a Rikshawpuller earning Rs. 20/- per day. He argued that the evidence let in by the prosecution was not trustworthy at all and the demand for dowry is not established. He would submit that the only independent witness of demand was DW-1 but he was not examined by the prosecution. However, DW-1 was examined in defence and he has denied that any demand was made by A-1 in his presence.

9. Learned counsel for the appellants argued that there was no evidence of demand of motorcycle by A-2. He further argued that in any case the demand of motorcycle for the purposes of the business does not qualify as a 'demand for dowry' and, therefore, no offence under Section 304-B IPC can be said to have been made out against the appellants. In this regard, he relied upon a decision of this Court in Appasaheb & Anr. v. State of Maharashtra¹.

10. On the other hand, Mr. Kamal Mohan Gupta, learned counsel for the State of Haryana, supported the judgment of the High Court.

11. Section 304B was inserted in IPC with effect from November 19, 1986 by the Dowry Prohibition (Amendment) Act, 1986 (for short, '(Amendment) Act, 1986'). Thereby substantive offence relating to 'dowry death' was introduced in the IPC. Section 304-B IPC reads as follows :

"304B. Dowry death.--(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal 1 (2007) 9 SCC 721

circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purposes of this sub- section," dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

12. For making out an offence of 'dowry death' under Section 304B, the following ingredients have to be proved by the prosecution:

(a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

(b) such death must have occurred within seven years of her marriage;

(c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(d) such cruelty or harassment must be in connection with the demand for dowry.

13. Pertinently, for the purposes of Section 304B IPC, 'dowry' has the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (for short, '1961 Act').

14. Section 2 of the 1961 Act defines 'Dowry' as follows:

"2. Definition of 'dowry'.- "Dowry" means any property or valuable security given or agreed to be given either directly or indirectly--

(a) By one party to a marriage to the other party to the marriage; or

(b) By the parent of either party to a marriage or by any other person to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation I--.....(Omitted). Explanation II--The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860)."

15. 1961 Act was enacted to prohibit the giving or taking of 'dowry' and for the protection of married woman against cruelty and violence in the matrimonial home by the husband and in-laws. The mere demand for 'dowry' before marriage, at the time of marriage or any time after the marriage is an offence. 1961 Act has been amended by the Parliament on more than one occasion and by the (Amendment) Act, 1986, Parliament brought in stringent provisions and provided for offence relating to 'dowry death'. The amendments became imperative as the dowry deaths continued to increase to disturbing proportions and the existing provisions in 1961 Act were found inadequate in dealing with the problems of dowry deaths. The definition of 'dowry' reproduced above would show that the term is defined comprehensively to include properties of all sorts as it takes within its fold 'any property or valuable security' given or agreed to be given in connection with marriage either directly or indirectly. In *S. Gopal Reddy v. State of A.P.*², this Court stated as follows :

"9. The definition of the term 'dowry' under Section 2 of the Act shows that any property or valuable security given or "agreed to be given"

either directly or indirectly by one party to the marriage to the other party to the marriage "at or before or after the marriage" as a "consideration for the marriage of the said parties" would become 'dowry' punishable under the Act.

Property or valuable security so as to constitute 'dowry' within the meaning of the Act must 2 (1996) 4 SCC 596 therefore be given or demanded "as consideration for the marriage".

.....

11. The definition of the expression 'dowry' contained in Section 2 of the Act cannot be confined merely to the 'demand' of money, property or valuable security "made at or after the performance of marriage" as is urged by Mr Rao. The legislature has in its wisdom while providing for the definition of 'dowry' emphasised that any money, property or valuable security given, as a consideration for marriage, "before, at or after"

the marriage would be covered by the expression 'dowry' and this definition as contained in Section 2 has to be read wherever the expression 'dowry' occurs in the Act. Meaning of the expression 'dowry' as commonly used and understood is different than the peculiar definition thereof under the Act. Under Section 4 of the Act, mere demand of 'dowry' is sufficient to bring home the offence to an accused.

Thus, any 'demand' of money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives or vice versa would fall within the mischief of 'dowry' under the Act where such demand is not properly referable to any legally recognised claim and is relatable only to the consideration of marriage. Marriage in this context would include a proposed marriage also more particularly where the non- fulfilment of the "demand of dowry" leads to the ugly consequence of the marriage not taking place at all. The expression 'dowry' under the Act must be interpreted in the sense which the statute wishes to attribute to it.....The definition given in the statute is the determinative factor. The Act is a piece of social legislation which aims to check the growing menace of the social evil of dowry and it makes punishable not only the actual receiving of dowry but also the very demand of dowry made before or at the time or after the marriage where such demand is referable to the consideration of marriage. Dowry as a quid pro quo for marriage is prohibited".

16. While dealing with the term 'dowry' in Section 304B IPC, this Court in the case of Kamesh Panjiyar @ Kamlesh Panjiyar v. State of Bihar³ held as under :

"14. The word "dowry" in Section 304-B IPC has to be understood as it is defined in Section 2 of the Dowry Act. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third "at any time" after the marriage. The third occasion may appear to be unending period. But the crucial words are "in connection with the marriage of the said parties". As was observed in the said case "suicidal death" of a married woman within seven years of her marriage is covered by the expression "death of a woman is caused ... or occurs otherwise than under normal circumstances" as expressed in Section 304-B IPC."

17. Learned counsel for the appellants heavily relied upon the following observations made by this Court in the case of Appasaheb¹:

"A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood".

3 (2005) 2 SCC 388 The above observations of this Court must be understood in the context of the case. That was a case wherein the prosecution evidence did not show 'any demand for dowry' as defined in Section 2 of the 1961 Act. The allegation to the effect that the deceased was asked to bring money for domestic expenses and for purchasing manure in the facts of the case was not found sufficient to be covered by the 'demand for dowry'. Appasaheb¹ cannot be read to be laying down an absolute proposition that a demand for money or some property or valuable security on account of some business or financial requirement could not be termed as 'demand for dowry'. It was in the facts of the case that it was held so. If a demand for property or valuable security, directly or indirectly, has a nexus with marriage, in our opinion, such demand would constitute 'demand for dowry'; the cause or reason for such demand being immaterial.

18. In the backdrop of the above legal position, if we look at the facts of the case, it is clearly established that Kanta died otherwise than under normal circumstances. There is no dispute of fact that death of Kanta occurred within seven years of her marriage. That Kanta was subjected to harassment and ill-treatment by A-1 and A-2 after PW-8 refused to accede to their demand for purchase of motorcycle is established by the evidence of PW-8 and PW-9. Then there is evidence of PW-10 that PW-8 had called him and DW-1 to his house where A-1 had made demand of motorcycle. PW-10 stated that he sought to reason to A-1 about inability of PW-8 to give motorcycle at which A-1 got angry and warned that Kanta would not be allowed to stay in her matrimonial home. It is true that the appellants produced DW-1 in defence and he did state in his examination-in-chief that he did not meet A-1 at the house of PW-8 but in cross-examination when he was confronted with his statement under Section 161 Cr.P.C. (portion A to A) where it was recorded that he and PW-10 had gone to the house of PW-8 and both of them (PW-10 and DW-1) counselled A-1 to desist from demanding motorcycle but she stuck to her demand, DW-1 had no explanation to offer. The evidence of DW-1 is, therefore, liable to be discarded. In light of the evidence let in by the prosecution, the trial court cannot be said to have erred in holding that it was established that unlawful demand of motorcycle was made by A-1 and A-2 from PW-8 and Kanta was harassed on account of his failure to provide the motorcycle and that led Kanta to commit suicide by hanging. Pertinently, the demand of motorcycle by A-1 from PW-8 was for A-2 and when PW-8 showed his inability to meet that demand, A-2 started harassing and ill-treating Kanta. In this view of the matter, it cannot be said that there was no demand by A-2.

19. The High Court has also examined the matter thoroughly and reached the finding that A-1 and A-2 had raised a demand for purchase of motorcycle from PW-8; this demand was made within two months of the marriage and was a demand towards 'dowry' and when this demand was not met, Kanta was maltreated and harassed continuously which led her to take extreme step of finishing her life. We agree with the above view of the High Court. There is no merit in the contention of the counsel for the appellants that the demand of motorcycle does not qualify as a 'demand for dowry'. All the essential ingredients to bring home the guilt under Section 304B IPC are established against the appellants by the prosecution evidence. As a matter of law, the presumption under Section 113B of the Evidence Act, 1872 is fully attracted in the facts and circumstances of the present case. The appellants have failed to rebut the presumption under Section 113B.

20. For the foregoing reasons, we find no merit in the appeal and it is dismissed accordingly. Two months' time is given to A-1 to surrender for undergoing the sentence awarded to her.

..... J.

(Aftab Alam) J.

(R.M. Lodha) NEW DELHI, FEBRUARY 8, 2011.