

Rajeev Kumar vs State Of Haryana on 31 October, 2013

Equivalent citations: AIR 2014 SUPREME COURT 227, 2013 (16) SCC 640, 2013 AIR SCW 6463, AIR 2014 SC (CRIMINAL) 132, 2014 (1) AJR 102, (2014) 1 MARRILJ 215, 2014 (1) DLT(CRL) 223, 2014 (1) JLJR 343, (2013) 132 ALLINDCAS 46 (SC), (2013) 4 CRILR(RAJ) 1298, (2013) 1 JCR 144 (SC), 2013 (132) ALLINDCAS 46, 2013 (13) SCALE 410, 2013 (4) CRIMES 523, (2014) 1 ALLCRILR 199, (2013) 4 JCR 376 (JHA), (2013) 13 SCALE 410, (2014) 57 OCR 141, (2013) 5 MAD LJ(CRI) 523, (2013) 4 RECCRIR 964, (2013) 4 CURCRIR 451

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Bench: A.K. Patnaik, Gyan Sudha Misra

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No. 967 OF 2005

Rajeev Kumar
Appellant

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Versus

State of Haryana
Respondent

.... .

J U D G M E N T

A. K. PATNAIK, J.

This is an appeal by way of special leave under Article 136 of the Constitution against the judgment dated 16.09.2004 of the Punjab and Haryana High Court in Criminal Appeal No.337-SB of 1992.

Facts:

2. The facts very briefly are that on 26.02.1991 at 11.20 P.M., the Assistant Sub-Inspector of Police of Police Station-City Dabwali, District Sirsa in Haryana, Madan Lal recorded a statement of Vandana at CHC Hospital, Mandi Dabwali. She stated that about two years ago, she was married to the appellant and the appellant used to taunt her on petty matters and earlier the appellant used to tease her for

dowry and on being fed up with the habits of the appellant, on 26.02.1991 between 7.00 and 7.30 P.M., she sprinkled kerosene on her and set herself on fire. The statement of Vandana was registered as First Information Report (FIR) by the S.I. of P.S. Dabwali, Kuldeep Singh. Soon thereafter on 26.02.1991, the Judicial Magistrate, First Class, R.S. Bagri, recorded a statement of Vandana under Section 164 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') in which Vandana reiterated her statement to the Police. On 27.02.1991 at 2.20 A.M., Vandana died.

Post mortem was carried out on the body of Vandana (hereinafter referred to as 'the deceased') by Dr. S.S. Bansal. The Police then took up the investigation and submitted a charge-sheet against the appellant.

3. On 28.08.1991, the Sessions Court framed a charge under Section 304B, IPC, against the appellant to which the appellant pleaded not guilty. At the trial, the prosecution examined Kedar Nath, who had prepared the scaled plan (Ext. PA) on the place of occurrence, as PW-1; Dr. R.C. Chaudhary, Medical Officer, General Hospital, Mandi Dabwali, who had examined the deceased and found the burn injuries on her body as PW-2; S.I. Kuldeep Singh of P.S. Dabwali, who had registered the FIR as PW-3; the landlord of the house in which the deceased lived with her husband as PW-4; Niranjan Ram Gupta, the father of the deceased, as PW-5; Bhupinder Kumar, the uncle of the deceased as PW-6; Dr. S.S. Bansal, who conducted the post mortem on the body of the deceased as PW-7; R.S. Bagri, the Judicial Magistrate, who recorded the statement of the deceased under Section 164, Cr.P.C. as PW-8 and ASI Madan Lal, the Investigating Officer, as PW-9. The statement of the appellant was recorded under Section 313, Cr.P.C. In defence, the appellant examined Ramesh Devra as DW-1; Jagdish Kumar as DW-2; Nihal Singh, Assistant Chief Medical Officer, Sirsa, as DW-3; Dr. Ajay Kumar Gupta, Medical Officer, Civil Hospital, Sirsa, as DW-4 and Dr. J.L. Bhutani as DW-5. After considering the evidence and the arguments on behalf of the parties, the learned Additional Sessions Judge, Sirsa, in his judgment dated 31.08.1992 held that the prosecution has been able to prove the charge against the appellant and accordingly convicted him under Section 304B, IPC. Thereafter, the learned Additional Sessions Judge heard the accused on the quantum of sentence and ordered that the appellant be sentenced to seven years R.I. with a fine of Rs.2,000/- and in default of payment of fine, to undergo further imprisonment of six months.

4. Aggrieved, the appellant filed Criminal Appeal No.337-SB of 1992 before the High Court. After hearing the appeal, the High Court in the impugned judgment held that the deceased had indicated in her dying declarations (Exts.PG and PN) before ASI Madan Lal and the Judicial Magistrate R.S. Bagri that she was being harassed by her husband with demands of dowry on account of which she had sprinkled kerosene on herself before setting herself ablaze. The High Court further held that the statement of the deceased in these two dying declarations (Exts. PG and PN) that she was being harassed for dowry stood corroborated by the evidence of the father of the deceased (PW-5) and uncle of the deceased (PW-6). The High Court rejected the contention raised on behalf of the appellant that the deceased was not in the medical condition to speak inasmuch as her larynx and tracheae had been charred by burns, relying on the testimony of the medical experts Dr. R.C. Chaudhary (PW-2) and Dr. J.L. Bhutani (DW-5) as well as the testimony of the ASI Madan Lal (PW-9) and the Judicial Magistrate R.S. Bagri (PW-8), who had recorded the dying declarations of

the deceased. The High Court accordingly held that there was no ground to interfere with the orders of conviction and sentence passed by the trial court and dismissed the criminal appeal of the appellant.

Contentions of the learned counsel for the parties:

5. Mr. S.B. Upadhyay, learned counsel for the appellant, submitted that the finding in the impugned judgment that the appellant was harassing the deceased for dowry is not correct inasmuch as PW-4, the landlord of the house in which the deceased and her husband were living, has stated in his evidence that he did not hear any sort of disharmony or fighting between the appellant and the deceased and that they used to live and lead a normal married life and both of them were blessed with a daughter, who was aged about six to seven months. He further submitted that when the Judicial Magistrate (PW-8) recorded the statement of the deceased under Section 164, Cr.P.C., Dr. R.C. Chaudhary (PW-2) was not present, as will be evident from the evidence of PW-8. He submitted that PW-2, on the other hand, was the doctor who issued the fitness certificate to the Judicial Magistrate that the deceased was in a fit state to give the statement. He referred to the opinion of Dr. S.S. Bansal (PW-7) to submit that the larynx and tracheae is a voice box containing vocal cords through which a man speaks and if they were charred by heat and burns, a person will not be able to speak. He submitted that DW-2 was present in the hospital for the whole night on 26.02.1991 and DW-2 has stated that the deceased was not in a position to speak when the alleged dying declarations are said to have been made. He submitted that the trial court and the High Court, therefore, were not correct in relying on the dying declarations of the deceased recorded by the ASI Madan Lal and the Judicial Magistrate R.S. Bagri for holding the appellant guilty.

6. Mr. Upadhyay next submitted that on a reading of the entire evidence of PW-5 (the father of the deceased), it will be clear that the appellant and the deceased were happy with each other and this will also be evident from the letters exchanged between the family members between March 1989 and January 1991 (Exts. DE/2, DE/6, DE/7, DE/9, DE/12, DE/15, DE/17, DE/18, DE/19, DE/20, DE/21, DE/22 and DE/23). He submitted that this is, therefore, not a case where the appellant had made any demand of dowry on the deceased and had subjected the deceased to any cruelty or harassment in connection with the demand of dowry soon before her death and hence the ingredients of the offence under Section 304B, IPC, are missing in this case and, therefore, the appellant could not have been held guilty under Section 304B, IPC.

7. Mr. Upadhyay cited the decisions of this Court in Sanjiv Kumar v. State of Punjab [(2009) 16 SCC 487], Durga Prasad & Anr. v. State of Madhya Pradesh [(2010) 9 SCC 73], Gurdeep Singh v. State of Punjab & Ors. [(2011) 12 SCC 408] and Devinder alias Kala Ram & Ors. v. State of Haryana [2012] 10 SCC 763] in support of his submission that the offence under Section 304B, IPC, is not made out against the appellant. He submitted that at the worst the appellant can be held guilty under Section 306, IPC, for having abetted suicide by the deceased if the dying declaration is to be accepted. He argued that the appellant has already undergone two years imprisonment and is now on bail and also has a young daughter to take care of and, therefore, the appellant should not be subjected to further imprisonment for the offence under Section 306, IPC.

8. Mr. Vikas Sharma, learned counsel appearing for the State of Haryana, on the other hand, submitted that the two dying declarations (Ext. PG and PN) of the deceased are clear that the appellant used to harass the deceased for dowry and being fed up with the habits of the appellant, the deceased sprinkled kerosene oil on herself and set herself ablaze. He submitted that the evidence of Dr. S.S. Bansal (PW-7) is clear that one can speak when the larynx and tracheae are in the process of being charred. He submitted that even DW-5, the medical expert produced by the accused in his defence, has admitted in cross-examination that in case of charring of vocal chords, the patient may be able to speak and the trial court has relied on this admission made by DW-5. He submitted that Dr. R.C. Chaudhary has also deposed that the deceased was fit to make the statement. He submitted that both these witnesses were medical experts and were rightly relied on by the trial court and the High Court to reject the contention of the appellant that the deceased was not in a fit condition to give the statements to ASI Madan Lal and the Judicial Magistrate R.S. Bagri. Mr. Sharma also relied on the evidence of PW-5 that the appellant used to give beatings to the deceased and demand more and more dowry. He submitted that the trial court and the High Court were therefore right in holding the appellant guilty of the offence under Section 304B IPC.

9. Mr. Sharma cited the decision of this Court in *Bansi Lal v. State of Haryana* [(2011) 11 SCC 359] in which it has been held that while considering a case under Section 304B, IPC, cruelty in connection with demand of dowry has to be proved in close proximity to the time of death because of the expression “soon before her death” in Section 304B IPC, and the Court has to analyse the facts and circumstances of each case leading to the death of the victim and decide if there is such proximate connection between the act of cruelty in connection with demand of dowry and death of the woman. He also cited the decision of this Court in *Smt. Shanti and Another v. State of Haryana* [AIR 1991 SC 1226] for the proposition that once the death of a woman is found to be unnatural, either homicidal or suicidal, Section 304B, IPC, has to be attracted.

Findings of the Court:

10. The first question that we have to decide is whether the deceased was in a condition to make the dying declarations (Exts.PG and PN) before ASI Madan Lal and the Judicial Magistrate R.S. Bagri when her larynx and tracheae had been affected by burns. PW-2, Dr. R.C. Chaudhary, has stated in his evidence that on 26.02.1991, on the application of the Police (Ext.PD), he gave his opinion in Ext.PD/1 to the effect that the patient was fit to give her statement and this opinion was given at 10.30 P.M. PW-9, ASI Madan Lal, has deposed in his evidence that the doctor vide his endorsement (Ext.PD/1) declared that Vandana was fit to give her statement and then he recorded the statement of Vandana (Ext.PG) correctly and after Vandana admitted the contents of the statement to be correct, she gave her thumb impression in Ext.PG in token of its correctness. PW-9 has further stated that at that time Vandana was living and taking long sigh and she remained conscious at the time of giving her statement (Ext. PG). PW-9 has also stated that he then went to the Judicial Magistrate R.S. Bagri (PW-8) whose residence was near the hospital and R.S.Bagri accompanied him to the hospital and recorded the statement of Vandana. The Judicial Magistrate R.S. Bagri has accordingly deposed that ASI Madan Lal had approached him in person at his residence at 10.40 P.M. along with application (Ext.PM) and he came to the hospital and moved an application (Ext.PM/1) to the Medical Officer concerned and thereafter he recorded her statement and at the

time of recording the statement, Dr. R.C. Chaudhary was not present but he had given a certificate (Ext.PM/2) on the application (Ext.PM/1) that Vandana was in a fit state to make a statement and she continued to be so during the making of the statement. It is thus clear from the evidence of the aforesaid three witnesses PW-2, PW-8 and PW-9 that at the time the statements of Vandana were recorded by ASI Madan Lal (PW-9) and the Judicial Magistrate R.S. Bagri (PW-8), she was in a fit condition to make the statement. When, however, the post mortem was carried out on 27.02.1991 by Dr.S.S. Bansal (PW-7) at 4.00 P.M. he found that the larynx and tracheae of the deceased were charred by heat. On questions being put to him whether a person will be able to speak when her larynx and tracheae were charred by heat, PW-7 has clarified that when the larynx and tracheae are charred, the person cannot speak, but when the larynx and tracheae are in the process of being charred, the person can speak. Dr. J.L. Bhutani, DW-5, has given his opinion that if the vocal chord of larynx is charred, such person may be able to speak, but not clearly, and it will be difficult to understand. The opinions of the two medical experts, therefore, are not in variance of the ocular evidence of PW-2, PW-8 and PW-9 that Vandana was in a position to speak when her dying declarations were recorded on the night of 26.02.1991. Hence, the two dying declarations (Ext.PG and Ext.PN) can be relied on by the Court.

11. The next question which we have to decide is whether the prosecution has been able to prove beyond reasonable doubt that the appellant has committed the offence of dowry death under Section 304B, IPC. The two dying declarations are similarly worded. We, therefore, extract hereinbelow only the dying declaration which was recorded by the Judicial Magistrate (Ext. PN):

“Statement of Vandana, w/o Rajiv Singla, age 23 years, occupation house wife, R/o Dabwali, u/s 164 Cr.P.C.

I was married to Dr. Rajiv Singla 2 years back. My husband used to get upset on petty issues. My in-laws lived separately. They are living after the 6 months of my marriage. My daughter is of 2 months. Today about 7.30 p.m., in evening I was fed up with activities of my husband and put on kerosene oil and burn myself. Earlier my husband used to taunt me for dowry. Action should be taken against my husband.

RO & AC

RTI of Vandana
Identified
Sd/-
Madan Lal, ASI
P.C. City Dabwali,
Dated: 26-2-91”

Sd/- R.C. Bangri
JMIC
Dabwali, 26-2-91

It will be clear from the contents of the dying declaration (Ext. PN) that the deceased was fed up with the activities of her husband and she poured kerosene oil on herself

and burnt herself. What those activities of the appellant were which prompted her to commit suicide have not been clearly stated, but she has stated that her husband used to get upset on petty issues and earlier her husband used to taunt her for dowry.

12. When, however, we scrutinize the evidence of PW-5, the father of the deceased, we find that soon before the death of the deceased, the appellant had subjected the deceased to cruelty which was not in any way connected with the demand of dowry. The relevant part of the evidence of PW-5 is quoted hereinbelow:

“Smt. Vandhana deceased was my daughter. I had married my daughter Vandhana with Rajiv Kumar, accused now present in the Court on 28.01.1989 at Kartarpur. Out of her wed lock with the accused Rajiv Kumar, a female child was born on 2.7.90. Vandhana deceased and Rajiv Kumar accused, her husband used to reside/live in Mandi Dabwali. After marriage, whenever Vandhana used to come to tell us, she used to tell me that her husband Rajiv Kumar gives her beating and demands more and more dowry. We used to fulfill the demand of Rajiv Kumar accused in the shape of dowry put forward before us by my daughter and used to send her back after advising her that she is to live with her husband and should try to adjust with him. On 19.2.91 Vandhana came to me at Kartarpur and told me that two days prior to 19.2.91, Rajiv Kumar accused her husband gave her merciless beating. She narrated this to me in the presence of my wife Smt. Pushpa Rani and Bhupinder Singh my brother in fact, he is my friend.

On the night of 24.2.91, I had received anonymous telephone call on the telephone no. 242 that Rajiv Kumar has fled away leaving his minor daughter alone. On hearing this, my daughter Vandhana got perturbed and wanted us to leave her at Mandi Dabwali immediately. On 25.02.91 (25.2.91) we left Vandhana at Mandi Dabwali. I was accompanied by my wife Pushpa Rani and Bhupinder Kumar. On reaching at Dabwali we found Rajiv Kumar present in his clinic and later on he came to the house. We told Rajiv Kumar that he should not repeatedly give beating to Vandhana. We told him that it was not proper for him to do so. We also advised our daughter Vandhana to adjust with her husband and to remain calm and quiet and not to speak. On 25.2.91 itself after advising Rajiv Kumar and Vandhana we came back to Kartarpur after staying at night at Bhatinda. On 27.2.91, I received a telephonic message that Vandhana after sprinkling kerosene oil on her body has put herself fire and that she is dead and no longer alive.” From the aforesaid evidence of PW-5, it is clear that the marriage between the appellant and the deceased took place on 28.01.1989 and the demand of dowry by the appellant and the beatings for more dowry was after the marriage. PW-5 has also stated that on 19.02.1991 the deceased came to him at Kartarpur and told him that two days prior to 19.02.1991, the appellant gave her merciless beating. PW-5 has, however, not stated that the beating that the appellant gave to the deceased on 19.02.1991 was in connection with demand of dowry. One of the essential ingredients of the offence of dowry death under Section 304B, IPC is that the accused must have subjected a woman to cruelty in connection with demand of dowry soon before her death and this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113B of the Indian Evidence Act. As this ingredient of Section 304B,

IPC, has not been established by the prosecution, the trial court and the High Court were not correct in holding the appellant guilty of the offence of dowry death under Section 304B, IPC.

13. We have perused the decision of this Court in *Smt. Shanti and Another v. State of Haryana* (supra) cited by Mr. Sharma and we find that in the aforesaid case the facts were that Smt. Shanti was mother-in-law of the deceased and Smt. Krishna was another inmate in the matrimonial home in which the deceased was living and it was alleged that both Smt. Shanti and Smt. Krishna were harassing the deceased all the while after the marriage for not bringing a scooter and television as part of the dowry and she was treated cruelly. On 26.04.1988 at about 11.00 P.M., the father of the deceased came to know that the deceased had been murdered and was cremated by two ladies and he filed a report accordingly before the police. Both the courts below held that the two ladies did not send the deceased to her parents house and drove out the brother and father of the deceased complaining that a scooter and a television has not been given as dowry. The evidence of the father, mother and brother of the deceased was that they were not even informed soon after the death of the deceased and the appellants had hurriedly cremated the dead body. In these circumstances, this Court held that the presumption under Section 113-B of the Indian Evidence Act that the two ladies have committed the offence under Section 304B, IPC, was attracted. This was, therefore, a case where the evidence clearly disclosed that the deceased had been subjected to harassment or cruelty committed by the appellants soon before her death.

14. We have also examined the decision of this Court in *Bansi Lal v. State of Haryana* (supra), cited by Mr. Sharma, and we find that the facts in that case were that the appellant Bansi Lal was married to Sarla on 04.04.1988. She was subjected to cruelty, harassment and demand of dowry and on 25.06.1991 she died. After investigation of the case, prosecution filed a charge-sheet against Bansi Lal and his mother Smt. Shanti Devi and charges were framed against them under Sections 498A, 304B and 306, IPC, and they were convicted for the said charges by the trial court. The High Court, however, acquitted Smt. Shanti Devi, but convicted Bansi Lal because of demand of dowry and cruelty in connection with demand of dowry to which the deceased was subjected to by him. Bansi Lal had made a statement under Section 313, Cr.P.C. that Sarla was in love with some other person but she was forced to marry Bansi Lal against her will due to which she felt suffocated and committed suicide, leaving a suicide note to that effect. On these facts, this Court held that once it is shown that soon before her death the deceased has been subjected to cruelty or harassment for or in connection with the demand for dowry, the Court shall presume that such person has caused the dowry death under Section 113-B of the Evidence Act, and if the case of the Bansi Lal was that Sarla has committed suicide, the onus was on him to establish his defence by leading sufficient evidence to rebut the presumption that he has not caused the dowry death, but Bansi Lal has failed to discharge that onus.

15. On the evidence on record, though the appellant is not guilty of the offence under Section 304B, IPC, he is certainly guilty of offences of abetment of suicide and cruelty. Section 113-A of the Indian Evidence Act states as follows:

“113A. Presumption as to abetment of suicide by a married woman.- 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" The language of Section 113-A of the Indian Evidence Act makes it clear that if a woman has committed suicide within a period of seven years from the date of her marriage and that 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. The Explanation to Section 113-A of the Indian Evidence Act states that for the purpose of Section 113-A "cruelty" shall have the same meaning as in Section 498A, IPC. The Explanation to Section 498A, IPC, defines 'cruelty' and Clause

(a) of the Explanation states that cruelty means any willful conduct which is of such nature as likely to drive a woman to commit suicide. The dying declaration of the deceased (Ext. PN) as well as the evidence of PW-5 extracted above are sufficient to establish that the appellant used to fight on petty issues and give beatings to the deceased, which drove the deceased to commit suicide. This is, therefore, a clear case where the appellant had committed offences under Sections 498A and 306, IPC.

16. In *K. Prema S. Rao and Another, etc. v. Yadla Srinivasa Rao and Others, etc.* [(2003) 1 SCC 217], this Court on similar facts has held that to attract the provisions of Section 304B, IPC, one of the main ingredients of the offence, which is required to be established, is that "soon before her death" she was subjected to cruelty and harassment "in connection with the demand for dowry" and this ingredient of the offence was not there in that case. This Court, however, held that it was not necessary to remit the matter to the trial court for framing a charge under Section 306, IPC, and the accused also cannot complain for want of opportunity to defend the charge under Section 306, IPC, if the facts found in evidence justify the conviction of the appellant under Sections 498A and 306, IPC instead of the graver offence under Section 304B, IPC. In that case, the three-Judge Bench of this Court held the appellant guilty of the offences under Sections 498A and 306, IPC instead of the graver offence under Section 304B, IPC.

17. In this case also, we hold the appellant guilty of offences under Sections 498A and 306, IPC. Considering the particular conduct of the appellant which drove the deceased to commit suicide, we impose a sentence of one year imprisonment and fine of Rs.1,000/- for the offence under Section 498A, IPC and impose a sentence of three years imprisonment and fine of Rs.2,000/- for the offence under Section 306, IPC, and direct that in case of failure to pay the fine for either of the two offences, the appellant shall undergo a further imprisonment for a period of six months. We make it clear that the sentences of imprisonment for the two offences will run concurrently. If the appellant has already undergone the punishment imposed by this judgment, his bail bonds shall stand discharged.

18. The appeal is allowed to that extent.

.....J. (A. K. Patnaik)J. (Gyan Sudha Misra) New Delhi, October 31,
2013.