State Of Himachal Pradesh vs Nikku Ram And Others on 30 August, 1995

Supreme Court of India

Equivalent citations: AIR 1996 SC 67, 1995 CriLJ 4184, I (1996) DMC 131 SC
Bench: K R Hansaria

JUDGMENT

B.L. Hansaria, J.

1. Dowry, dowry and dowry. This is the painful repetition which confronts, and at times haunts, many parents of a girl child in this holy land of ours where, in good old days the belief was : "Yatra Naryastu Pujyante ramente tetra dewatan" (where woman is worshipped, there is abode of God). We have mentioned about dowry thrice, because this demand is made on three occasions: (i) before marriage; (ii) at the time of marriage; and (iii) after the marriage. Greed being limitless, the demands become insatiable in many cases, followed by torture on the girl, leading to either suicide in some cases or murder in some.

2. The highly injurious and deleterious effect on the girl, her parents and the society at large required legislative interference. It started with enactment of the Dowry Prohibition Act, 1961, containing some penal provisions also. But as the evil could not be taken care of by this soft statute, the Penal code was amended first by inserted Chapter XX - A (containing the only Section 498-A) in it by the Criminal Law (Second Amendment) Act, 1983 (46 of 1983); and then, by insertion of Section 304-B by the Dowry Prohibition (Amendment) Act, 1986 (43 of 1986). Section 498-A seeks to protect a married woman from being subjected to cruelty by the husband or his relative. Section 304-B is aimed at those who indulge in "dowry deaths". To give teeth to these provisions, Act 46 of 1983 inserted Section 113-A in the Evidence Act, permitting a court to presume, having regard to the circumstances of the case, that suicide by the woman was abetted by her husband or his relative. Similarly, Act 43 of 1986 inserted Section 113-A in the Evidence Act requiring some presumption to be drawn in case of dowry death. Amendment was also made in the Code of Criminal procedure making the offence of dowry death cognizable, non-bailable and triable by a Court of Session.

3. In the appeal at hand we are required to decide whether the respondents had committed offences under Sections 304-B and 306 which punishes abetment of suicide. The trial court (Sessions Judge, Hamirpur) having acquitted all the accused of the aforesaid offences, the State approached Himachal Pradesh High Court seeking leave to appeal against the judgment of acquittal. The High Court refused leave by a short order observing "all the essential features of the prosecution case have remained unsubstantiated" and the

accused "could not have been convicted on the vague and unsubstantiated allegations". Hence this appeal by special leave.

4. The couple was married on 6.2.1985. 5-6 months thereafter, it is alleged, that the husband of deceased Roshani, named Nikku Ram, her mother-in-law Batholi Devi, and sister-in-law Kamla Devi started taunting Roshani for bringing less dowry. Demands for television, electric fan and buffalo etc. were made through Roshani, which not having been fulfilled, the prosecution case, is that the aforesaid named persons started treating Roshani with cruelty. The harassment gradually increased so much so that on 20.6.1988 Batholi is alleged to have given a blow with drat (a sickle like instrument) causing an incised wound on the forehead of Roshani. She being unable to bear the torture etc., it is said, she consumed naphthalene balls which proved fatal and she died on 20th June itself due to cardio-respiratory arrest. On police being informed, investigation was taken, during the course of which a sickle was recovered on the disclosure made by Batholi, Some letters written by Roshani to her father also came into light. After completion of investigation the aforesaid persons were challaned for offences under Sections 304-B, 306 and 498-A IPC, in the Court of Chief Judicial Magistrate, Hamirpur. The first two offences being exclusively triable by Court of Session, the accused persons were committed to stand their trial before that Court.

5. During the course of the trial the prosecution examined 18 witnesses of whom P.W. 1 Mansha Ram, P.W.4 Sant Ram, P.w. 5 Dina Nath and P.W. 8 Bidhi Chand are relations of Roshani - being her maternal uncle, father, brother-in-law and brother respectively. Others were formal witnesses. The letters written by Roshani were brought on record as Exhibits P-1, P-3 and P-4. The defence was one of complete denial.

6. The trial court, after analysing the oral and documentary evidence including the testimony of P.W. 7, the doctor who had conducted autopsy, came to the conclusion that the prosecution failed to establish the charges beyond reasonable doubt and, therefore, acquitted all the three accused. As already noted, the High Court refused to grant leave to appeal.

7. The offence alleged being also of dowry death, which is in steep rise, we have examined the matter afresh, by applying our mind to the relevant piece of evidence brought on record by the prosecution. We shall first advert to the offence under Section 304-B. This allegation has virtually less to stand, because the autopsy had revealed only two wounds on the person of Roshani. These were : (i) a vertical incised wound on the right side of forehead 1-1/2"x1/2" bone deep with tapering ends; and (ii) T shaped contusion 1-1/2"x 1/2" with slight discharged from one end. Even if it be held that these two wounds were inflicted by an outside agency, these could not have caused the death of Roshani. This indeed is the evidence of P.W.7, according to whom, the death was because of naphthalene poisoning. This being the

position, we are not inclined to examine whether the contusion could have been caused by a fall as submitted on behalf of the respondents. But then, we have no doubt that the first injury had been caused on the person of Roshani by Batholi as is the evidence of P.Ws. The offence made out would, however, be under Section 324 IPC. We accordingly find Batholi guilty under this section. As to the sentence to be awarded for the offence, keeping in view the advanced age of Batholi, which by now is more than 80 years, we do not think if sentence of substantive imprisonment is called for at this length of time. According to us, ends of justice will be met by imposing a fine of Rs. 3,000 which would be paid within two months, failing which Batholi would undergo simple imprisonment for one month. Fine, if paid, shall be made over to the parents of Roshani.

8. Before coming to the offence under Section 306, we have felt called upon to say a few words about the view taken by the trial court on the question that the demands of television, electric fan etc., after Roshani had been given in marriage, could not be "dowry"; so, Section 304-B was not attracted in any case. This view was taken because as per the Explanation to Sub-section (1) of Section 304-B, the word "dowry" has the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The learned trial court noted in this connection the judgment of learned single Judge of Delhi High Court in Inder Sain and Anr. v. The State (1981) Crl. L.J. 1116, in which it was held that to constitute dowry the valuables demanded or given must be as "consideration for the marriage". The learned Judge then opined that only those articles are dowry which are given or agreed to be given for solemnization of marriage; and anything given after marriage is only for a happy matrimonial relationship and would not be dowry. As the demands in the present case had been made after the marriage, the trial court concluded that the same would not be dowry.

9. We have two observations to make. The first is that the meaning of the word "dowry" was examined as it had stood before the same was amended, first by Act 63 of 1984 and then by Act 43 of 1986. As we shall presently note, these two amendments have altered the definition of dowry in a significant way. Our second observation is that even on the basis of the definition as it stood when the decision in Inder Sain was rendered, it could not have been said that anything given after marriage could not be dowry.

10. We shall first take up the second facet. A perusal of the judgment shows that dowry had been defined at the relevant time as under : It

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 parents of either party to the marriage or by any other person, to either party to the marriage or to any other person;

at or before or after marriage as consideration for the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Laws (Shariat) applies.

(emphasis supplied)

11. Despite the aforesaid definition having stated that the property or valuable security given or agreed to be given has to be as "consideration for the marriage", demands made after the marriage could also be a part of the consideration, according to us, because an implied agreement has to be read to give property or valuable securities, even if asked after the marriage, as a part of consideration for marriage when the Dowry Prohibition Act was enacted, the legislature was well aware of the fact that demands for dowry are made, and indeed very often, even after the marriage has been solemnized, and this demand is founded on the factum of marriage only. Such demands, therefore, would also be, in our mind, as consideration for marriage.

12. The definition as amended by the aforesaid two Acts does not however leave any thing to doubt that demands made after the solemnization of marriage would be dowry. This is because the definition as amended reads as below :

In this Act "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 parents 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 person to whom the Muslim Personal Law (Shariat) applies.

(Explanations omitted being not relevant)

13. The aforesaid definition makes it clear that the property or the valuable security need not be as a consideration for marriage, as was required to be under the unamended definition. This apart, the addition of the words "any time" before the expression "after the marriage" would clearly show that even if the demand is long after the marriage the same could constitute dowry, if other requirement of the section are satisfied.

14. Having however held that in the present case the injuries as found on the person of Roshani could not have caused here death, despite the demands being dowry, the offence would not attract the mischief of Section 304-B.

15. As to the offence under Section 306 IPC, trial court has first observed that none of the respondents could really be said to have abetted suicide as per the definition of "abetment" in Section 107 IPC. This was the accepted position. The stand of the prosecution rather was that abetment stood established because of what has been provided in Section 113-A of the Evidence Act. That section reads as below :

Presumption as to abetment of suicide by a married woman: when the question is whether the commission of suicide by 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 a 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 a suicide had been abetted by her husband or by such a relative of her husband.

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

16. This shows that if the woman had been subjected to cruelty, as defined in Section 498-A IPC, the Court may presume, having regard to all the circumstances of the case,that the suicide had been abetted by her husband or any of his relative. So, let it be seen whether Roshani was subjected to cruelty. A reference to Explanation (b) of Section 498-A shows that if there be harassment of the woman with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security, the same would amount to cruelty. The case of the prosecution being that the accused party had demanded television, electric fan etc., let us see whether there is reliable evidence to establish the same. The learned trial court has dealt with this matter in para 25 of the judgment and it has been observed that neither P.W, 5 nor P.W.8 has stated about any of the alleged demands and though P.W.I deposed that Batholi and Kamla had made illegal demands of electric fan and television etc. from P.W. 4 Sant Ram, the father of Roshani, the latter did not say anything about the same. The court, therefore, rightly disbelieved this part of the prosecution case. There is thus no reliable evidence to hold that Roshani was being harassed within the meaning of Explanation (b) of Section 498-A.

17. On the basis of the foregoing discussion, we hold that the prosecution failed to bring home the offence either under Section 304-B or against any of the respondents. The only offence made out is under Section 324 against Batholi, for which offence, as already stated, she would pay a fine of Rs. 3,000 within a

period of two months from today, in default undergo simple imprisonment for one month. Fine, if paid shall be made over to the parents of Roshani.

18. The appeal is allowed accordingly.