
Before Uma Nath Singh, J

SURESH KUMAR,—Appellant

versus

STATE OF HARYANA,—Respondent

Crl. A. No. 147/SB OF 1992

23rd February, 2005

Code of Criminal Procedure, 1973—S. 221(2)—Indian Penal Code, 1860—Ss. 302 & 304—B—Dowry death—Sessions Court charging and trying the accused u/s 302 IPC but convicting and sentencing u/s 304-B IPC under impression that offence under this Section is minor to the one u/s 302 IPC—Whether in the absence of a specific charge for distinct offence u/s 304-B IPC the accused can be convicted on that account—Held, no—Conviction and sentence passed by the Sessions Court set aside while remanding the case for a fresh consideration on merits after framing proper charges.

Held, that since Sudesh Kumari died within 9 months of marriage and there was an allegation that she was being harassed as her parents failed to meet the demand of dowry by her husband, the presumption as to dowry death under Section 113-A of the Evidence Act would be attracted. However, it appears from the charge that the accused-appellant was tried upon only u/s 302 IPC but was convicted u/s 304-B IPC. Hence, the ratio of the judgment of Hon'ble the Apex Court in the case of Shamnsaheb M. Multtani versus State of Karnataka, 2001 (1) RCR (Criminal) 617, holding that in the absence of a specific charge under Section 304-B IPC apart from one u/s 302 IPC, an accused cannot be convicted u/s 304-B IPC under impression that offence under this section is minor in nature, would cover this case. Thus, without expressing any opinion on merits of the case, I hereby set aside the conviction and sentence passed by learned Addl. Sessions Judge, Rohtak and remand the case to his court for a fresh consideration on merits after framing proper charges.

(Paras 4 & 6)

S. S. Ahlawat, Advocate, for the appellant.

Sanjiv Sheokand, Assistant Advocate General, Haryana, for the respondent.

JUDGMENT

(1) This Criminal Appeal has been preferred against a judgement and order passed by Learned Additional Sessions Judge, Rohtak, in the Sessions Trial No. 6 of 1992, wherein, though the accused was only tried upon a charge under Section 302 IPC, but has been convicted under Section 304-B IPC and sentenced to a period of 7 years RI without giving him opportunity to place his defence thereunder obviously under impression that the offence under Section 304-B IPC is minor to the one under Section 302 IPC.

(2) The relevant facts of the prosecution case as stated in the impugned judgment on being extracted and reproduced read as under :—

“2. Sudesh Kumari daughter of Umed Singh resident of village Kawali, District Sonapat, was married to Suresh Kumar accused about nine months before her death which occurred on 22nd March, 1991. The case of the prosecution is that 1½ month before her death Sudesh Kumari visited the house of her parents and told them that she was asked to bring television and some ornaments on her third visit to the matrimonial home. Umed Singh sent her daughter Sudesh Kumari on 9th March, 1991 along with Suresh Kumar accused on her third visit but he could not give her television and ornaments. It is further the case of the prosecution that for not meeting the aforesaid demand Sudesh Kumari was harassed by her in-laws. On 22nd March, 1991 Umara Singh of Village Fatehpur came to Umed Singh and told him that her daughter Sudesh Kumari had died after consuming some tablet. Umed Singh accompanied by his uncle Chandan Singh, his brother Suraj Bhan and his nephew Rajbir went to village Mokhra to the house of Suresh Kumar accused. He found that the dead body of her daughter was lying on a bed in the Chaubara (room on the first floor) of the house of Suresh Kumar accused. There were several injuries caused with a knife on the neck of the deceased. The blood from these injuries had fallen on the mattress and bed. Umed Singh and others made inquiries and they came to know that Sudesh Kumari was murdered by Suresh Kumar accused. Umed Singh went to Rohtak for reporting the matter to the police. There he came to know that village Mokhra

was within the jurisdiction of police station Meham. He then went to police station Meham and reported the matter there to S.I. Rameshwar Dass who recorded the F.I.R. on the basis of his statement, the carbon copy of which is Ex.PA. S.I. Rameshwar Dass then went to the cremation ground in village Mokhra alongwith some other police officials. There he prepared rough site plan Ex.PH in the presence of Phool Chand and Ved Pal. He lifted from the spot ash and bone pieces of Sudesh Kumari deceased which were made into parcels and sealed with the seal bearing impression RD. The same were taken into possession,—*vide memo. Ex.PJ.* S.I. Rameshwar Dass thereafter visited the place of occurrence and prepared the rough site plan Ex.PK of the said place. He took into possession one blood-stained mattress from the spot,—*vide memo. EX.PF.* The accused were produced before S.I. Rameshwar Dass on 25th March, 1991 by Daya Kishan Lambardar and they were arrested by him. After completion of investigation, the accused were challaned in the court of Shri Lakshman Sharma, Addl. Chief Judicial Magistrate, Rohtak, who committed the case to the Court of Sessions and the same was assigned to this court for trial.

3. On 24th July, 1991, Suresh Kumar accused was charged under Section 302 of the Indian Penal code and the other accused were charged under Section 201 of the Indian Penal Code. They pleaded not guilty to the said charges and claimed trial.”

(3) Heard the rival submissions and perused the records.

(4) Learned counsel for the appellant has raised a preliminary objection on the strength of a Three Judge Bench judgment of Hon'ble the Apex Court in the case of **Shamnsaheb M. Multtani versus State of Karnataka**, (1) holding that in the absence of a specific charge under Section 304-B IPC apart from one under Section 302 IPC, in case of acquittal under Section 302 IPC, an accused cannot be convicted under Section 304-B IPC under impression that offence under this section is minor in nature. On the other hand, learned Assistanct Advocate General for the State, submitted that this point

is squarely covered by Section 221 (2) Cr. P.C. and that in his examination under Section 313 Cr. P.C. the accused has been asked a specific question on demand of dowry.

(5) In the judgment of Hon'ble the Apex Court under reference this point of law has already been discussed in great details holding that offence under Section 304-B I.P.C. cannot be minor to Section 302 I.P.C., and in respect thereof, a separate charge be framed mainly on the ground that accused does not get an opportunity to place his defence to that charge and that there is a presumption as to dowry death under Section 113-B of the Indian Evidence Act. Thus, in the absence of a specific charge for a distinct offence under Section 304-B I.P.C., the accused cannot be convicted on that account. Hence, Hon'ble the Apex Court with a view of afford opportunity to the accused to advance his defence in respect of offence under Section 304-B, I.P.C. was pleased to set aside the conviction and sentence passed thereunder and remanded the case for a fresh consideration.

(6) In the instant case also, since Sudesh Kumari died within 9 months of marriage and there was an allegation that she was being harassed as her parents failed to meet the demand of dowry by her husband, the presumption as to dowry death under Section 113-A of the Evidence Act would be attracted. However, it appears from the charge that the accused- appellant was tried upon only under Section 302 I.P.C. but was convicted under Section 304-B I.P.C. Hence, the ratio of the judgment (*supra*) would cover this case. Thus, on careful consideration of the rival submissions, without expressing any opinion on merits of the case, I hereby set aside the conviction and sentence passed by learned Additional Sessions Judge, Rohtak, in the Sessions Trial No. 6 of 1992 and remand the case to his Court for a fresh consideration on merits after framing proper charges. Learned Additional Sessions Judge, Rohtak, shall complete the entire exercise within two months from receipt of copy of the judgement.

(7) Hence, the Crl. Appeal is allowed not on merits by re-appreciating the evidence on record but only on the ground of preliminary objection as discussed hereinabove. The Registry is directed to remit the records of the case forthwith to the Court of learned Additional Sessions Judge, Rohtak, for compliance.