

THE HONOURABLE SRI JUSTICE K.SURENDER
CRIMINAL REVISION CASE No.1772 OF 2006

ORDER:

The petitioner – Accused filed the present Criminal Revision Case questioning the correctness of the concurrent findings of the trial Court and appellate Sessions Court in convicting the petitioner – Accused for the offences under Section 304-B of Indian Penal Code.

2. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the respondent-State. Perused the record.

3. The case of the prosecution is that the petitioner was married to the deceased in the year 1998 and at the time of marriage dowry was given. However, an agreement for Rs.70,000/- cash was made by the parents of the deceased but at the time of marriage Rs.40,000/- was given and there was a due of Rs.30,000/- . For the said Rs.30,000/- it is alleged that the petitioner and his parents harassed the deceased, for which reason deceased committed suicide.

4. The trial Court found that Accused Nos.2 and 3 who are the parents of the petitioner were not responsible in any manner, for which reason, they were acquitted by the trial Court and convicted the petitioner herein for the offence under Section 304-B of IPC.

5. The State has not preferred any appeal against the acquittal of the Accused Nos.2 and 3.

6. The learned Assistant Sessions Judge found that though there was no specific evidence with regard to the harassment, relied upon the presumption available under Section 113B of the Indian Evidence Act (for short the Act).

7. The learned Assistant Sessions Judge found that in cases such as these, when there is no direct evidence regarding demand of dowry, the Court has to fall back on the presumption prescribed under Section 113B of the Act.

8. Section 113B of Indian Evidence Act reads as follows:

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 had 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.

9. To invoke presumption under Section 113B of the Act, the initial burden is always on the prosecution to prove their case. Unless such basis is made by the prosecution, a presumption under Section 113B of the Act cannot be invoked to infer only on the basis of the death that occurred and convict the accused.

10. In the present case, the learned Assistant Sessions Judge has found that PWs 1 and 2 have stated that A1 asked for dowry and that he was informed eight days prior to her death that there was a demand for dowry. Apart from such vague allegation there is no other evidence. On the basis of such statement, the learned Assistant Sessions Judge has concluded that there was harassment, pursuant to which the death occurred.

11. It is necessary that soon before death or preceding the suicide, any incident of harassment must be proximate in time to convict an accused for the said offence by drawing presumption conviction was based on Section 113B of the Act as already

discussed above without any incident happening anytime in close proximity. Though there cannot be any time fixed to state proximity, however, it depends on the facts of each case.

12. In the absence of the Courts below specifically mentioning as to on what basis they had come to a conclusion that there was harassment soon before death of the deceased, the Revision has to be allowed.

13. For the said reasons, when the conviction is solely based on Section 113B of the Act by drawing presumption and failure of the prosecution to lay foundation regarding any harassment, this Court deems it appropriate to *set aside* the conviction.

14. Accordingly, the Criminal Revision Case is allowed and the conviction recorded by the trial Court and appellate Sessions Court is hereby *set aside*.

Miscellaneous Petitions, pending if any, shall stand closed.

K.SURENDER, J

Date: 03.01.2023
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