

R-68 & 69

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : August 21, 2009*

+ **CRL.A.387/2001**

RAM BABU Appellant
Through: Mr.Rajesh Mahajan, Advocate.

versus

STATE Respondent
Through: Mr.Pawan Sharma, A.P.P.

CRL.A.900/2001

RAMESH Appellant
Through: Mr.Rajesh Mahajan, Advocate.

versus

STATE Respondent
Through: Mr.Pawan Sharma, A.P.P.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J. (ORAL)

1. The appellants have been convicted for the offence punishable under Section 302/498-A/34 IPC.
2. The impugned judgment and order is dated 1.11.2000.

3. For the offence of murder, the appellants have been sentenced to undergo imprisonment for life and pay a fine in sum of Rs.500/- each; in default of payment of fine they have been directed to undergo rigorous imprisonment for one month.

4. For the offence punishable under Section 498-A IPC, the appellants have been sentenced to undergo rigorous imprisonment for three years and pay a fine in sum of Rs.500/- each.

5. Appellant Ram Babu is the father-in-law of the deceased Kamlesh. Appellant Ramesh is the husband of the deceased Kamlesh. Ramesh and Kamlesh were married on 26.4.1993. Kamlesh died somewhere in the late hours of the intervening night of 19th and 20th July 1997. The place where she died is her matrimonial house being Jhuggi No.E-59/A – 410 Kalandar Colony, Dilshad Garden.

6. The jhuggi stands delineated in the site plan to scale Ex.PW-10/A. It consists of two rooms. The first room is square shaped, of the size 12'x12'. The other is a small room, trapezium in shape, having dimensions 4'x8'x6'x9'.

7. The information pertaining to Kamlesh being dead was conveyed by appellant Ramesh to her parents Desh Raj PW-1 i.e. the father and Smt.Ram Murthy PW-13 i.e. the

mother of Kamlesh at around 4:00 AM or 5:00 AM on 20.7.1997; a fact deposed to by Desh Raj and his wife, in respect whereof, their testimony to said effect has gone unchallenged during cross-examination.

8. Information pertaining to Kamlesh being dead in her matrimonial house was conveyed to the local police station at 11:00 AM as noted in DD No.17-A, Ex.PW-16/A, when Desh Raj went to the police station and informed that he suspects that his daughter has been murdered and that he desires that before she is cremated a post-mortem be conducted.

9. SI Ratan Singh PW-15 accompanied by Const.Jatan Swarup proceeded to Kalander Colony Jhuggi Basti and saw the dead body of Kamlesh lying in front of the jhuggi. He seized the body and sent it to the mortuary of GTB Hospital for post-mortem.

10. On 21.7.1997, SI Ratan Singh took the parents of the deceased to the office of the Sub Divisional Magistrate who recorded the statement Ex.PW-1/A of Desh Raj and the statement Ex.PW-4/A of Ram Murthy. In the two statements, the parents of the deceased stated that their daughter was physically maltreated on account of dowry demand by her in-laws.

11. SI Ratan Singh prepared the inquest papers, Ex.PW-

4/C, and on receipt of the same, Dr.K.K.Banerjee PW-9 conducted the post-mortem on the dead body of Kamlesh of 21.7.1997 and after the post-mortem report, in view of his observations, prepared the post-mortem report Ex.PW-9/A noting 9 external injuries on the body of the deceased being:-

- “1. Abrasion reddish 2.5 into 1 cm placed obliquely on the upper part on the front of right side of chest in the region of third rib 13.5 cm below the medial line third of right clavicle in medial and being 3.5 cm away from mid line.
2. Abrasion reddish .5 cm into .5 cm present on right side of upper lip 1 cm away from midline.
3. Abrasion reddish 1.5 cm into 0.5 cm present on left forehead 2 cm above the median one third of left eyebrow.
4. Abrasion reddish two in number small size present on the front of vertex of head almost in the midline 6 cm behind hairline.
5. The whole of left hand including the left wrist and left elbow is swollen.
6. Contusion reddish over in area of 32 cm into 6 cm starting from middle of outer aspect of left upper arm going down to left elbow, the whole of left forearm on into dorsal and ventral surface up to ventral portion of left wrist joint.
7. Contusion, reddish over in area of 14 cm x 8 cm on the dorsum of left hand, going up to the middle knuckles of all the fingers.
8. Contusion 1 cm x 0.5 cm reddish present on the middle of right nostril.
9. Contusion reddish 5 cm x 4 cm present on the left palm.”

12. Internal injuries noted were as under:-

“Scalp – On reflection showed extravasation of blood more over the occipital region.

Brain – Oedematous left occipital lobe showed sub arachnoid haemorrhage.

Lungs – Both lungs adherent to the chest wall tedementaus.

Right lung – upper and middle lobe showed contusion over its outer surface. Left lung – on cut section showed multiple large cavities filled with grayish colour caseating material and puss.”

13. He opined that all injuries were ante-mortem and the cause of death was shock as a result of injuries to the organs which were the likely result of blunt force impact. He opined that injuries could be caused by any kind of blunt object and that the internal injuries to the brain and the lung could be caused by a blunt object if it is hit very hard.

14. In the post-mortem report Ex.PW-9/A it has been recorded that the height of the deceased was 148 cms and her weight was 28 kg.

15. The death not being a natural death, it was obvious that somebody had killed Kamlesh. Since the place she was killed was her matrimonial house, the appellants as also one Bimla were sent to trial. Bimla was impleaded as a co-accused for the reason even she was a resident of the jhuggi in question and in the statements made by the parents of

Kamlesh before the Sub Divisional Magistrate they had implicated Bimla of being a party to the harassment of their daughter. The relationship of Bimla with the appellants is not clear. Some witnesses of the prosecution have referred her to be the daughter of appellant Ram Babu and some have referred her as his niece. Bimla has been acquitted of the charge framed against her. The State has not challenged her acquittal. The reason is that there is no evidence led at the trial that Bimla was present in the jhuggi in the intervening night when the deceased was killed. Except for vague reference to Bimla being a party to the harassment of the deceased by the witnesses, the learned Trial Judge has not found any specific allegations in the testimony of the witnesses implicating Bimla. Thus, while noting the evidence, we would not be referring to anything stated qua Bimla.

16. Desh Raj PW-1, the father of Kamlesh, deposed that he sold off a plot belonging to him and spent Rs.75,000/- on the marriage of his daughter Kamlesh with Ramesh. Admitting that neither any dowry was demanded at the time of the engagement nor at the time of marriage, he stated that after 8 months of the marriage, the in-laws of his daughter started demanding a three-wheeler scooter. He did not have the means to finance a scooter but gave Rs.5,000/-. In spite

thereof, his daughter was repeatedly left in his house and on an occasion, when after 5/6 months she was not taken back to her matrimonial house, through the intervention of a panchayat, the in-laws of his daughter were persuaded to take their daughter-in-law to their house. That in spite thereof, the dowry demands continued. The harassment continued. On 7.7.1997, he was constrained to lodge a written complaint with the police being Ex.PW-13D/C (also exhibited as Ex.PW-1/A), followed by another complaint delivered in the office of the Deputy Commissioner of Police on 8.7.1997 being Ex.PX-1. He further deposed that his daughter was physically handicapped and that in the morning of 20.7.1997, appellant Ramesh came to his house at 5:00 AM and informed that Kamlesh had died. When he went to the matrimonial house of his daughter he found injury marks on her hands and head and hence reported the matter to the police. His statement Ex.PW-1/A was recorded by the Sub Divisional Magistrate and that he signed the same at point 'A'. That the dowry articles which he had given at the time of marriage of his daughter were mark 'C-1' and 'C-2'.

17. On being cross-examined, Desh Raj stated that no issues were born to his daughter from the marriage and that it was correct that his daughter and her husband i.e. Ramesh

used to reside mostly at his house. He admitted that Ram Babu had three sons and a daughter.

18. With reference to the testimony of Desh Raj and the complaints made by him to the police, we may note at this stage itself, that in the complaints made to the police, Desh Raj has stated that his daughter was harassed due to being physically handicapped. He has referred to a demand of a three-wheeler scooter and Rs.5,000/-, without naming as to who demanded the said sum. Even while deposing in Court he has generally referred to as the demand being made by the accused persons without specifying as to on what day, month or the year the demand was raised and by whom.

19. Shiv Lal PW-2, a neighbour of Desh Raj deposed that Kamlesh was married to Ramesh about 5 years back and that the accused used to beat Kamlesh and leave her in the house of her parents. The fights were domestic fights on petty matters. He deposed that due to intervention of about 15 persons, Kamlesh was sent back to her matrimonial house and that when she was compelled to go back to her matrimonial house she expressed a fear that she would be killed.

20. Suffice would it be to note that as per Shiv Lal PW-2, the beating to Kamlesh were not on account of any dowry demand, but were the result of domestic fight on petty

matters.

21. Mallu Khan PW-3, the interlocutor of the matrimonial bond between Ramesh and Kamlesh, deposed that he was the mediator who arranged the marriage of Ramesh with Kamlesh and that it was a marriage without any dowry demand from the side of the accused persons. After 3/4 years of the marriage the accused started torturing and beating Kamlesh. He himself had seen injury marks on her body. The panchayat was held. Accused gave an assurance not to maltreat Kamlesh. She was sent back to her matrimonial house and after sometime he learnt that Kamlesh had expired in her matrimonial house.

22. Suffice would it be to note that Mallu Khan has not deposed of any dowry demands being raised. He has only deposed that after 3/4 years of the marriage the accused persons started beating Kamlesh. He has not ascribed any specific role to any accused.

23. Prempal PW-5, another neighbour of Desh Raj deposed that after the marriage the attitude of the in-laws of Kamlesh was not cordial. Being a handicapped girl she could not perform the domestic work properly and this was the reason she was harassed. She used to live in the house of her parents after being beaten. With the intervention of

panchayat, Kamlesh was taken back in her matrimonial house and at that time she told him that the accused persons would not leave her.

24. Qua the testimony of PW-5, it may be noted that he has not deposed about any dowry demand. According to him the unfortunate girl Kamlesh was harassed due to her physical handicap, resulting in being rendered disabled to perform domestic work.

25. Munshi Ram PW-6, another friend of Desh Raj deposed that at the time of marriage of Kamlesh with Ramesh good dowry articles were given. He learnt that Desh Raj had brought back his daughter from her matrimonial house as he feared that she may be killed there. Some persons of the locality decided to intervene and did so. Ram Babu was persuaded to settle the discord. Kamlesh was beaten by her in-laws and had told him that she will not survive in the house of her in-laws.

26. Qua testimony of Munshi Ram it may be noted that he has not deposed of any dowry demands being raised. He has simply deposed that at the time of marriage good dowry articles were given by the parents of Kamlesh to her in-laws. Further, he has not attributed any specific role of harassment or torture to any of the accused persons.

27. Ram Murthy PW-13, the mother of Kamlesh deposed that after marriage, her daughter mostly remained at her house as the accused persons used to beat her and deny food to her. Accused Ramesh used to demand money and sometimes she i.e. Ram Murthy and sometimes her husband gave money to Ramesh. She deposed that the accused persons started demanding a three-wheeler scooter and 20 days prior to the death of her daughter the accused persons came to her house and quarreled. She stated that her daughter was killed by the accused persons. She deposed that accused Ramesh, accused Bimla, the mother-in-law of her daughter and her younger brother-in-law used to harass her daughter for dowry.

28. During cross-examination she admitted that no dowry was demanded at the time of settlement of the marriage nor at the time of the marriage, but clarified that the demand was raised on her and her husband by the accused Ramesh. She admitted that accused Ram Babu had not made any demand of dowry or money. During cross-examination she further stated that at 4:00 AM in the morning on the day when her daughter died, information was given to her by Ramesh, the husband of her daughter.

29. Qua the testimony of Ram Murthy it may be noted

that she has specifically exonerated from the charge of cruelty towards her daughter. She has inculpated Ramesh.

30. Om Prakash PW-14 another acquaintance of Desh Raj deposed that Kamlesh used to tell him that her in-laws would deny food to her and beat her and were also demanding dowry.

31. We may note that Om Prakash has given no particulars of alleged dowry demands i.e. the day or month thereof; the nature thereof or who demanded the same.

32. It is obvious that the issue at hand has to be discussed at two levels. The first relates to the crime of murder and the second to the offence of dowry harassment i.e. the offence punishable under Section 498-A IPC.

33. The learned Trial Judge has held that the evidence of PW-1, PW-2, PW-3, PW-5, PW-6, PW-13 and PW-14 establishes that the deceased was ill-treated and harassed by her in-laws. The learned Trial Judge has held that the two complaints lodged with the police by Desh Raj specifically referred to dowry demands. Thus, the learned Trial Judge has concluded that the prosecution has successfully established that the appellants used to mentally and physically torture the deceased on account of dowry.

34. With reference to the testimony of the 7 witnesses

of the prosecution who have deposed to, on the issue of dowry, it is apparent that save and except PW-13 i.e. the mother of the deceased, who has specifically stated that the demand for a three-wheeler scooter and Rs.5,000/- was raised by Ramesh, the other witnesses have made general statements that all the in-laws of Kamlesh used to demand dowry and harass her for not bringing dowry.

35. Of course, PW-2, PW-3, PW-5, PW-6 and PW-14 would be expected to have hearsay information of dowry demands. PW-1 and PW-13 would have first hand personal information, being parents of Kamlesh.

36. In this context it assumes importance to note that PW-1 has remained inchoate and general in his statements while deposing in Court that all the members of the family of the in-laws of his daughter used to demand dowry. PW-13 has specifically alleged that only Ramesh was demanding dowry. The complaints made to the police i.e. Ex.PX-1 and Ex.PW-1/A are general in nature. None of them refers to any specific demand raised or made by Ram Babu.

37. The testimony of the neighbours of Desh Raj shows and establishes their personal knowledge of having seen the deceased with injuries, resulting from beating. It is thus apparent that when she was in her matrimonial house, the

deceased was subjected to physical cruelty.

38. The question which arises is: Whether both appellants were beating her or it was only her husband who was beating her?

39. In view of the fact that PW-13 has exonerated Ram Babu from the charge of having ever demanded any money and for the reason the other witnesses of the prosecution have deposed in very general terms, it would be most unsafe to convict appellant Ram Babu for the offence punishable under Section 498-A IPC.

40. Qua Ramesh, specific role attributed to him by PW-13, has resulted in good and cogent evidence coming on record against him implicating him for the offence punishable under Section 498-A IPC.

41. Pertaining to the conviction of the appellants for the offence of murder, it has to be kept in mind that the place where the deceased died was her matrimonial house, in which, apart from the deceased, her husband, her father-in-law, her mother-in-law, two brothers-in-law and a sister-in-law were residing. The matrimonial house was a jhuggi having two rooms of the size noted in para 6 above. The mother-in-law and the two brothers-in-law have not been impleaded as accused. The reason why they have not been impleaded as

accused is not forthcoming on record qua the two brothers-in-law. The mother-in-law died within less than two months of the incident and thus qua her it can be said that for said reason she was not impleaded as an accused.

42. No witness has deposed that he saw the appellants in the jhuggi where the deceased was murdered. No witness has deposed that when they went to the jhuggi where the deceased died, they saw Ram Babu. The only evidence is the testimony of Desh Raj and his wife i.e. the parents of the deceased that their son-in-law i.e. Ramesh came to their house at around 4:00 AM or 5:00 AM and told them that his wife had died. Thus, there is evidence that Ramesh was present in the jhuggi.

43. The post-mortem report Ex.PW-9/A has noted the height of the deceased as 148 cms and her weight as 28 kg. There is evidence that the deceased was a patient of tuberculosis. The same finds mention in the inquest papers. The nine injuries on the person of the deceased noted in para 11 above, shows, vide injury No.1, an abrasion on the chest. Injury No.2 and 3 are on the lip and the forehead. Injury No.8 is on the nostril. Injury No.4 is on the front of vertex of the head, almost in the midline. Injury No.5, 6, 7 and 9 are on the left hand, left wrist, left elbow and the left upper arm.

44. As deposed to by the witnesses whose testimonies have been noted by us, the deceased was physically handicapped. She was a victim of polio. The injuries No.2, 3 and 8 show that somebody had put his/her hand on the face of the unfortunate girl to muffle her cries. Injuries No.5, 6, 7 and 9 show that they are the result of the outstretched left arm and the left hand hitting a hard surface or vice versa. Injury No.4 shows that the same is a result of the head banging against a hard surface when the victim was lying. Injury No.1 shows a force applied on the right side of the chest. It is apparent that the assailant, with one hand, muffled the face and gagged the mouth of the tiny victim, who weighed only 28 kg and was 148 cm tall. The victim was physically challenged and could not render much resistance. With the other hand, force was continuously applied on the chest. This accounts for the internal injuries in the chest cavity. It is apparent that the assailant was, in all probability, one.

45. Ramesh has tried to explain away the death of his wife by saying, when examined under Section 313 Cr.P.C. that his wife died due to tuberculosis. The post-mortem report clearly evidences that the deceased died a homicidal death and not a death occasioned by any sickness.

46. Ramesh knew that his wife was suffering from

tuberculosis i.e. had a special disability and was also physically handicapped. He was aware of her tiny built. He was aware that if he did an act which would prevent breathing, in all probability, his wife would die.

47. Thus, there is sufficient evidence wherefrom the involvement of the appellant Ramesh in the crime can be safely inferred. It can also be said that knowing the special disability of his wife, the act of Ramesh attracts Section 300 secondly of the Indian Penal Code.

48. Ram Babu would be entitled to the benefit of doubt.

49. Crl.Appeal No.387/2001 is allowed. Ram Babu is acquitted of the offences he was charged of. The bail bond and surety bond furnished by Ram Babu are discharged.

50. Crl.Appeal No.900/2001 filed by appellant Ramesh is dismissed. His bail bond and surety bond are cancelled. Ramesh is directed to surrender and suffer the remaining sentence.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

AUGUST 21, 2009
Dharmender