

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

+ **Crl. L.P. No.151/2009**

% **Date of Decision: 27.07.2010**

Appellant

State

Through Mr. Jaideep Malik, APP

Versus

Ravinder Chhabra & Ors.

.... Respondents

Through Mr. Subhash Wason, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SURESH KAIT

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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CRL.M.A.9704/2009 (condonation of delay)

This is an application filed by the petitioner for condonation of delay of 3 ½ months in filing the petition. For the reasons stated in the application, it is allowed. The delay in filing the petition is condoned.

Crl. L.P. No. 151/2009

1. The respondents, namely, Mr. Ravinder Chhabra, Ms. Puja Chhabra, Mr. Shiv Kumar Anand and Ms. Lata Anand were charged for offences under Section 498A/304B/34 of IPC in FIR 15/2000, PS Patel Nagar and by impugned judgment and order dated 6th January, 2009, the respondents have been acquitted of the charges framed against them.

2. The case as set up by the petitioner was that on 5th September, 1998 Puja @ Pallavi, daughter of Mr. Ram Lal was married to Mr. Ravinder Chhabra, respondent No. 1 as per Hindu Rites. After the marriage, the matrimonial life was not smooth as allegedly Puja's husband, Ravinder Chhabra (R-1) married sister-in-law (Nand) R-2 and her parents-in-law Nanak Chand Chhabra and Kalawati (since expired during trial) used to taunt her for not bringing sufficient dowry.

3. The allegations made was that few days prior to their marriage a two wheeler scooter was demanded which was given despite the financial condition of Puja's parents not permitting it and their financial condition being not good. A washing machine was also demanded within three months, which was also given by the parents

of Puja.

4. There were allegations of Puja's in-laws being not given proper respect in the marriage of the brother of Puja, namely, Jawahar-PW-4.

5. The prosecution version is that on 10th January, 2000 at around 5:45 PM, the husband of Puja (R-1) had informed that Puja @ Pallavi was not well and she had been taken to hospital. Accordingly, the parents of Puja rushed to Anand Nursing Home, which was near the matrimonial home, where they found Puja in unconscious state being taken in a TSR to Ganga Ram Hospital by her husband R-1. At Ganga Ram hospital, Puja was, however, declared 'brought dead' by doctors.

6. Since Puja had died within seven years of her marriage, the statements of the parents of Puja were recorded and the case under Section 498A/304-B IPC was registered at PS Patel Nagar. The statements of other brother and sisters-in-law (Bhabhi) of Puja were also recorded.

7. Pursuant to the registration of the case, Mr. Ravinder Chhabra(husband) along with his parents Nanak Chand Chhabra

and Smt. Kalawati (since both expired) and two sisters, namely, Smt. Puja Chhabra (R-2) and Smt. Lata Anand (R-4) and husband of Smt. Lata Anand Sh. Shiv Kumar (R-3) were arrested.

8. The postmortem Ex.PW-3/A of deceased Puja was carried out and her viscera for chemical examination was also preserved. In the chemical analysis report of the viscera from FSL Ex.PX-1, the presence of any common poison was ruled out and the doctor also expressed his inability to give any definite opinion Ex.PW-3/B about the cause of death of Puja as FSL report had ruled out presence of any common poison in the viscera. The findings of the postmortem Ex.PW-3/A were, however, of a case of poisoning on account of congestion in the brain matter, Tracheal Mucosa and lungs and other organs of abdomen.

9. During the trial, Sh. Nanak Chand Chhabra, father-in-law and Smt. Kalawati, mother-in-law expired and Additional Sessions Judge after considering the testimonies of the witnesses and the record, has held that the mere demand of two wheeler scooter or washing machine either a few days prior to marriage or immediately after three months of the marriage would not constitute demand of dowry in the facts and circumstances of the case on account major contradictions and variations in the testimonies of witnesses

regarding alleged demands. It was also held any cruelty being inflicted on Puja or any harassment to her has not been established from the deposition of various prosecution witnesses. Regarding the alleged demand of Rs. 5000/- which was fulfilled by the brother about which other witnesses have not at all deposed, it was held that the same was also not established as it was not corroborated and the sole statement of PW-4 Mr. Jawahar, brother of the deceased, could not be relied on as he had made improvements over his previous statement recorded under Section 161 of Criminal Procedure Code. The Sessions Court also relied on the fact that the concerned doctor i.e. Sarvesh Tandon was not examined to prove the cause of death and even opinion given by him reflects that he was not clear as to the cause of death. The Sessions Court has given benefit of doubt under Section 113B of the Evidence Act, 1872 to the respondents holding that the prosecution has miserably failed to prove the material ingredients of the offence under Section 498A/304B/34 of IPC.

10. The petitioner has impugned the judgment passed by the Sessions Judge and has sought leave contending, inter alia, that the Court has failed to appreciate the consistent statement of witnesses i.e. PW-1 Sh. Ram Lal Popli, PW-4 Sh. Jawahar, brother of the deceased; PW-9 Ms. Manju Popli (bhabi of the deceased) and PW-10 Subhash who have corroborated the statement of each other on every

aspect of the commission of crime and has wrongly acquitted the respondents by wrongly evaluating the statement of complainant and the witnesses. It is further contended by the petitioner that the statement of Subhash PW-10 has been wrongly interpreted and Court failed to appreciate the testimony about the demand of Rs. 5,000/- being made by the deceased at the instance of husband and which amount was given to the deceased by her brother PW-4 Sh. Jawahar. It is contended that no further corroboration was required and in the circumstances, it is asserted that all the ingredients for constituting a crime under Section 498A/304B/34 IPC of Indian Penal Code are made out and consequently, the leave should be granted, appeal be heard and the impugned judgment dated 6th January, 2009 be set aside.

11. This Court has heard the learned prosecutor at length and has also perused the testimonies of the witnesses specially the material witnesses including PW-1 Sh. Ram Lal Popli, PW-4 Sh. Jawahar, brother of the deceased; PW-9 Ms. Manju Popli (bhabi of the deceased) and PW-10 Subhash and the entire trial Court's record.

12. Sh. Ram Lal Popli PW-1, father of the deceased has made general allegations without any particulars or instances about the alleged harassments and the taunts to the deceased in connection

with the alleged demand of dowry. He deposed that a scooter was demanded in the marriage and thereafter a washing machine was given two months after the marriage. It was also deposed that in the marriage of his son on 4th September, 1991, sisters-in-law of his deceased daughter had complained that they were not given full respect. In the cross-examination, he admitted that his daughter used to visit him after every 4th or 5th day and her husband Ravinder used to accompany her. He was confronted with his statement about giving the washing machine with the statement Ex. PW1/DA, where it was not so mentioned.

13. PW-4 Jawahar, brother of the deceased had deposed that some days prior to marriage, a scooter was demanded and the demand was made neither to his father nor to him but to the deceased, who had met Ravinder R-1 prior to marriage whereas Sh. Ram Lal Popli PW-1, father of the deceased in his statement had deposed that a scooter was demanded from him. The said witness rather deposed that his sister was treated well by the respondents at her in-laws house initially. However afterwards the in laws of her sister started demanding washing machine from deceased Puja which fact was told by her to him. Though, he deposed that his deceased sister complained of cruelty and harassment, however, the allegations of alleged torture and beatings were general and no specific instances

were given. He also stated that the accused persons had demanded Rs.5,000/- from the deceased Puja and he had given Rs.5,000/- to her. In his cross-examination, he admitted that when his deceased sister used to come to his house, her husband, respondent No. 1 used to accompany her on certain occasions. In the statement before the Court he stated that at the time his deceased sister demanded Rs. 5,000/-, which was given to her by him, no one was present at that time, however this fact was not disclosed by him in his statement on 7th January, 2000, made to the Investigating Officer. He admitted that he had not stated the names of different accused, who had demanded the washing machine. He has improved his statement by saying that only two sisters-in-laws i.e. R-2 & R-4 of deceased used to harass her whereas in his examination-in-chief, he had deposed that all the accused used to harass, torture and beat her. He had first stated that he had named all sisters-in-law, who had harassed the deceased. Later on he changed his version and deposed that out of the four sisters-in-law, only two sisters-in-laws R-2 & R-4 used to allegedly harass her. The said fact was also not disclosed by the said witness in his statement under Section 161 of the Criminal Procedure Code with which he was confronted and which statement was Ex. PW4/DA.

14. Mr. Jawahar, brother of the deceased also categorically

admitted in his cross-examination that none of the accused ever demanded anything directly from them and all the demands used to be through the deceased only. His deposition is materially different from the testimonies of other witnesses as to through whom or to whom the demand for scooter and washing machine were made. He admitted that he had not disclosed in his statement Ex. PW4/DA that his deceased sister was harassed right till the time of her death. Though he deposed about the telephonic call from Puja (deceased) on 10th January, 2000 at 4:30 pm to Pradeep and his Bhabhi but as to what had been disclosed or transpired in the telephonic conversation has not been established as Pradeep and Bhabhi of PW-4 were not examined.

15. Ms. Manju Popli, PW-9, is the wife of the brother of deceased, who deposed that whenever deceased used to come to their house, she used to complain about her in-laws and that she was regularly harassed without disclosing as to what was the harassment. She also deposed that the younger sister-in-law, Puja Chabra R-2 had asked for a washing machine two-three months after the marriage. This deposition is not consistent with the deposition of other witnesses on this aspect. It was further stated that on the occasion of Karva Chouth, the deceased was insulted by the mother-in-law and two sisters-in-law of the deceased without specifying which of the sisters-

in-law had insulted her. Though, the father and the brother did not disclose that the deceased was allegedly beaten by her husband, however, Bhabhi of the deceased, namely, Manju Popli alleged that the husband of deceased used to beat her on instigation of younger sister of the husband.

16. Regarding alleged marks on the neck of the deceased, she deposed that deceased had gone along with her husband and Pooja Chabra (Nanad) on two wheeler scooter and on the way she was pushed. The said witness had not disclosed in her statement under Section 161 of Crl. P.C, which was exhibited as Ex. PW-9/DA that a day prior to Sagan, the accused R-1 had demanded a two wheeler scooter and that the accused/husband, used to beat the deceased at the instance of his younger sister, Puja R-2. The instance about the deceased being pushed from the scooter was disclosed by the said witness in her statement under section-161 of Cr. P.C. Though she deposed about the deceased calling her at 2:30 pm and thereafter calling her again after every 25-30 minutes and finally at about 5:15 pm, however, this testimony of the said witness is not corroborated by any other evidence.

17. Another witness examined by the prosecution is PW-10 Subhash, who used to sell fruits outside the shop of accused

persons, who rather deposed that he had never seen any quarrel between the accused Ravinder R-1 and his wife and they had been happily living together. He also deposed that he had not seen any marks of injury on the neck of the deceased when he lifted the deceased to TSR on the fateful day contrary to the deposition of Manju Popli PW-9 (Sister-in-law of deceased).

18. Perusal of the testimonies of the prosecution witnesses reflect that the alleged demand of a scooter is as before marriage and of a washing machine later on. However, there are major inconsistencies in the statements of these witnesses as to whom the demand was made and who had made the demands. The said witnesses testimonies have glaring inconsistencies even with the statements given by them under Section-161 of the Criminal Procedure Code. In the circumstances these testimonies cannot be relied to infer that the demand for scooter and washing machine were made on behalf of the accused. Pw4 Jawahar had rather admitted that no demand for dowry was made directly from them by any of the accused.

19. The plea of the brother, Pw4 that an amount of Rs.5000/- was demanded which was communicated by the deceased to him and he had paid the said amount to the deceased also cannot be believed as other witnesses have not deposed about it and it would be very

unlikely that the brother would not have disclosed about it to his father PW-1 and Manju Popli PW-9, had such demand been made and met by him. In the circumstances, the prosecution has failed to establish that there was demand for dowry by which of the accused from the deceased and from which of her family members.

20. Even if the demand of these two article i.e scooter and a washing machine either a few days prior to marriage or after three months of marriage are taken to be true, the element of harassment and cruelty being inflicted upon the deceased with regard to said demand had also to be established.

21. Regarding harassment and cruelty the allegations made are omnibus in nature and has been made without any specific instances only to involve most of the family members. Even the allegation that the deceased was pushed from the scooter when she was going with the husband and one of the sister in law cannot be believed on the basis of testimony of Manju Popli PW-9. The father and brother have not at all deposed about such an incident. Had such an incident taken place Manju Popli PW-9 (bhabhi of the deceased) would have disclosed about it to father and brother of the deceased. Even the testimony of Manju Popli has major contradiction and inconsistencies with her statement recorded under section 161

of the Cr. P.C and inconsistent with the statement of another witness, PW 10 Subhash examined by prosecution who had helped in taking the deceased in the TSR. The allegation regarding alleged beatings or harassment of any other nature by husband to the deceased were also without specific dates or near about dates and time. Generic allegation about alleged harassment without any specific dates or near about dates and times were nor relied upon by the Apex Court in (2001) 9 SCC 417, Sunil Bajaj Vs State of M.P and it was held that conviction cannot be on the basis of vague and inconsistent and generic allegation. In *Surinder Kaur v. State of Haryana*, (2004) 4 SCC 109, at page 111 the Supreme Court had not relied on allegations of harassment which were omnibus in nature and which had been made without any specific instances only to involve the entire family.

22. The essential ingredients of the said offence are: (i) death of a woman must have been caused by any burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have occurred within seven years of marriage; (iii) soon before her death she was subjected to cruelty or harassment by her husband or relative of her husband; (iv) such cruelty or harassment must be in connection with the demand of dowry; and (v) such cruelty is shown to have been meted out to the woman soon before her death.

23. In the circumstances it is inevitable to infer that the prosecution has failed to establish that the deceased was subjected to cruelty or harassment by her husband or relatives of husband with a view to coerce the deceased or any person related to her to meet the alleged demands. In our opinion the appreciation of testimonies of these witnesses of the prosecution by the trial judge does not suffer from any grave infirmity. We also concur with the view taken by the trial judge with respect to appreciation and analyses of the testimonies of the witnesses.

24. Regarding the cause of death, PW-3 Dr. Ashok Jaiswal, Head of the Department, Sabji Mandi Mortuary, Delhi deposed and proved the postmortem report Ex. PW-3/A of Dr. Sarvesh Tandon. He also proved Ex.PW-3/B on the back of the postmortem report about the viscera report submitted by the IO for final opinion regarding cause of death. According to him Dr. Sarvesh Tandon had opined that no definite opinion can be given about the cause of death. The said witness admitted that there was no fresh injury on the body of the deceased and Dr. Sarvesh Tandon had preserved the viscera and blood for analysis for ascertaining any poisoning. According to him no final opinion on 11th January, 2000, the day of conducting postmortem, could be given and even viscera report was negative for

any poison. He was categorical that in view of viscera analysis report Ex-PX-1, no definite opinion about the cause of death could be given.

25. This cannot be disputed that unless the conclusions of the Court drawn on the evidence on record are unreasonable, perverse or unsustainable, the High Court should not interfere with the order of acquittal, although the power of the High Court to reassess the evidence and reach its own conclusions are as extensive as in an appeal against the order of conviction, yet as a rule of prudence, the High Court should always give proper consideration to matters such as (i) the views of the Trial Judge as to the credibility of witnesses; (ii) the presumption of innocence in favor of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (iii) the right of the accused to the benefit of any doubt and (iv) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had advantage of seeing the witnesses. In the entirety of facts and circumstances this Court does not find that the conclusions of the Trial Court are unreasonable, perverse or unsustainable.

26. No other grounds have been raised by the petitioner seeking leave against the judgment of the trial court dated 6th January, 2009 giving benefit of doubt to all the four accused and acquit them of the

offence under Section 498A/304B/34 of IPC. It would also be relevant to note that where a view taken by the trial judge is reasonable and probable view, merely because some other view may also be probable or possible view, would not justify any interference by the Appellate Court in the facts and circumstances. In the circumstances petition seeking leave to appeal is dismissed and leave is declined.

ANIL KUMAR, J.

July 27, 2010
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SURESH KAIT, J.