

IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON: 26.09.2011

-+ **CRL.L.P. No. 269/2011 & CrI.M.A.7533/2011**

STATE (NCT OF DELHI)

..... Petitioner

Through : Mr. Saleem Ahmed, Addl. Standing Counsel along with
the I.O. AniteshKumar, P.S. Narela

Versus

SURESII

..... Respondent

Through : None

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE G.P. MITTAL

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

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1. The State seeks leave to appeal against a judgment and order of the learned Additional Sessions Judge, dated 24.02.2010, in SC No. 178/2008, acquitting the respondent of the charges of having committed the offences punishable under Sections 304-B/498-A/302 IPC.

2. The prosecution alleges that PS Narela was informed on 27.06.2006, that a lady residing at A/30, Punarwas Gautam Colony, Narela had been killed by her husband. On receiving this information at 10.25 AM, the intimation (IDD No.16A) was sent through Ct. Shamsher to SI Bhagwat Prasad for further action. In the meantime, Addl. SHO Inspector Ram Krishan, also reached the spot, where he found SI Bhagwati Prasad and SI Suraj Bhan, who were present along with staff.

They found a woman dead in the house; her name was Angoori. No apparent injury marks were discernable; the police found that the deceased had married the accused Suresh, four years prior to the incident. Thereafter, SDM Narela was called. He directed the removal of the dead body to the mortuary and that the parents of the deceased be informed. The crime team was called to the spot, and dead body was removed to mortuary of BJRM Hospital, Jahangir Puri. It was alleged that the next day, the SDM carried out proceedings under Section 176 Cr.PC. The viscera was seized and sealed. The SDM recorded the statement of the father of the deceased Ram Dass, who in his statement, spoke about the deceased's marriage to Suresh, and about the fact that she complained against him saying that he used to beat her everyday. He stated that his son Ravinder went to Delhi to look into the matter. Upon finding that the condition was not good, he took back his daughter to his house in the village and at that time his daughter was pregnant. She gave birth to a female child, while in their house, but nobody from her in-law's side or their son-in-law came to see them. Thereafter, she stayed with them for almost two years, and then the father-in-law of their daughter took her to his native village and thereafter left her with Suresh at Delhi. He stated that three months before her death, she had again started complaining about beatings given to her by Suresh; she even made mention about threats. The complainant stated that on 27.06.2006, after receipt of information, regarding the death of their daughter, he and his family went to Delhi and they were certain that Suresh was responsible for the death of their daughter. The SDM directed the lodging of an FIR, which was done; under which the accused was alleged to have committed the offences punishable under Sections 304-B, 498A and 406 IPC. The accused was accordingly arrested.

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3. After completion of the investigation, the accused was charged with committing the crime; he denied any guilt and claimed trial. The prosecution relied on the testimony of 13 witnesses, and also on several material exhibits. After considering all of these, and the parties' submissions, the Trial Court concluded that the evidence led was insufficient to convict the accused; he was therefore, acquitted of all charges.

4. The Additional Public Prosecutor argued that the Trial Court fell into error in concluding that the prosecution had not been able to establish the accused's guilt beyond reasonable doubt. In this regard it was submitted that the deceased expired within seven years of her marriage, in her matrimonial home and the circumstances of her death were highly unnatural. Having regard to these facts, the accused owed an explanation as to the manner and circumstances of his wife's death, by virtue of Section 113-B of the Indian Evidence Act. The accused was unable to explain how the death occurred. The APP contented that disclosure of facts, during the course of investigation even if recorded by supplementary statement would not in any manner detract from eyewitnesses account if it was otherwise probable. In this regard it was submitted that the deceased's relatives, particularly her parents were so traumatised that many important and material facts could not be mentioned by them to the Sub-divisional Magistrate, when the latter recorded the statement at the time of the occurrence, i.e., when their daughter died. The Trial Court however fell into error in holding that these later and subsequent statements amounted to improvement of material facts, thus injecting uncertainty and untrustworthiness to such witnesses' depositions during the trial. It was argued that the Trial Court should have seen that even though the deceased went back to apparent alone for some time, nevertheless at the time of death, she was in her matrimonial home. Moreover, the Post-Mortem report revealed external and internal injuries which

could not be explained by the accused, even when he was afforded an occasion to do so, under Section 313 Criminal Procedure Code.

5. By the impugned judgment, the Trial Court noticed that so far as the demand for dowry was concerned, the prosecution evidence was conflicting. PW-1 Sh. Ram Dass in his evidence deposed that whenever his daughter used to go to their house she used to complain that Suresh used to demand a motorcycle, and she was beaten by him; he however did not state those facts to the SDM, since he was disturbed. Similarly, PW-10 Smt. Ram Katori Devi the mother of the deceased in cross-examination stated that due to shock, she could not tell about the demand for motorcycle, to the SDM. The Trial Court noticed that she also made an improvement in her testimony, when she stated that she had told the SDM that accused Suresh had threatened to kill her daughter and would go to jail in case his demand of motorcycle was not fulfilled; she was confronted with her previous statement Ex. PW-8/A, where that fact was not mentioned.

6. We have noticed (as the Trial Court did, in its judgment) that in the statements of PW-1 and his wife PW-10 Ex. PW-1/A and Ex. PW-8/A) dated 28.06.2006 i.e., immediately after the incident there was not even a whisper about any demand for dowry or harassment consequent to it; neither was there a mention of a demand for a motorcycle. The witnesses's explanation that they were traumatised, is reasonable. Yet what the Trial Court found disturbing was that the statements of both the witnesses were identically worded. The court held – and we fully agree with this view- that *“It is difficult believe that both of them missed this important allegations regarding the conduct of the accused Suresh with regard to demand of dowry being demanded from them, which resulted in the death of their daughter.”* The deceased's brother PW-6, had mentioned her (his sister's) ill-treatment by his brother-in-law, on account of insufficient dowry being given to

her. He deposed that this was recorded by the SDM. However that was not the case and his testimony was an improvement from the previous statement recorded during the investigation which merely identified the dead body (Ex. PW-6/A). The Trial Court noticed, significantly, that when the request for inquest was made (Ex. PW-8/C) at the time of conducting inquest proceedings of the deceased, PW-6 Ravinder was present. Therefore, it reasoned that his statement would have been recorded, about insufficient dowry, and harassment, if indeed it had been made. The Trial Court further held that:

"28. Further, manner in which the SDM had recorded the statements of the witnesses also does not inspire any confidence, as PW-8 Vijay Dogra the concerned SDM had admitted in his cross examination that he had not recorded the statement of Ram Dass and Ram Katori Devi and the same were recorded on his instructions. He also admitted that at the time of recording the statements of Ram Dass and Ram Katori Devi, their son Ravinder was also present. He did not recorded the statement of Ravinder and both the statements were recorded by some constable and he does not remember the name of the constable, and he also admitted that it was correct that statement of Ram Dass and Ram Katori Devi were same, though, he denied the suggestion that the written statements of Ram Dass and Ram Katori were produced before him by the police officials and he had signed the same and directed the SHO to register the case.

29. This testimony of SDM that the statements were recorded by some constable are contradicted by the testimony of the initial IO PW 11 SI Bhagwat Prasad, who had admitted in his cross examination that he was scribe of Ex. PW. 6/A, Ex. PW1/B, Ex. PW 7/A, Ex. PW.11/B. EX. PW 1/A and Ex. PW 8/A. Ex. PW 1/A is the statement of father of deceased and Ex. PW8/A is the statement of Smt. Ram Katori mother of the deceased, who has appeared as PW 10. This shows that the aforesaid statements had been got recorded by the SDM in a most purfunct manner, as they very purpose of getting the statements recorded, through SDM was to ensure independent, investigation is carried out in such cases of alleged dowry death, so that the police should not be able to fudge the investigations. Consequently, this act of SDM in getting the statements recorded through the police officials and

that too by the initial IO, who was interested in the investigations(s) of the present case, is not proper and PW 11 SI Bhagwat Prasad has also admitted in his cross-examination that he had not told the SDM that dictation with regard to recording of statement of Ram Katori Devi PW 10, should not be given to him, as he was deputed to investigate DD No. 16A. He also stated that brief history was reduced into writing after recording the statement of Ram Katori and Ram Dass. In the said brief history Ex. P.W. 11/B there is no mention regarding, recording of statements of Ram Katori PW 10 and Ram Dass PW 1, and that Ravinder PW 6 S/o Ram Dass, was also present at the time of recording of the statements of his parents. He stated that SDM had also recorded the statement of Ravinder, but in the same breach he later on stated that he does not remember whether his statement was recorded or not. These facts cumulatively establish that the allegations made by the PW 1 Ram Dass, PW 6 Ravinder and PW. 10 Ram Katori with regard to demand of dowry and consequent harassment meted out by the accused in relation to the demand of dowry are an after thought, if the said allegations were indeed true, then what stopped the afore relatives of the deceased from recording their statement in this regard, as discussed above. There is not a single whisper in the statement of PW1 Ram Dass and PW 10 Ram Katori Devi, with regard to demand of dowry and consequent harassment by the accused in relation to that for not meeting the demand of dowry by them. Despite the presence of PW 6 Ravinder before the SDM, which has been admitted by the SDM and also by the initial IO SI Bhagwat Prasad (PW11), which is also proved by the documentary evidence, as discussed above, yet no statement of his was recorded by the SDM immediately, which would have been the best evidence in this case, to prove the demand of dowry. The later statement recorded by the police U/s 161 Cr. P.C. in which there are general allegations with regard to demand of dowry and more specifically the demand with regard to motorcycle by the accused persons and consequent beating of the deceased by the accused on the failure of her family members to meet the same does not inspire any confidence, and it appears to be an afterthought. Further, PW 6 Ravinder in his cross examination has stated that after the cremation they left for their village and on that day the police did not record the statements of his parents and himself. Similarly, PW 10, Smt. Ram Katori has stated in her cross examination that after SDM recorded her statement twice, she remained in Delhi at Vikas Nagar and thereafter her statement was not recorded by any police official. On the other hand, it has been stated by the IO PW 12 inspector Ram Kishan, that he had recorded the statements of Ram Dass, Ram Katori and Ravinder. It is not clear, it Ram Katori and

Ravinder had left for their village, where was the occasion for the IO to record their statements including their supplementary statements U/s 161 Cr. P.C. especially when PW 10 Ram Katori has stated that no notice official had recorded her statement and PW 6 Ravinder had also stated that police did not record statement of his parents or himself on that day, as they had left after cremation for their village. Consequently, it seems that IO had himself concocted some statements U/s. 161 Cr. P.C in order to fortify the case of the prosecution and to bring it within the four corners of 3048/498A IPC, and therefore, the prosecution has failed to make out a case U/s 498A IPC. As the prosecution has failed to prove that there was any willful conduct of the accused of such nature as was likely to force the deceased to commit suicide, as prosecution has failed to prove any demand of dowry soon before her death as discussed above.

30. Since to make out a case U/s 498A IPC, the prosecution had to prove either one, that there was a reasonable nexus between the cruelty and suicide or second, that the harassment of the deceased was with a view to coerce her or any person related to her to meet the unlawful demand of any property or valuable security or was on account of failure by her or any person related to her to meet the said demand."

7. So far as the charge of murder was concerned, the post-mortem examination revealed that the stomach of the deceased contained traces of insecticide poisoning in the form of organo sulphate; the initial report stated that the cause of death was due to such poisoning. However in a later report, it was stated that the body also showed cerebral damage produced by blunt force impact independently and collectively sufficient to cause death in the ordinary course of nature. The doctor's subsequent opinion was Ex. PW 3/B. The prosecution had urged before the Trial Court that since the accused admitted that he was present in the premises at the time of death, he owed an explanation and that since he did not offer any reasonable explanation, it must be presumed that he was guilty of committing murder. The accused, on the other hand urged that the cause of death was insecticide poisoning, the deceased for reasons known to her consumed the deadly substance which led to her demise. It is urged that having regard to the totality of

circumstances, since she fell down, the cause for the injury on her head was apparent. The Trial Court observed this:

"34. In this case, the accused in his statement U/s 313 Cr. PC has taken a defence that he has innocent and was falsely implicated in this case and on 27.06.06 i.e. the date of incident, he had taken dinner from the hotel and came back to his house and when in the morning he woke up, he found his wife vomiting, thereafter he went to the doctor Rajender, who was residing in Narela and told about the condition of his wife, but he stated that he would not be able to accompany him, therefore, he went to another doctor, who after diagnosing his wife told him that his wife was dead.

35. Though, the aforesaid defence enunciated in the statement of the accused U/s 313 Cr. P.C. has not been proved by the accused, as no witness has been brought in the witness box namely Dr. Rajender or any other doctor who could depose that on 27.06.06 the accused had visited him complaining about the illness of his wife or that the accused had come to him stating that his wife was not well. However, it is settled proposition of law that the prosecution has to prove its case beyond all shadows of doubt, and it is enough for the accused to probablise his defence, and if on the probative scale the accused is able to show that his defence was having high probative value then accused is liable to be acquitted.

36. The postmortem report discussed above proved by PW3 Dr. Upender Kishore supports two hypothesis, one is that either the deceased and accused had quarreled with each other and there thereafter accused caused the injuries on her head and thereafter the deceased in a fit of rage consumed insecticide, as it is almost impossible/difficult for anyone to administer such a pungent smelling insecticide to any person against her will and consumption of such insecticide is inconsistent with the finding of homicide and is consistent with the finding of suicide. Further, as per postmortem report Ex. PW 3/A, no undigested food or material was found in the stomach of the deceased and stomach was only found to contain a yellowish liquid measuring 200 Ml. Consequently, the same rules out, the administration of the insecticide mixed in some sweet substance or food. The second hypothesis which arises from the postmortem report is, that the deceased had consumed insecticide after a quarrel with the accused or otherwise, and thereafter she accidentally sustained injury due to falling, as autopsy expert PW 3 Dr. Upender Kishore has also stated in his cross-examination that the said injury was possible by striking against the hard

wall or falling on the floor, as after taking such insecticide/ poison, ones loses sensorium, and experiences disorientation and vertigo.

37. In any case, no external injury in the shape of laceration was observed on the scalp/ head of the deceased, consequently, the head injury sustained by the deceased to have been caused by some weapon is ruled out, as if she would have been hit by some weapon on the head, then there would have been a definite external injury on the head.

38. In this case, in view of the aforesaid analysis of the report of the autopsy surgeon and that of chemical examiner, as discussed above, two views arise and it is settled law that if two views are possible from the appreciation/ analysis of evidence, then one which is found favourable to the accused has to be preferred, in the present case, the prosecution has failed to execute this second hypothesis of the innocence of the accused and disprove it by some positive evidence regarding the culpability of the accused having caused the death of the deceased Angoori Devi."

8. This Court has considered the submissions as well as the Trial Court's records. It is well established that in all criminal cases, the prosecution has to establish the guilt of the accused beyond reasonable doubt through unimpeachable evidence. Further, the Code of Criminal Procedure permits an appeal against convictions and in others, in a limited category of cases. It does not include an appeal against acquittal. The Courts have uniformly construed this to mean that while considering petitions for grant of leave by the State - against acquittal of accused, there ought to be substantial and compelling reasons, apparent from the record. These compelling reasons may include mis-appreciation of evidence, wrong application of law and glaring omissions on the record.

9. The reasoning which appealed to the Trial Court in this case, as discussed above, was the lack of credibility of the deceased's relatives, regarding allegations of dowry harassment soon before her death, chiefly arising on account of their contradictions. They were, by all means substantial and serious enough, to impeach the core facts alleged by the prosecution, regarding demand for motorcycle; the

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allegations of repeated beatings given by Suresh, etc. We also notice that the prosecution failed to produce any objective evidence regarding phone calls being made to PW-6 by the deceased, before her death, despite his deposition in that regard. Furthermore, the lack of any explanation as to why PW-6's alleged statement about details was not recorded by the SDM at the time of the inquest, also injects doubts about the prosecution version. As regards the cause of death, the Trial Court reasoned –and we think, quite correctly, that when there was a reasonable explanation by the accused, the court should accept it, as long as it is not improbable, or unfeasible, under the circumstances.

10. Having regard to the nature of the evidence including the testimonies of eye witnesses, this Court is un-persuaded by the State's argument that the findings contained in the impugned judgment require an appellate review. There are no substantial or compelling reasons why leave ought to be granted in this case. The petition, being unmerited, is, therefore, dismissed.


(S.RAVINDRA BHAT)
JUDGE

September 26, 2011


(G.P. MITTAL)
JUDGE