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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.L.P. 201/2012 and Crl.M.A.No.4646/2012

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Date of decision: 24th May, 2012

STATE

..... Petitioner

Through : Ms. Ritu Gauba, APP.

versus

RISHI KUMAR

..... Respondent

Through : None.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The lower court record has been received. We have heard Ms. Ritu Gauba, learned APP for the State and carefully perused the record.

2. By way of the present petition, the State has sought leave to appeal against the acquittal of the respondents with regard to the commission of offence under Sections 304B and 406 of the Indian Penal Code by the judgment dated 10th August, 2011. It appears that the respondents were arrested in case S.C.No.110/2010/2004 arising from FIR No.226/2003 registered by the police station Mangol Puri under Sections 304B/498A/406/34IPC titled State v. Rishi Kumar and Others. The case was registered against the respondents with regard

to the death of Smt. Beena who had got married to the respondent, Rishi Kumar and unfortunately expired on 24th April, 2003. It was the case of the prosecution that the deceased was taken to Sanjay Gandhi Memorial Hospital on 24th April, 2003 in an unconscious condition. The deceased Beena appears to have expired in the hospital.

3. The deceased was married to Rishi Kumar on 27th April, 2001, two years prior to her death. The case was registered against the respondents on the complaint made by Shri Mohal Lal, father of the deceased who mentioned dowry demands made by Rishi Kumar (husband of the deceased), Yadav Ram (father-in-law of the deceased), Bhagwan Devi (mother-in-law of the deceased) and Kumari Gayatri and Kumari Kiran (sister-in-law of the deceased/Nanads). The complainant alleged that it appeared to them that Smt. Beena had been killed by her husband, father-in-law, mother-in-law and sisters-in-law.

4. Apart from the statement of the close relatives of the deceased, reliance was placed by the prosecution on the post-mortem report as well as chemical analysis report of viscera and histo pathology report of lungs tissues.

5. The learned trial court framed charges under Sections 498A/304B/34IPC against the respondents. The prosecution examined 14 witnesses in support of his case including three

doctors. The respondents denied the charges leveled against them and also led evidence of five witnesses in support of their denial.

6. We find that after detailed consideration of the entire material produced by the prosecution during the trial, the learned trial court held that the respondents were guilty of commission the offences under Section 498A/34 IPC but the prosecution has failed to prove the charges under Section 304B and 406 of the Indian Penal Code against the respondents.

7. The present petition has been filed by the State seeking leave to appeal against the acquittal of the respondents for commission of offence under Section 304B/406 IPC. We have given considered thought to the submissions made before us and the record placed before the learned trial court. In order to bring home the charge of commission of offence under Section 304B of the IPC, the State was bound to prove that the death of the lady had occurred otherwise than under normal circumstances. In the instant case, we find that the learned trial judge has carefully considered the evidence led by the prosecution and the report of the medical experts on this subject. Dr.V.K. Jha - PW-11 stated that he was working as a medical officer in Sanjay Gandhi Memorial Hospital on 8th April,

2004 and he had received the application of the SHO, PS Mangol Puri for opinion with regard to the cause of the death of the deceased. He had perused the chemical analysis report of viscera and histo pathology report of lungs tissues dated 28th April, 2003 and the post-mortem report. His opinion given on 8th April, 2004 has been placed on record and is proved as Ex.PW11/B which reads as follow:-

“In reference Page Ante and pursuance of Police I.O. SHO Mangolpuri dated 8/4/04, I have seen the chemical analysis report of viscera vide report No. 13/CFSL (H)/EE/2003/8361 dated 16.1.04 which revealed negative findings for common poison and histopathology of Lung tissue dated 28/4/2003.

In view of PM findings and both the reports mentioned above I am of the consistent opinion that chronic vascular disease of heart is ruled out as description of heart in PM report is inadequate and incorrect. In view of the above No definitive opinion regarding cause of death can be given.”

8. It appears that the SHO of P.S. Mangol Puri had made further reference to the doctor on 7th May, 2004 raising the following queries from PW-11, Dr. V.K. Jha:-

“Inquiry No. 1 Whether death of Smt. Beena is unnatural or otherwise.

Inquiry No. 2 whether final cause of death can be given by any way in that case.”

9. On consideration of the material placed before the doctor, Dr. V.K. Jha appearing as PW-11 has given the opinion which is proved on record as Ex.PW11/D, the relevant extract

whereof reads as follows:-

“In pursuance of request letter of Police INQUIRY OFFICER dated 7.5.04 in reference page Ante the opinion given on the basis of histopathology and chemical analysis report by the undersigned on 8.4.04 is relevant as there was general congestion of Viscera found with patchy congestion of viscera of stomach which is not consistent with natural death.

It is also not uncommon that chemical analysis of viscera may reveal negative testing of common poison but there are enumerable toxic poison which are not categorized in the list of common poison and may show generalized congestion of viscera being caused with unnatural component cannot be ruled out.

However definite cause of death in this case cannot be ascertained in such a negative autopsy.”

10. At this stage, we may also notice the observations of Dr. R.K. Punia, the forensic expert who had conducted the post-mortem on the 28th April, 2003 on the body of the deceased. The post-mortem report of the deceased has been proved as Ex.PW12/A on record. The doctor had found no injury on the body of the deceased. However, while examining the heart, the doctor had made the following observations:-

“Mitral valve left lets are thickened and small areas of calcification seen. Left atrium wall thickened measuring 2.8 mm in thickness.”

11. We may note that doctor R.K. Punia appears to have left the hospital and the post-mortem report was proved in the testimony of Dr. Manoj Dhingra, PW-12.

12. The matter does not end here. The prosecution examined yet another doctor as PW-13, namely, Dr. Avneender Parsad who was posted as a Consultant Pathologist in the Sanjay Gandhi Memorial Hospital in April, 2003 and had examined the lung tissues of the deceased Beena through microscopic examination. He had given his report which was proved on record as Ex.PW13/A which reads as follows:-

“Microscopic Impression :

Chronic venus congestion with haemosiderine laden macrophage and acanthosis with early fibrosis.”

13. In view of the above, it is clearly evident that the prosecution has failed to prove that the deceased had died an unnatural death or that the respondents were in any manner responsible to the same. The evidence of the expert on the subject is to the contrary who have clearly recorded that no definite finding with regard to the cause of death of late Beena can be given.

The prosecution is also unable to point out any allegation or evidence on record to bring home the finding of guilt with regard to the charge under Section 406 of the IPC. It may be observed that we are not aware as to whether the respondents have filed any appeal with regard to the conviction under Section 498A of the IPC. It is trite that in such circumstances

where two views are possible, the court would require to take the view which is favourable to the accused person. In this background, so far as the charge of commission of offence under Section 304B of the IPC is concerned, we find no reason to disagree with the findings returned by the learned trial judge.

14. We are not called upon to examine the sustainability of the conviction under Section 498A of the IPC in any manner in the present appeal. Therefore, nothing herein contained shall be deemed to be an expression of opinion on the correctness of the finding of guilt so far as Section 498A of the IPC is concerned.

15. For all the forgoing reasons, we find no merit in this appeal, which is hereby dismissed.

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The appeal has been dismissed. For this reason, this application is not required to be considered and shall be treated to be disposed of.

GITA MITTAL, J

J.R. MIDHA, J

MAY 24, 2012/mk