

\$~1

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

Reserved on: 25.04.2012
Pronounced on: 04.05.2012

CRL.A.1552/2011, Crl. M.A.19637-19639/2011

+ **KASHI RAM PUJARI** Appellant

Through: Sh. Rakesh Malhotra, Advocate.

versus

STATE OF (NCT) & ORS Respondents

Through: Ms. Richa Kapoor, APP.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT

%

1. This is a complainant's Appeal under the proviso to Section-372, Cr.P.C., preferred by the deceased's father, who also deposed during the trial as PW-1. The Appeal challenges the judgment and order of the Learned Additional Sessions Judge dated 31.03.2011 in SC No.183/2008 in which the respondents (hereafter referred to as "the accused") were acquitted of the charges for having committed the offence under Sections-498A/406/304B read with Section-34, IPC.

2. The prosecution's case before the Trial Court was that the first respondent Aashish (hereafter referred to as "the husband") married Deepa Tiwari on 02.03.2006. It was alleged that the marriage was a stormy one, in

the course of which, Deepa was repeatedly harassed and treated with cruelty even to the extent of being denied food on account of demands made for dowry. The prosecution alleged that in 2006 on two different occasions, ₹1,00,000/- was paid and that it was made clear that Deepa was bad match for the husband who would later be married to someone else, in order to get at least ₹15,000,00/- in dowry. It was also alleged that Deepa had on an earlier occasion approached the police and complained specifically about dowry harassment and even left the matrimonial home to be with her parents. After re-assurances were given to her and the parents i.e. PW-1 and PW-3, that she would be treated and looked after well, she returned to the matrimonial home. The prosecution further alleged that 15 days before her death, a further demand of ₹2,00,000/- had been made by the accused and that ultimately she died on 17.12.2006 on account of unnatural reasons, even though she had been admitted to the hospital on 16.12.2006.

3. The prosecution recorded the statements of the deceased's parents i.e. PW-1 and PW-3. The statement of her brother was also recorded; he deposed as PW-2 during the trial. PW-4 was another relative of the deceased. On the strength of these statements recorded at various points of time during investigation, as well as the postmortem report and the statements of the doctors and the Forensic Science Laboratory Report, a charge-sheet was filed after conclusion of investigation. The accused denied guilt and claimed trial. The prosecution examined 22 witnesses in support of its allegations; after making the submissions, the accused relied upon testimonies of three defence witnesses. After considering all these as well as the submissions on behalf of the parties, the Trial Court held that the prosecution could not prove the accused's guilt beyond reasonable doubt

and, therefore, acquitted them.

4. It is submitted by the Appellant that all the ingredients that make up the offence under Section-304-B, IPC were proved in accordance with law. Counsel emphasized the fact that in this case, Deepa died on 17.12.2006, barely nine months after the marriage. The testimonies of PW-1 and 3 conclusively proved that repeated demands for huge amounts were made by the accused. The evidence in the form of testimonies of PW-7 also supported the statements of these witnesses. Since the death had occurred within seven years, admittedly, the Court should have been alive to this fact and taken into consideration the further circumstance that dowry demands cannot be proved like other facts. Counsel submitted that inherently demands for dowry stand on a different category than other events or facts which can be proved or inferred on the basis of materials. The testimonies of witnesses invariably have to be looked into. It was further argued in this context that the statements of PW-1 and 2 were consistent with regard to dowry demands and the consequent cruelty both physical and mental, meted out to Deepa. These had been mentioned during the investigation to the Executive Magistrate PW-7 at the earliest point of time. They were also deposed to during the trial. Having regard to these circumstances, the Trial Court clearly fell into error in holding that there was no specific demands and that general allegations could not be given credence.

5. It was urged that the Trial Court overlooked a very material circumstance, i.e., the complaint lodged by Deepa Tiwari in the form of a D.D. Entry with the concerned Police Station on 25.10.2006. This was requisitioned and marked during the evidence as Ex.PW-22/F. The complaint clearly makes a mention about quarrels and ill treatment which

the deceased was facing. It provided corroboration to the statements of PW-1 and 3, her parents. Learned counsel next submitted that the statement of PW-5 Ms. Khusboo was damaging and clearly implicated the accused. This witness was independent and had deposed that after marriage Deepa had become close to her and used to confide in her on telephone. She even deposed that Deepa complained against her in-laws, stating that they were not of good nature and were not giving her good food or clothes. Learned counsel underlined the fact that witness even went on to depose to the extent that Deepa confided in her, after her pregnancy that the accused would kill her.

6. Learned counsel for the Appellant also stated that Trial Court took the cause of death very casually and gives no weightage to the fact that it was under highly unnatural and suspicious circumstance. Though, the husband had taken the deceased to the hospital when she complained of unease, the fact remained that by all accounts, the cause of death was Zinc Phosphide poisoning. As the deceased was with the accused in their house soon before her death and there was material on record in the form of a complaint lodged by her in October, 2006, the Court had sufficient material to draw the necessary inference to attract the presumption statutorily mandated under Section-113-B of the Indian Evidence Act and also conclude that the accused were guilty of the offences they were charged with.

7. The Court has considered the submissions and has also gone through the Trial Court's records which were requisitioned for this purpose during the present proceedings.

8. There is no dispute that the marriage between the first accused and the deceased took place on 02.03.2006. The testimonies of PW-1, the present

Appellant and PW-3, the deceased's mother, are extremely material. The PW-1 stated that on two separate occasions, he went to the accused' house and gave them ₹1,00,000/- each time in cash, to Deepa's father-in-law and the other accused. He specifically mentioned having gone in May, 2006, and even mentioned that he had to sell gold ornaments and jewellery to pay ₹1,00,000/-. He had further deposed that Deepa used to report to her parents about the harassment meted out to her by the accused by way of beating and also denying food to her. Moreover, he deposed that on 05.09.2006, he sent his wife PW-3 to Delhi who came to know that the accused were complaining that Deepa was insane and that they wanted Aashish to marry again after getting dowry of ₹18,00,000/-. The witness further alleged that Aashish used to have an extra marital affair. In order to say that there are dowry harassment and that other demands were made, PW-1 stated that ₹62,000/- and 16 tolas of gold were given to the accused at the time of Deepa's marriage. During the course of the trial, on all these aspects, i.e. demand for ₹1,00,000/- on separate occasions, selling of ornaments in order to meet dowry demands, the allegations that Deepa was treated insane and that the accused wanted Aashish to marry again after getting more dowry and crucially the allegation that Deepa used to be beaten up and denied food had not been mentioned at all in the statements recorded during the investigation at the earliest point in time. The Trial Court, therefore, was of the opinion that this witness was not trustworthy and his depositions to the extent it alleged cruelty, dowry demands and demands having been made on separate occasions to the accused, had to be discarded.

9. The second witness Bhuwan Chander Pujari deposed that he used to live in Bombay and whenever his sister talked to him on telephone, she

complained against her husband and parents-in-law and told him that they were greedy for money and kept on demanding more money. He also alleged that accused tried to wriggle out of situation by pressurizing him to sign on blank papers after which he reached Delhi upon hearing Deepa's hospitalization and subsequent death. The witness expressed his ignorance as to where the deceased and Aashish had got engaged, whether it was Ranikhet or some other place. He was also unaware as to who was the mediator of the marriage. Though, he attended the Deepa's marriage, he admitted to never having visited her matrimonial home, till her death. In fact he admitted not having seen his sister during the subsistence of her marriage with Aashish till her death. It was also confirmed by him that in the first statement recorded by the Executive Magistrate, no specific incident of cruelty or dowry harassment had been made or any allegation leveled against the accused.

10. The deceased's mother PW-3 Lila Devi stated that after marriage was solemnized between Deepa and Aashish, the deceased was frequently tortured; the accused used to taunt her for bringing less dowry and one month after the marriage when she went to her parental home at Ranikhet, she repeated those complaints. She stated that in May, 2006, her husband went to Delhi and gave ₹1,00,000/- in cash to the accused. She claimed that she came to Delhi in September, 2006 and actually witnessed Deepa being beaten up and being denied food. At that occasion, Aashish asked her to take away Deepa since he wanted to marry again for dowry. PW-3 further deposed that 15 days before her death, Deepa telephoned her asking for ₹2,00,000/-. Her statement was recorded on 19.12.2006. She admitted to being in her full senses and that no supplementary statement was recorded

nor that any police officer had visited her native place i.e. Ranikhet after 19.12.2006. In cross examination, she was confronted on various facts i.e. that Deepa was not provided food and was beaten up. These facts had not been mentioned in her previous statement under Section-161 Cr.P.C. Similarly, she was confronted with her previous statement, during investigation, where she did not mention about Aashish asking her to take away Deepa. She was again confronted about her omission to mention that Aashish wanted to marry again and that 15 days before her death, that the deceased had given a call saying that if ₹2,00,000/- was not paid, she would be killed.

11. PW-4, the other important prosecution witness was Deepa's cousin. He lived in Delhi and deposed that the deceased had told him about her harassment by the accused. He clarified that Deepa's complaint was that the accused asked her to perform domestic chores despite her being pregnant. He deposed in the cross examination that Deepa had visited his house on 24.10.2006 and stayed there for 4-5 days. On the last day of her stay, PW-1 had come down to Delhi and all of them went to the accused's house and had dinner. There was a long conversation and interaction between the two families, during which, PW-1 and Deepa assured that she would remain with the accused without giving any cause for complaint. PW-5 claimed to have been Deepa's close friend in whom the deceased had confided about cruel treatment and to whom she further voiced her apprehension about being killed. She also claimed to have written a letter to Deepa's parents at her dictation. According to the witness, one line had been written by Deepa; the letter was produced as Ex.PW-1/D.

12. The testimonies of PW-1 and 3, in the considered opinion of this

Court, are shaky and unreliable. Both witnesses admitted that the statements were recorded within reasonable time after Deepa's death on 17.12.2006. PW-3 admitted that no supplementary statement was recorded by the police after the first one recorded in Delhi, yet the prosecution sought to rely upon the second supplementary statement. Both the witnesses made substantial and crucial improvements upon the statements recorded by the police or the Executive Magistrate during the course of investigation. These pertained to demands made by the accused on account of dowry, acts of cruelty or harassment, husband voicing the desire to marry again for dowry because Deepa was insane and that Deepa used to call up her parents and inform them about repeated cruelty. On all these aspects, the witnesses were silent at the earliest available opportunity. These aspects assume importance because statements in this case were recorded not just by the police but by PW-7, the concerned Executive Magistrate who recorded the statement of PW-1 on 18.12.2006. Seen in totality, the testimonies of these two witnesses do not advance the prosecution case at all so far as the vital aspect of cruelty and dowry demands are concerned. In fact, the testimony of PW-4 furnishes the explanation for the complaint made by Deepa, as noticed by the Trial Court. He deposed during the trial that Deepa stayed with him on account of misunderstandings with the accused after her pregnancy. She felt that she was asked to perform household chores which should have been avoided. The deposition of this witness clarifies that after the police complaint was made, the PW-1 and other members of his family came and had a discussion with the accused. They even had dinner. Thereafter, it was agreed that Deepa would not raise the issue and would return to the matrimonial home. Moreover, the Court notices that the

complaint Ex.PW-22/A was not produced by any police official even though it was marked in evidence.

13. As far as the testimony of PW-2 is concerned, it is absolutely general and lacking in any particulars as to the time and any other details with regard to dowry harassment or the kind of cruelty meted out to deceased. The witness, who was the deceased's brother even admitted to not meeting her after the marriage and having ever stepped into her matrimonial home. He apparently met his brother-in-law, the first accused at the time of the marriage.

14. So far as the cause of death is concerned, the PW-16 deposed that the deceased had been admitted in the hospital due to the high blood pressure and was treated for it. This witness stated that the death would occur on account of Zinc Phosphide consumption between 4-6 hours of its administration and that the symptoms would start within one hour. He also deposed that MLC Ex.PW-16/A did not disclose any symptoms of Zinc Phosphide poisoning and that the deceased was suffering from high blood pressure. The postmortem report could not give any conclusive opinion and the final opinion was given after examination of the FSL report Ex.PW-6/A. The final opinion given by PW-16 on 25.12.2007 was that the cause of death was pulmonary Oedema as a result of Zinc Phosphide poisoning. The MLC Ex.PW-16/A also in this case records that Deepa was referred from a private hospital at 02:20 PM on 16.12.2006 complaining of high blood pressure and that she expired during treatment at 08:45 AM on 17.12.2006. If one sees these materials, it would be apparent that the death on account of Zinc Phosphide poisoning, in the opinion of the Doctor, would occur within 5-6 hours of its being consumed or administered. However, for at least 1½

days, the deceased Deepa was in the Hospital. This makes it extremely improbable for the accused to have had a hand or being instrumental in Zinc Phosphide poisoning. PW-16 admitted that Zinc Phosphide poisoning is commonly the cause of death on account of suicide.

15. As far as the testimony of PW-5 is concerned, in her cross examination, the witness admitted to not visiting the deceased's house after her death. She also deposed that her statement was recorded one month after the incident. The Trial Court remarked that the letter could not be proved to have been written by PW-5 Khushboo as claimed by her and, therefore, her statement was no reliable.

16. The above discussion would reveal that the prosecution had relied mainly on the testimony of two witnesses, i.e. the deceased's parents, who deposed as PW-1 and PW-3. Though they made various allegations in the course of their depositions in Court, those were undermined almost fatally in their cross examinations, when the defence was able to successfully show that the most damaging allegations were really improvements, which had not been made during the statements recorded during investigations. Whether it was that Deepa had told them before her death, about constant harassment in the form of beating and food deprivation, or the two instances when amounts had been demanded from them, which they acceded to, or even whether they or any of them had witnessed any act of cruelty, the respondents had confronted them with their statements recorded under Section 161 Cr. PC where those facts were omitted. These contradictions severely undermined the prosecution story, which could not proceed on the remainder slender evidence, to establish credibly that the accused had made any worthwhile dowry demand, or had treated the deceased with cruelty, for that purpose,

soon before her death. Likewise, the reliance on a previous complaint, Ex. PW-22/F dated 2-10-2006 proved futile, because PW-4, the deceased's cousin, deposed that after complaining, the deceased had reconciled with her husband and parents in law, and the maltreatment which she was aggrieved of, stemmed from their insistence that she continue to do her domestic chores, although she had become pregnant. The witness, PW-4 even stated that the deceased's parents in law had come down to Delhi, and participated in the patch up efforts- a fact omitted in the narratives of both PW-1 and PW-3.

17. As far as the cause of death, i.e Zinc Phosphide consumption is concerned, PW-16's evidence is quite illuminating. He deposed that the deceased was brought to the hospital, where he examined her on 16-12-2006 at the time, i.e. 2:20 PM. She had high blood pressure, and did not exhibit any of the symptoms of zinc phosphide poisoning, which according to the doctor would have normally manifested within an hour of its being administered to a victim. He also deposed that the victim would die within 5-6 hours of the substance being administered or consumed. Neither eventuality materialized in this case; Deepa died more than 18 hours after she was admitted, i.e. in the morning of the next day, at 8:45 AM on 17-12-2006. It is also a matter of record (Ex. PW-16/A) that first, the victim was taken to a private hospital before being taken to Lady Hardinge Medical College hospital.

18. While the law mandates a close scrutiny of deaths which occur under abnormal circumstances, of a woman whose marriage is less than seven years old, at the same time, it achieves a balance so crucially necessary for

any legal system to maintain, by decreeing that such death alone, though unusual, would not attract a presumption, but would do so, if the prosecution is able to establish that "soon before" the death (an elastic, but nevertheless legally defied concept) she was subjected to cruelty, on account of dowry demand. If all these elements are established, the court would be justified in returning a conviction under Section 304-B IPC. Similarly, for the offence under Section 498-A IPC, the prosecution has to prove cruelty -also defined specifically in the explanation to that provision.

19. In this case, the substratum of the prosecution case hinged on the testimony of the deceased's relatives. Two of them proved to be unworthy of credence, because they made considerable improvements on the statements recorded previously, under Section 161 Cr.PC. PW-2, the deceased's brother, had not even met her after her marriage, and not even visited her matrimonial home. PW-4's deposition proved to be disastrous to the prosecution case.

20. What has been ingrained in the judicial lexicon, concerning administration of criminal justice is that an acquittal of a criminal suspect of charges, after a full trial, is an affirmation of his innocence, which will not be lightly upset, in appellate review. Unless the judgment recording acquittal suffers from a manifest error of law or gross misappreciation of evidence, the view taken by the Trial Court would be allowed to stand. The mere possibility of another view, when that of the Trial Court is a plausible one, is insufficient to occasion interference with the acquittal. Applying these time tested norms, this Court is of opinion that an overview of the evidence in this case does not reveal any such error, which calls for interference. The

reasoning of the Trial Court is sound and plausible. The Appeal, therefore has to fail; it is dismissed.

S. RAVINDRA BHAT, J

S.P.GARG, J

MAY 4, 2012

/vks/