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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.L.P. No.303/2012 & CrI.M.A. no.7782/2012

Date of Decision: 23rd August, 2012

STATE OF NCT OF DELHI Petitioner
Through Mr. Rajesh Mahajan, Adv.

Versus

RAJIV & ANR Respondents
Through

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE J.R. MIDHA

GITA MITTAL (Oral)

1. The instant petition has been filed under Section 378 of the Code of Criminal Procedure (Cr.P.C.) praying for leave to appeal against the judgment dated 30th November, 2011 passed by the learned Additional Sessions Judge, Dwarka in SC No.24/1/11 titled State Vs. Rajiv & Anr. arising out of FIR No.36/08 registered by the police station Najafgarh, Delhi whereby the learned Trial Judge has acquitted the respondents of commission of offence under Section 498A/34 of the IPC against all the respondents and a charge under Section 302 of the Indian Penal Code (IPC) against the respondent no.1.
2. The record of the lower court has been received. The same has

been perused. The learned APP for the State has been heard on the petition.

3. The case of the prosecution rests on the allegation that the deceased Rekha was married to the respondent no.1 in July, 1999. In 2002, the deceased had given birth to a female child. It is alleged by the prosecution that there was a demand of a scooter by the accused persons particularly by the respondent no.1 and that Rs.30,000/- was given on this account to him. It is the case of the prosecution that this amount of Rs.30,000/- was borrowed by the father of the deceased, PW 20-Shri Satya Narain from his relative PW 1 Azad Singh and sent to the respondent no.1 through his nephew in the year 2007. The second allegation is that an amount of Rs.1,40,000/- was demanded by the respondents prior to the death of the deceased which was paid by her relatives to the accused in the year 2007.

4. So far as the unfortunate incident on 20th January, 2008 is concerned, it is the case of the prosecution that the deceased was administered poison by her husband in tea which he had made and served to her.

5. In support of these allegations, the prosecution had filed the challan against Rajiv the husband of the deceased, arrayed before us as respondent no.1; his father Shri Ram Dhan, his mother Smt. Brahmo Devi (respondent no.2 herein) and another relative Ms. Anita. On the basis of the material on record, charge was framed under Section

498A/34 IPC against the respondent no.1 and his parents. A further charge was framed under Section 302 of the IPC against the respondent no.1, husband. Vide an order dated 28th August, 2009, Anita was discharged in the case. Shri Ram Dhan, father-in-law of the deceased died on 4th July, 2011 and proceedings against him abated.

6. The respondents had pleaded not guilty and claimed trial. In support of the case, the prosecution has examined 23 witnesses in all.

7. We may first examine the case of the prosecution to bring home the charge under Section 498-A of the IPC.

8. It is trite that to attract the provision of Section 498-A of the IPC, there must be willful conduct of the husband or any of his relatives of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person relating to her to meet such demand.

9. So far as the two demands are concerned, the prosecution has relied on the testimony of PW 1 Azad Singh (brother-in-law of the father of the deceased) who had stated that after the marriage of deceased, her father-Satya Narain, had visited his house one day and informed him that her in-laws were harassing her for dowry and he

(Satya Narain) requested for help from him. PW 1 has stated that he had given Rs.30,000/- to fulfill the demand. In his testimony, the witness was unable to give any particulars of the date nor did he state that the accused persons had raised demand of a scooter.

10. PW 20 Shri Satya Narain (the father of the deceased) deposed that the demand of scooter was made in the year 2007 and that he had sent the amount of Rs.30,000/- to the respondent no.1 through his nephew. PW 20, however, does not state anywhere that he had borrowed this amount from PW 1 Azad Singh.

The mother of the deceased PW 10 Smt. Dhanpati made no allegation at all that the respondents/accused persons had made a demand of two wheeler scooter or that an amount of Rs.30,000/- was borrowed by her husband and sent to the accused Rajiv through his nephew PW 5 Ashok Kumar. PW 10 was declared hostile by the prosecution and she was cross-examined by the APP for the State. In her cross-examination, she admitted the suggestion of the prosecutor to the effect that such a demand had been made and the amount was arranged by her husband and sent to the respondent no.1. However, in her cross-examination by the defence, she testified that the amount of Rs.30,000/- was borrowed by PW 5 Ashok Kumar from her brother-in-law and was handed over to accused Rajiv. The witness also stated that PW 5 Ashok Kumar had not visited their house at that time and

that they had not seen the money borrowed by him.

This testimony of PW 10 is in contradiction to evidence of PW 1 Azad Singh as well as that of PW 20 Satya Narain.

11. We find that the learned Trial Court has carefully examined the evidence on this allegation and has noted that PW 5 Ashok Kumar has neither stated that the amount of Rs.30,000/- was taken by him from PW 1 Azad Singh nor that he was given the amount by PW 20 Satya Narain. He also did not make any statement that he had given an amount of Rs.30,000/- to the respondent no.1 at the instance of PW 20 Satya Narain or that the deceased was harassed by his in-laws since after one month of his marriage. Several material contradictions in the testimonies of the witness on the allegation of the demand, arrangement of the amount as well as the manner of its payment have been noticed. While PW 11 brother of the deceased stated that she was being harassed within one and a half months of marriage, her father PW 20 stated that the demand for the scooter was made only in 2007. The learned trial court has, therefore, rightly disbelieved the allegation that there was a demand of scooter or the payment of the amount of Rs.30,000/-.

12. The second allegation with regard to demands leveled against the respondents is that of the demand of Rs.1,40,000/- by the respondent No.1. On this issue, PW 10-the mother of the deceased has testified that this amount was demanded by the respondent no.1 four

or five months prior to the death of the deceased and that such amount was paid to them by her elder son Jai Bhagwan to PW 20 (father of the deceased). But PW 20 Shri Satya Narain has deposed that he withdrew the said amount from his bank account in the month of July, 2007 and had handed over the amount of Rs.1,40,000/- to the respondent no.1 in his house. PW 20 makes no reference to a payment by Jai Bhagwan. The prosecution has also proved on the other hand the bank statement of Satbir Singh in Allahabad Bank in Rohad Branch, Jhajjar, Haryana reflecting a withdrawal of an amount of Rs.1,40,000/- on 17th December, 2007.

On the same issue, the brother of the deceased PW 11 Harish Chander has testified that the accused person made a demand of Rs.1,50,000/- which amount was arranged by his brother Jai Bhagwan and withdrawn from his bank account in the Allahabad Bank, Rohad Branch, District Jhajjar, Haryana. PW 11 has further stated that this amount was given to the accused 15/20 days before the death of his sister.

13. The above narration would clearly show that there was a contradiction not only with regard to the person who had made a demand but also of the amount demanded. The evidence of the mother (PW 10) and brother (PW 11) of the deceased are in material contradiction to the evidence of her father (PW 20) so far as the arrangement of the amount and the manner of payment is concerned.

The learned Trial Judge has also noticed that none of the witnesses has testified that the deceased was harassed by the accused persons on the issue of such a demand. It has also been observed by the learned Trial Judge that PW 20 Satya Narain-father of the deceased had stated that such demand was raised by the respondent no.1 for starting some business and held that therefore there was no dowry demand. The witnesses give no date of either the payment of the amount. Their testimony contradicts each other in manner of arrangement of the amount as well as its payment. Casting doubt, therefore, over the amount of the withdrawal, from the bank being payment to the respondents.

14. As noticed above, in the instant case, the prosecution submits that there is no credible evidence to prove on record that the respondents had made any demand or that there was such willful conduct or harassment which could drive her to commit suicide or was likely to cause any grave injury or danger to life, limb or health on account of unlawful demand of dowry or on account of non-fulfilment of such a demand. The findings of the learned Trial Judge are based on evidence and sound reasoning.

15. So far as the allegation of harassment is concerned, whereas PW 11 Harish Chander, brother of the deceased stated that her harassment commenced after one and a half months of the marriage, PW 20 Satya Narain father of the deceased stated that the demand of

scooter was raised only in the year 2007 and no allegation has been made for the period prior thereto. PW 10 mother of the deceased is silent on this issue. In this background, the conclusion of the learned Trial Judge to the effect that the deceased was being harassed by the accused persons on account of non-fulfilment of the demands, was not established by a cogent evidence, cannot be faulted.

16. The finding in the judgment of the learned Trial Judge to the effect that the prosecution had failed to lead evidence to bring home charge under Section 498-A and therefore under Section 304-B of the IPC, therefore, is unassailable.

17. It is now necessary to examine the charge under Section 302 of the IPC for which the respondent no.1 stood trial. PW 11 Harish Chander, brother of the deceased has claimed that he had received a phone call from his sister Rekha that she had been poisoned by her husband whereupon he proceeded to her matrimonial house along with PW 5 Ashok Kumar and removed her from her house to the hospital where she was declared brought dead. It is inexplicable that PW 11 Harish Chander did not lodge any report with the police with regard to the alleged telephone call received by him or the death of his sister. Instead, a typed written complaint was lodged only the next day i.e. 21st January, 2008. The defence had urged at great length that this was lodged more than twenty four hours after the incident. No explanation has been tendered for the delay.

18. So far as the incident on 20th January, 2009 is concerned, Mr. Rajesh Mahajan, learned Additional Standing Counsel for the State has submitted that the learned Trial Judge has disbelieved the statement by PW 11 Harish Chander to the effect that the deceased had given any call to him. In this regard, the learned Trial Judge had found contradiction in his first statement recorded by the police of PW 11 at Police Station Bahadurgarh, District Jhajjar, Haryana which is Exh.PW 22/B-1 dated 20th January, 2008 and the formal complaint dated 21st January, 2008 whereupon the FIR was registered. In the initial complaint, Exh.PW 22/B-1, PW 11 stated that his sister had called him and told that her husband had given her poison and asked him to come fast. No mention is made therein with regard to the presence of the daughter of the deceased at the time of poison being administered in the finding of any poisonous substance or other at the spot. There is no allegation of dowry harassment in Exh.PW 22/B-1. The prosecution also did not bring Exh.PW 22/B-1 on record and the same was brought on record only during the cross-examination of PW 22. The learned Judge has noted that the prosecution has failed to connect the phone calls. In his written complaint Exh.PW 11/A, PW 11 Harish Chander has attributed a statement allegedly made by the respondent no.1 while escaping as related by the deceased in her phone call.

19. The learned Trial Judge had noticed that there was material improvement over the statement made under Section 161 of the Cr.P.C. on 22nd January, 2008.

20. So far as the poisoning of the deceased is concerned, the prosecution has claimed that the daughter of the deceased PW 9 Nishu had witnessed the incident. The statement of this child was recorded for the first time on 22nd January, 2008. We have been taken through the testimony of PW 9 Nishu by Mr. Rajesh Mahajan, learned Additional Standing Counsel. At the time of her examination, the child was eight years of age and the child appeared to be staying with the parents of the deceased. In her examination-in-chief, she stated that her father used to give beating to her mother Rekha whenever her mother asked money for clothes. So far as the incident in question is concerned, the child had stated that her father had given poison in tea to her mother. The witness was unable to tell the month or the year of incident. In her cross-examination, the child stated that food in the house was always prepared by her mother. She categorically stated that on the fateful day, the tea was also prepared by her mother. PW 9 Nishu unambiguously stated that the tea was served to her father by her mother and that her mother had taken tea on her own while a cup of milk was served to the child by her mother. In this background, there is no evidence to the effect that the respondent no.1 had administered poison in tea to the deceased Rekha.

21. A cloud is cast on the statement attributed to the deceased by PW 11 Harish Chander from the other evidence which has been brought on record. The evidence brought on record shows that it was not a single call from the house of the deceased to the phone of the PW 11 Harish Chander. On the contrary, two calls were received on the landline number 65850427 installed in the house of the deceased from the mobile number of PW 11 Harish Chander at 10:02:53 hours and 10:03:53 hours which lasted for 39 and 25 seconds respectively.

Thereafter, there are also two phone calls made from the said landline number to PW 11 Harish Chander 's phone number which are of the duration of 25 seconds and 9 seconds respectively at 9:33:58 hours and 09.35:31 hours.

No evidence has been led by the prosecution as to what was the nature of these calls and who had made or attended these calls at the house of the deceased. According to PW 11 Harish Chander, the deceased had told him at 9:00 a.m. that her husband had run away after giving her poison. It is the case of the prosecution that parents of the respondent no.1 had left the house on previous evening. Thereafter, as per the case of the prosecution, there was none at the house of the deceased after 9.00 a.m. So far as her daughter is concerned, she would have been about six years of age and makes no reference to any phone calls at all.

22. The prosecution has placed reliance on the recovery of three packets of Sulphas in the house of the deceased. However, as per the evidence on record and deposition of PW 22 SI Jogender Kumar, these packets were in original sealed condition and were exhibited as Exh.P-3. No opened packet was recovered. Therefore, this seizure would also not impact the adjudication of the case.

23. The defence has suggested that the deceased was depressed as one of her brothers Shri Jai Bhagwan whom she was deeply attached, had been shot dead.

24. PW 22 has deposed that he had visited the house of the deceased on 20th January, 2008 and had seized a mess tin in which the tea had been prepared and contained a milk like liquid, one spoon, a steel glass which appeared to have been used for milk; a white cup with a design of flower which appeared to have been used for serving the tea; tea sieve, steel bowl containing tea leaves from the courtyard. The seizure memo in this regard has been exhibited as Exh.PW 14/B. The same was also sent to the forensic science laboratory for chemical examination. PW 14 Constable Dharamvir also lifted a sample of vomit and a mess tin containing milky white liquid from the courtyard of the premises vide exh.PW 14/A on the 20th January, 2008.

The FSL Report dated 14th March, 2008 shows that the items seized were one metallic pan having some brown coloured dried material; one metallic tumbler having some dirty stains; one printed

white coloured cup having some brown coloured dried material; one metallic bowl having some brown coloured dried material; one red coloured plastic sieve having some brown dried material, one spoon having some dirty stains milky white colour powder in a plastic bottle with green lid and parcel no.4 consisted of dirty colour liquid in a glass vial.

25. The case of the prosecution appears to be that the deceased was administered poison or Sulphas in tea prepared by and given to her by the respondent no.1. In this regard, PW 2 Dr. Parvinder Singh who had conducted the post-mortem on the dead body of the deceased, testified in his cross-examination that only a Forensic Science Laboratory expert could tell whether the poison found in the body of the deceased was mixed up with the food, tea or any other substance. The forensic laboratory report Exh.PW 19/A has reported that Exh. 1B - the pieces of viscera i.e. pieces of liver, spleen and kidney and Exh. IC i.e. cherry red colour liquid were found to contain "Aluminum Phosphide".

26. The FSL report therefore does not support the prosecution that there was any poison in the vessels in the tea which was consumed by the deceased.

27. No evidence was led by the prosecution of the forensic expert with regard to the manner in which the poison was administered to the deceased. The prosecution also failed to send any samples of milk or

tea from the spot to the laboratory for testing. No finger print was lifted from the spot to prove the presence of the accused at the spot when the tea was allegedly prepared and consumed by the deceased.

28. In this background, the learned Trial Judge has held that the prosecution has failed to establish that the respondent no.1 administered poison to the deceased. As per Exh.PW 19/A, no metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers and insecticides could be detected on any of the utensils used for or containing tea.

29. The above discussion would show that a wholly implausible case that the respondent no.1 administered poisonous tea in the presence of his daughter, has been set up in the instant case. There is no legal evidence of any dispute between the parties either on the fateful day or immediately proceeding the same. There is also no evidence on record of use of any force, violence or compulsion in administering the poisoned tea. It is difficult to accept the proposition laid before the court that any wife would consume poisoned tea when handed over to her by her husband without protest or objection in the presence of their daughter.

The findings of the learned Trial Judge and conclusion that the prosecution has failed to bring home the charge under Section 302/304-B IPC against the respondent no.1 are based on a sound evaluation of the evidence produced on record and is based on well

settled principles of law. The same has not been faulted on any legally tenable grounds.

30. In the light of the above discussion, we see no merit in this petition which is hereby dismissed.

(GITA MITTAL)
JUDGE

(J.R. MIDHA)
JUDGE

AUGUST 23, 2012
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