

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

+ CRL.A. 37/2003 and Crl. M.A. No. 178/2003

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Reserved on: 30th April, 2013

Decided on: 4th July, 2013

DHARAMPAL

..... Appellant

Through: Mr. Jayant K. Sud and Mr. Ujas
Kumar, Advocates with Appellant in
person.

versus

STATE OF NCT DELHI

..... Respondent

Through: Mr. Manoj Ohri, APP for the State
with SI Rajeev Kumar, PS Hazrat
Nizamuddin, Delhi.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal the Appellant lays a challenge to the judgment dated 23rd December, 2002 whereby he has been convicted for offences punishable under Section 304B/498A IPC and the order on sentence dated 24th December, 2002 whereby he has been directed to undergo rigorous imprisonment for 7 years for offence under Section 304B IPC and rigorous imprisonment for a period of one year and a fine of Rs. 10,000/- for offence under Section 498A IPC.

2. Learned counsel for the Appellant contends that on similar evidence the mother of the Appellant was discharged by this Court, however the Appellant has been convicted. The main allegation by the parents of the deceased against the Appellant was that he used to taunt the deceased for

having illicit relations with his cousin which does not constitute offence under Section 304B IPC. The other allegation is that on 13th April, 1990 the deceased went to the house of her parents and demanded Rs. 20,000/- for construction of the house. Reliance is placed on *Appasaheb and Anr. Vs. State of Maharashtra (2009) 7 SCC 721* to contend that demands made from the parents to meet domestic expenses is not demand of dowry. Further there are material discrepancies in the statements of the witnesses regarding these two incidents. It is also alleged that at the time of Thaka ceremony of the younger daughter of the complainant, the Appellant demanded a refrigerator. Even on this allegation there are material discrepancies in the statements of the prosecution witnesses. PW1 and PW2 stated that on 13th April, 1990 the deceased came and demanded Rs. 20,000/- for construction of the house whereas PW9 the uncle of the deceased stated that the deceased, Appellant along with their child came to their house and demanded Rs. 20,000/-. Each witness has given his own version; one states that there was demand of fridge, the other says about the steam press and radio. Further no bill of the alleged gift of fridge has been proved. The brother of the deceased who was a material witness has not been examined. The Appellant appeared as a defence witness and proved on record that even before the alleged demand of a refrigerator in February, 1989 the Appellant had purchased a refrigerator in 1988 from the bonus money he received. The allegations are thus totally exaggerated and unfounded. The son of the Appellant and the deceased who was a natural witness and aged 5 years who could have stated about cruelty was not examined by the prosecution. The Appellant has proved on record that the deceased was suffering from ailments and she was being treated for the same. The doctors had opined

that in case she was operated there were chances of paralysis. In view of her medical condition the deceased was depressed and thus took this extreme step of committing suicide. The testimony of PW8 & PW9 the uncle of the deceased is full of exaggeration. PW9 has stated that on 17th April, 1990 a day prior to the death he had met the deceased when the Appellant had beaten her. However in the post-mortem report there is no mark of injury. The Appellant examined his son in defence as DW3 who stated that there was no quarrel in the family. No neighbor was examined. The Appellant is living in a 40 sq. yds. house and there are number of families living adjoining and if there was any quarrel, the neighbours would have known the same definitely. The prosecution witnesses have been duly confronted with their statements made to the SDM which shows that the statements in examination-in-chief are material improvements from the earlier statement made to the SDM. The SDM has not been examined and the investigating officer has identified his signature. The evidence on record does not prove the case of dowry death. Thus the Appellant be acquitted of the charges framed.

3. Learned APP on the other hand contends that the FIR was registered on the intervening night of 18th and 19th April, 1990 and on the same date statements were recorded by the SDM. There are specific allegations of demand of Rs. 20,000/- for construction of the house soon before the death on 13th April, 1990. Reliance is placed on *Jagjit Singh Vs. State of Punjab* (2009) 4 SCC 759 to contend that demand for purchase of a new house would also be a dowry demand in relation to the marriage. On 13th the deceased and the Appellant visited the house of the uncle as well as the

parents and demanded Rs. 20,000/-. In view of the specific allegations, no case for acquittal is made out.

4. Heard learned counsel for the parties. On 18th April, 1990 at about 9.20 PM an information was received at Police Post Jangpura about the death of one Ms. Rajni at H.No. H-19, Railway colony, Jangpura. SDM was called on the spot and the statements of PW1 father of the deceased Balram Singh was recorded wherein he alleged that the Appellant tortured the deceased due to illegitimate relations with his cousin which fact was known to his parents as well. His younger daughter was married an year ago on 10th February, 1989 when the appellant taunted and thus the complainant bought a fridge for the Appellant. He further stated that his daughter came to his house for the last time on 13th April, 1989 and stated that she has been sent to get Rs. 20,000/- as the Appellant was constructing the house. The complainant stated that he was not in a position to arrange the amount, however since one of her uncle was a businessman and the other at a good position in LIC, they could arrange for the same. The statement of other witnesses were recorded by the SDM and after investigation a charge-sheet was filed against the Appellant and his mother. Charge was framed against both the Appellant and his mother, however on a revision petition filed before this Court, this Court discharged the mother of the Appellant. After recording of statements of the prosecution witnesses and statements of the Appellant and the defence witnesses the Appellant was convicted as above.

5. As per the prosecution there are two material allegations against the Appellant with regard to harassment in relation to demand of dowry. One relates to the demand of fridge almost a year prior to the death and the other

demand of Rs. 20,000/- to construct the house on 13th April, 1989 i.e. 5 days prior to the deceased committing suicide. In relation to the demand of fridge PW1 in his statement before Court has stated that marriage of his younger daughter was arranged for February, 1989 and he had given a scooter from the earnings of his younger daughter on which the Appellant stated that he had not been given anything in the marriage. The Appellant did not attend the Thaka ceremony of his younger daughter. In order to make the Appellant happy and for keeping his mouth shut, PW1 purchased a refrigerator and gave it to him. In cross-examination PW1 admitted that the Appellant had a fridge in his house in the year 1988. He however volunteered that it was the same fridge that they had bought for the Appellant after the Thaka ceremony of his daughter Manju as he has not attended the same. PW1 in his cross-examination also admitted that Appellant attended the marriage of his younger daughter Manju and also attended all social functions of other relations like his elder brother's son's marriage etc.

6. PW2 Smt. Santosh Anand, the mother of the deceased in this regard stated that in 1989 the Appellant did not attend the marriage of his younger daughter and thus they gave a refrigerator to him. In cross-examination PW2 admitted that the Appellant attended the marriage of his younger daughter Manju. She also volunteered that the Appellant had come on the Thaka ceremony. She however reiterated that the Appellant had TV, motor-cycle etc., in the house but they purchased a fridge from Lajpat Nagar. She however did not remember the make of the fridge and stated that the same was medium size.

7. PW8, the uncle of the deceased has not stated anything about the fridge in his examination-in-chief. He however stated that he had given money to the Appellant number of times to purchase the articles which he used to demand from the deceased. PW9 the other uncle of the deceased also did not state anything about the demand and giving of the fridge. The prosecution has not exhibited the bill of purchase of the refrigerator by either PW1 or his family. As against this, the Appellant entered into the witness box and examined himself as a defence witness. He proved on record that in the year 1988 he purchased the refrigerator in the name of his wife from Unique Electronics Ltd. and paid Rs. 5300/-. The make of the refrigerator was Kelvinator, and he proved the original receipt, the guarantee card, etc., as Ex.DW1/A to C. He also produced documents to show that he had received Rs. 3840/- as bonus on the occasion of Diwali and had also taken Rs. 4500/- as advance salary. The Appellant was not required to prove his defence beyond reasonable doubt but by the preponderance of probability. In the present case there are material contradictions in the statement of the witnesses as both the witnesses have in cross-examination admitted that the Appellant attended the marriage and the Thaka ceremony and further did not demand a fridge. The case of PW1 and PW2 is that they gave a fridge to shut the mouth of the Appellant, however Appellant has proved that the refrigerator was brought from his own income.

8. This brings me to the next most material aspect of the prosecution case i.e. demand of Rs. 20,000/- on the 13th April, 1990 for construction of the house. PW1 in his examination-in-chief stated that on 13th April, 1990 his daughter came to his house and told him that Appellant was getting a house

constructed and that he was demanding Rs. 20,000/- to which he stated that he was not in a position to give money to her at that time. In the cross-examination PW1 admitted that the Appellant never came to him to ask for Rs. 20,000/-. PW2 the mother of the deceased in her examination-in-chief stated that on 13th April, 1990 his daughter and the Appellant had gone to her sister's house and demanded Rs. 20,000/-, as the Appellant was constructing a house. Thereafter his daughter came to her house on the same day and asked for Rs. 20,000/- and stated that in case she was not having this money she should arrange from Mausī. In cross-examination PW2 admitted that the Appellant never came to demand Rs. 20,000/- from them. PW8 Madan Lal the uncle of the deceased in his examination-in-chief stated that the accused used to often demand money from him and lastly he demanded Rs. 20,000/- rupees which he did not fulfill. He further stated that probably on 13th April, 1990 the deceased telephoned him and stated that the Appellant had given him beatings. When he went to the house of the deceased, he saw injury marks on her person. He was confronted with his earlier statement where these facts were not recorded. Further PW8 does not state that he took the deceased to a doctor or lodged a report in this regard. Moreover even in the post-mortem, no external injury except due to hanging were found. PW9 R.K. Sabharwal, the other uncle of the deceased in his examination-in-chief stated that on 13th April, 1990 the deceased, her husband along with the child came to his house and they stated that they were constructing a house and they urgently required Rs. 20,000/- and he should arrange for the same. He stated that he replied to them that he would speak to the parents of the deceased and if they say he would arrange the same. This witness has also been confronted with his earlier statement wherein the demand of Rs.

20,000/- has not been mentioned. It is thus apparent that the statements of PW8 and PW9 are material improvements from their previous statement. Further though even PW1 and PW2 have made material improvements, they have admitted that the Appellant did not demand any money. Thus the prosecution has failed to prove demand of dowry soon before death.

9. As regards continuous harassment, the statements of PW1 and PW2 were that the Appellant used to harass and torture the deceased, however, no specific instance has been mentioned. In cross-examination these witnesses have admitted that the Appellant arranged the marriage of their son. He also helped him in getting a job and that the Appellant used to attend all functions in the extended family. It is further admitted that the relations between the Appellant and the family of the deceased were cordial. PW1 and PW2 have been confronted from their previous statements and it is revealed that they have made material improvements in their statement before the Court from their previous statement.

10. There is yet another aspect of the matter. PW1 and PW2 have admitted in the cross-examination that the deceased was suffering from a serious ailment of spinal injury due to which she was in severe pain. The case of the PW2 is that the Appellant used to twist the arm of the deceased and thus she had pains. Appellant has confronted PW1 and PW2 with the various medical records which show that she had undergone treatment at various hospitals. This fact has been admitted by PW1 and PW2. PW8 and PW9 uncles of the deceased though have stated about continuous demands of the Appellant on one pretext or the other and have stated that the deceased used to talk to them very often, however it is strange that they were unaware

of the ailments of the deceased which have been proved on record. This is highly unnatural. It is impossible to comprehend that close relations who purport to know everything about day-to-day life of the deceased and the Appellant so much so that the Appellant was making demands to them, would not know about the serious ailments of the deceased. Further whatever has been stated by PW8 and PW9 have been confronted to them from their previous statement and has been found to be material improvements.

11. In view of the fact that the prosecution has neither been able to prove harassment in relation to demand of dowry soon before death nor continuous harassment resulting in the death of the deceased, the Appellant is entitled to the benefit of the doubt. Accordingly he is acquitted of the charges framed. Bail bond and surety bond are discharged. Appeal and application are disposed of.

(MUKTA GUPTA)

JULY 04, 2013
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