

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

Reserved on: January 31, 2013

Pronounced on: February 18, 2013

+ **Crl. Rev. P. No.535/2001**

MANGAL SINGH

..... Petitioner

Through: Mr.Arvind Pandey, Advocate with
petitioner in person.

versus

**THE STATE GOVT. OF NCT OF
DELHI & ORS.**

.... Respondents

Through: Mr.Sunil Sharma, Additional
Public Prosecutor for State
Mr.S.K.Grover, Advocate for
Respondent No. 2 to 7.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Respondent - accused persons having faced the trial in FIR No. 320/1998, under Section 304B/498A/34 of IPC registered at Police Station Tilak Nagar, Delhi have been acquitted by the Trial Court vide impugned judgment of 30th April, 2001 which is under challenge in this revision petition by the complainant/first informant of the FIR in question.

2. Trial Court after having scrutinized the evidence on record has arrived at a conclusion that the complainant/first informant of the FIR in question in his

deposition had made substantial and material improvements which cannot be ignored and the deposition of mother and brothers of the deceased is also on the similar lines as that of father of the deceased and their deposition is not trustworthy. Trial Court in the impugned judgment has referred to the defence evidence and while relying upon the observations made in the decisions reported in 1996 (3) C.C.Cases 494 (SC) and I(1992)CCR 471 (DB) has held that since prosecution has failed to prove that '*soon before her death*' deceased was subjected to cruelty, so presumption under Section 113-B of *The Indian Evidence Act, 1872* cannot be raised against respondent - accused. Finding no satisfactory evidence against respondent – accused, they have been acquitted by the Trial Court.

3. At the hearing of this petition, learned counsel for petitioner had urged that impugned judgment has resulted in gross miscarriage of justice and is palpably perverse and unsustainable in law. The contentions advanced on behalf of petitioner are enumerated as under:-

"(a) *The evidence of PW1, Dr.K.L. Sharma, who conducted the Post Mortem, has*

been absolutely shut wherein the witness submits that the deceased had received burn injuries during unconsciousness, the post mortem report duly proved by the witness as Ex. PW1/A, has also been shut in its entirety. The nature of external physical injuries sustained before death and the sustaining of burn injuries while being in unconscious state as proved in the post mortem report and the evidence of PW1 prove that the deceased was physically over powered and set on fire.

- (b) While shutting the evidence of PW1, the Learned Trial Court makes a factual presumption that the deceased committed suicide as is evident from Para 13 of the impugned Judgment wherein the Learned Trial Court observes there is no suicide note written by the deceased Harjeet Kaur and nor is there any dying declaration by her. We, therefore, have no version of the deceased as to how and why she had taken her life.*
- (c) The impugned Judgment is based on the wrong presumption that the deceased committed suicide. As such the entire impugned Judgment is palpably wrong*

and has caused gross miscarriage of Justice.

- (d) The impugned Judgment is based on wrong legal presumption that the Learned Trial Court made without any basis that anything, if happened, between the date of marriage and the date of compromise in the CAW cell would be taken to have been exonerated and compromised as observed in Para 19 of the impugned Judgment.*
- (e) The Learned Trial Court has also overlooked the material and consistent evidence of demand on 2.6.1998 of Rs.1.00 lac coupled with the threat to kill of PW 3, 4, 6, 7 & 10.*
- (f) The Learned Trial Court also shut the unchallenged and unrebutted evidence of PW6 that entirely proves the prosecution case.*
- (g) That despite the proof of complaints to crime against Women cell and the statements of the deceased exhibited PW 3/D in evidence of PW3, the Learned Trial Court has held that there is no satisfactory evidence on record to hold that the accused of this case subjected the Harjeet Kaur to any cruelty during her*

married life as observed in Para 37 of the impugned Judgment.

- (h) That the Learned Trial Court has failed to appreciate that all the accused were at home and none either heard the hue and cry of a woman set ablaze or smelled the burning human flesh and has given more credence to the defence witnesses who were at the beck and call of the accused and had not been summoned by the Learned Trial Court.*
- (i) That the Learned Trial Court has, thus, ignored and shut the entire material and relevant evidence while passing the impugned Judgment.*
- (j) That in these circumstances the only inescapable conclusion should have been drawn that presumption under Section 113-B of Indian Evidence Act is attracted to hold the accused guilty."*

4. To contend that Trial Court has gravely erred in treating the unnatural death of deceased to be a case of suicide whereas it was a case of cold-blooded murder as the deceased was first assaulted and then burnt, reliance was placed by learned counsel for petitioner upon Apex

Court decision in *Subedar Tewari vs. State of M.P.*, AIR 1989 SC 733. While urging that impugned judgment is *per se* unsustainable in law, learned counsel for petitioner asserts that it deserves to be set aside.

5. To the contrary is the submission of learned counsel for respondent - accused, who defends the impugned judgment while maintaining that the deceased had unfortunately committed suicide as she was very much attached to her unmarried sister who had also committed suicide earlier. It is asserted that the testimony of neighbours substantiates the factum of deceased committing suicide due to depression. It is vehemently urged that the deceased had accompanied her husband to Vaishno Devi few days before her death which rules out the possibility of deceased being subjected to dowry death by respondent - accused. Reliance was placed upon decisions in *Arvind Singh vs. State of Bihar*, (2001) 6 SCC 407; *Durga Prasad & Anr vs. State of M.P.*, 2010(3) JCC 1852; *Sham Lal vs. State of Haryana*, 1997 JCC 423; *Vimal Singh vs. Khuman Singh and Anr.*, 1998 (2) JCC (SC) 243; *Kishan Swaroop vs. State*, 1997 JCC 645 by learned counsel for respondent - accused in support of

afore-referred submissions advanced, to seek dismissal of this revision petition while pointing out that there is no grave error of law and procedure in the impugned judgment requiring any kind of intervention by this Court.

6. What are the essential ingredients of dowry-death have been reiterated by the Apex Court in *Durga Prasad* (Supra), in these words:-

"As has been mentioned hereinbefore, in order to hold an accused guilty of an offence under Section 304B IPC, it has to be shown that apart from the fact that the woman died on account of burn or bodily injury, otherwise than under normal circumstances, within 7 years of her marriage, it has also to be shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. Only then would such death be called "dowry death" and such husband or relative shall be deemed to have caused the death of the woman concerned."

7. The exercise of revisional powers in a case of acquittal is confined to a limited examination to find out as to whether there is any manifest error or perversity in

impugned order. It is so said as Apex Court in *Vimal Singh* (Supra) has reiterated that interference with the order of acquittal passed by the Trial Court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice and that a finding of acquittal cannot be converted into one of conviction in the exercise of revisional jurisdiction. Thus, it is evident that this Court cannot substitute an order of acquittal with one of conviction and the only course left open in exceptional cases, is to order a re-trial.

8. While being conscious of the limited scope of intervention in the instant matter, after having heard both the sides and on perusal of the impugned order, evidence on record and the decisions cited, I find that what is required to be seen in such like cases, is that whether the death is natural or unnatural one. Once it is found out that the death is unnatural then, it is not required to be gone into as to whether it was a case of suicide or murder.

9. The factual backdrop as culled out from the impugned order is as follows:-

"Briefly stated the case of the prosecution is that on 3.6.98 on receipt of DD No.7A of PS Tilak Nagar, regarding burning of a lady at house No.NE-14, Vishnu Garden, SI O.P. Yadav reached the spot. A woman whose name was known as Harjeet Kaur was lying dead due to burns on the first floor of the house No.NE-14, Vishnu Garden, Delhi. SI O.P. Yadav had learnt that the deceased had died within 7 years of her marriage with accused Dharmender Singh. Thereupon, SI O.P.Yadav informed SDM Patel Nagar. On 4.6.98 SDM recorded the statement of Sh. Mangal Singh father of the deceased and the said statement is Ex.PW3/A.

In the said statement Sh. Mangal Singh told the SDM that he was residing at Laxmi Nagar, Delhi and was doing the job of a turner. He married his daughter Harjeet Kaur to accd. Dharmender Singh on 22.2.92/93. After marriage he used to meet his daughter frequently. His daughter has got a son aged 5 years. His daughter used to be beaten by her in-laws, and they were demanding dowry. On 2.6.98 Harjeet Kaur came to him and told him that she was being maltreated by her in-laws and they were asking her to bring ₹1 lakh failing which she will be done to death. He assured his daughter that he was going to his

village and will sell his land and whatever will be possible he will do the same. His daughter further informed him that her husband accd. Dharmender Singh, mother-in-law Joginder Kaur, two sister-in-law out of which one is married whose name is Nirmal and the other is unmarried, dever Billa and father-in-law Sarup Singh were harassing her and were demanding dowry. On the same date i.e. 2.6.98 he got his daughter boarded in a bus for going to her matrimonial home. He then proceeded to his village on 3.6.98 in train Shaan-e-Punjab. He got down at Byas. From there he went to Batala by bus. From there he went to the village Hariyabad of his sister as he had no place to stay in his village. At Hariyabad he learnt from the son of his bua that Harjeet Kaur had been killed. He immediately came back to Delhi and came to know that the in-laws of Harjeet Kaur had poured kerosene on her and set her on fire. Shri Mangal Singh requested the SDM to take legal action against the in-laws of Harjeet Kaur as such greedy people should receive severe punishment.

On the above statement of Shri Mangal Singh, a case u/s 304B/498A/34 IPC was registered against all the accused. The investigation of this case was handed over to SI S.K.Guliya. The dead body of Harjeet Kaur was got

subjected to post mortem. As per the post mortem report deceased had suffered burns to the extent of 100 percent. The burn injuries were ante mortem in nature and were sufficient to cause death rapidly and the cause of death is neurogenic shock consequent to dry burns extensively.

It is also the case of the prosecution that on 3.6.98 SI O.P.Yadav took into possession one wooden cricket bat, one plastic bucket, one chunni, some burnt pieces of skin of the burnt lady and one match box containing some burnt and some un-burnt match sticks from the spot i.e. H.No.NE-14, Vishnu Garden, Delhi. These exhibits were sent to laboratory for report and after completion of the investigation charge sheet was filed in the court."

10. In the instant matter, upon perusal of the evidence on record, it transpires that the death of deceased was unnatural one which satisfies one of the ingredients of the offence alleged. However, before statutory presumption of dowry death can be raised against accused, prosecution has to establish that '*soon before her death*', the deceased was subjected to cruelty of such a magnitude that it would compel her to end her life. In the face of the evidence on record, Trial Court was justified in arriving at the

conclusion that prosecution has failed to prove this crucial ingredient as '*soon before her death*', deceased had accompanied her husband for a trip to Vaishno Devi and thereafter had gone to her parents house with the *prasad*.

11. In view of the aforesaid, the probability factor militates against raising of statutory presumption of dowry death against respondent - accused as prosecution had alleged that about a year ago there was a demand of Rupees one lac and a plot of land by respondent - accused from the deceased and this was conveyed by her to her father who had expressed his inability to fulfill this demand and thereafter, till the death of deceased there was a lull, i.e., prosecution is silent as to whether during this intervening crucial period the deceased was ever subjected to cruelty on account of non-fulfilling the purported dowry demand. Had respondent - accused been unhappy on account of non-fulfillment of the purported dowry demand, then certainly husband of the deceased would not have taken her to a trip to Vaishno Devi and that too soon before her death. Apart from this, just to satisfy myself, I have gone through the evidence on record and have found that the following cross examination of father of the

deceased - Mangal Singh (PW-3) in fact demolishes the substratum of the prosecution case. Relevant part of the cross-examination of this witness (PW-3) is as under:-

"Likewise I did not tell the SDM that I frequently use to visit my daughter at her matrimonial home and that my daughter use to inform me about these demands. Incident dated 3.11.95 referred to by me above was also not told by me to SDM. I also did not tell the SDM that my daughter had made a complaint in a CAW Cell on 6th May, 1996. I also did not tell the SDM that the accused persons took my daughter with them and for 5/6 months she live separately from the remaining accused. I also did not tell the SDM that husband of my daughter Dharmender took her again to his parents house. I also did not tell the SDM that after one month of accused Dharmender taking my daughter again to his parents house he asked her to bring Rs. One lac and a plot for installing machines. I had also not told the SDM in my statement that the above mentioned facts were told to me by my daughter and I visited her and when she came to my house. I also did not tell the SDM that I expressed my inability to fulfill the demands and send her back to her matrimonial home."

12. The deposition of mother (PW-4), brothers (PW-6 and PW-10) of the deceased also is found to be not inspiring confidence to arrive at a conclusion that Trial Court has illegally shut out any crucial evidence or has failed to consider any material evidence. Nor the submissions advanced on behalf of petitioner provides any tangible basis to opine that impugned order is manifestly illegal or suffers from any palpable error to set it aside and to remand this matter for re-trial.

13. Having considered this matter from every possible perspective, this Court finds that the prosecution has utterly failed to establish the essential ingredients of dowry death and so, respondent - accused persons are entitled to benefit of doubt and thus, impugned order acquitting respondent - accused persons for the offence of dowry death cannot be termed to be perverse. Consequentially, finding no substance in this revision petition, it is dismissed.

(SUNIL GAUR)
Judge

February 18, 2013
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