

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

+ CRL.A. 389/2010

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Reserved on: 18th February, 2013
Decided on: 12th March, 2013

AJAY KUMAR YADAV

..... Appellant

Through Mr. Sunil, Adv.

versus

STATE

..... Respondent

Through Mr. Manoj Ohri, APP.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal the Appellant impugns the judgment dated 17th February, 2010 convicting the Appellant for offence under Section 306/498A IPC and the order on sentence dated 19th February, 2010 directing him to undergo rigorous imprisonment for 5 years and to pay a fine of Rs. 5000/-, in default of payment of fine to undergo simple imprisonment for six months for offence punishable under Section 306 IPC, and for offence punishable under Section 498A IPC to undergo rigorous imprisonment for 3 years and to pay fine of Rs. 1000/- and in default of payment of fine to undergo simple imprisonment for one month.

2. Learned counsel for the Appellant contends that there was suicidal tendency in the family of the deceased and after her death, her brother has also committed suicide. Though the suicide note was allegedly recovered from the window, however the site plan does not show window. The seizure

memo of the Chunni by which the deceased allegedly hanged herself does not bear the signatures of PW1. The alleged suicide note has not been sent to the CFSL for an expert opinion to prove that the hand-writing belonged to the deceased. Further as per the letters itself the deceased wanted the husband to perform her last rites and if the Appellant was ill-treating her, she would not have desired her last rites to be performed by him. There is no allegation of demand of dowry and hence the Appellant be acquitted of the charges framed.

3. Learned APP for the State on the other hand contends that the marriage between the parties lasted for two months only and a number of letters were written by the deceased which showed a continuous course of harassment to her. Section 498A IPC contemplates mental and physical cruelty as well, de-hors the demand of dowry. Since there was no demand of dowry in the letters, the Appellant has not been convicted for the same, though the family members of the deceased have alleged harassment for bringing more dowry. Thus, no case for acquittal is made out and the appeal be dismissed.

4. I have heard learned counsel for the parties. On 23rd July, 2003 an information was received regarding suicide committed by a girl in H.No. A-450, New Ashok Nagar. FIR No. 244/2003 under Section 406/498A/306 IPC was registered at PS New Ashok Nagar on the statement of PW1, the father of the deceased, who also gave the five pages hand-written notes lying at the window of the room of the deceased which were duly seized. During investigation, the dowry articles were seized by the Police and handed over to the complainant. Besides the Appellant, his family members were also

charge-sheeted. Charge under Section 498A/34 IPC was framed against all the 6 accused whereas charges for offences punishable under Section 406/34 IPC and 306/34 IPC were framed against the Appellant and his parents. After examining the prosecution witnesses, the accused under Section 313 Cr.P.C. and the defence witnesses, the learned Trial Court acquitted all the other accused except the Appellant who has been convicted as above.

5. PW1 father of the deceased stated that he had married his daughter with the Appellant on 14th May, 2003. She used to tell that her in-laws were harassing her on minor issues such as jewellery items given in the marriage were artificial and they treated his daughter like a servant. Whenever he visited the matrimonial house of her daughter, her in-laws did not allow him to meet his daughter alone. They did not even allow his daughter to talk to him on the telephone. Though he gave a motor-cycle in the marriage but the accused were not satisfied. A week prior to the death of the deceased, when PW1 visited her house, the Appellant told her daughter in a loud voice to bring a Maruti car and Rs. 1 lakh. When PW1 stated that he was not in a position to fulfill the demand, the in-laws stated that they would send her back to his house and will marry the Appellant again. PW1 further stated that after one month of marriage of his daughter when he received the complaint from his daughter about harassment by the in-laws, he had gone to their house along with the mediator and the parents of Appellant assured them that everything will be alright. Similar statement was made by PW2 the mother of the deceased who also stated that the Appellant was not interested in marriage with the deceased and told her that he had married the

deceased under compulsion of his parents and he had a love affair with some other girl.

6. The crucial evidence on which the learned Trial Court decided the matter are the 5 letters of the deceased recovered from the window of her house Ex.PW1/C to PW1/G, the contents whereof are reproduced as under:

“(1)Letter dated 23.7.03 Ex.PW1/C

This letter was written immediately before her death by deceased Sangeeta. The contents of this letter are reproduced verbatim as follows:-

“Sasural wale bahut dhokebaj nikle meri zindgi barbaad kar diya aur mujhe bahu ki taraha na samajh kar naukari ki taraha rakha yeh shabad mere bhosur ne kahaan sabke saamne ab main jaa rahi hoon. Meri bhi is zindgi ko jeene ki ichha thi par inn logon ne jeene nahin diya.”

(2) Letter dated 7.7.03 Ex.PW1/D addressed to her father:

When I (deceased Sangeeta) asked him (Ajay) to talk with you (father) on telephone he slapped me and told me that why your father calls daily. He should not say so. These people are taking out faults in me and you. Even fault is found out. It is stated that if she did not know how to work then why she married. He (Ajay) was saying that if you do not live properly then either he will die or leave the house. He (Ajay) tells me that it will happen either you will run away leaving the house or he (Ajay) can kill you even at the cost of going to jail. He was saying so. I don't know whether he was joking or was serious. He is (Ajay) saying if I will sleep with mummy he is with me otherwise he will leave me for his entire life. She has to bear the marriage but she is not the kind of wife that is desired by her in-laws.

(3)Letter dated 8.7.03 Ex.PW1/G

Mummy (Shayama Devi) was saying that your father always doubt everything..... If I communicate anything about this

house to my parents then She will get me married somewhere and then marry Ajay. She says that as your parents are worried about you they are worried about Ajay. He has left food. Before this I will finish myself.

(4)Letter dated 15.7.03 Ex.PW1/E

Mummy and Bhabhi are making false allegations against me. It is difficult for me to live here..... He (Ajay) was saying that he will die and get someone implicated My in-laws had harassed me a lot My husband himself told me that either I will leave the house or will rot here (yahin Sadhegi). I will not talk to you ever nor keep any relations. My life has been spoilt. What will I do by living? If this happens to a girl, how will she live later on? So whenever I finish myself it will be for these reasons.

(5)Letter dated 17.7.03 Ex.PW1/F

I am fed up with life. I just want to die. I do not want to listen to daily bickerings. If I die my husband will cremate my body. I will leave this world but will not let these people live in peace because law will punish them. I am writing this letter on this date so that I may not get chance later and this will be used as my evidence. It is settled that it has to be done in four five months. Even if my family leaves them, I will forllow them.....”

7. Learned counsel for the Appellant has contested these letters on the ground that they were not sent to FSL expert for verifying to be in the hand-writing of the deceased. These letters have been exhibited by PW1 the father of the deceased who was well-conversant with her hand-writing. This witness has identified the suicide note dated 23rd July, 2003 Ex.PW1/C to be in the hand-writing of his daughter duly signed by her and similarly exhibits Ex.PW1/D, PW1/E, PW1/F and PW1/G. Though an objection has been raised to Ex.PW1/G and PW1/C, however it is aptly clear from the testimony of PW1 who stated that he has identified the hand-writing and signatures of

his daughter. Since the hand-writing and signatures were identified by a family member who was acquainted with the handwriting of the deceased, it was not essential to get the same examined by a forensic expert. In this regard Section 47 Evidence Act provides as under:-

“47. Opinion as to handwriting, when relevant.- When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.- A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.”

7. A perusal of these letters shows that the deceased was subjected to a continuous mental harassment during the limited period of two months she stayed in the matrimonial home. The conduct of the Appellant clearly falls within the ambit of instigating the deceased to commit suicide and no case for acquittal is made out. The impugned judgment of conviction and sentence suffers from no illegality and hence I find no reason to interfere in the same.

8. Appeal is dismissed. Trial Court record be sent back.

(MUKTA GUPTA)

MARCH 12, 2013/‘ga’