

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 109 of 2008

KHUSHAL CHAND

..... Appellant

Through: Mr. S.C. Sagar and Mr. Pradeep
Sehrawat, Advocates.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Aashaa Tiwari, APP with
Inspector Arvind Kumar, SHO
Kalyan Puri.

CORAM: JUSTICE S. MURALIDHAR

ORDER
07.03.2014

1. This appeal is directed against the impugned judgment dated 18th December 2007 passed by the learned Additional Sessions Judge in Sessions Case No. 273/06 convicting the Appellant for the offences under Section 306/498A of the IPC and the order of sentence dated 18th December 2007 by which the Appellant was sentenced to undergo three years rigorous imprisonment (RI) and a fine of Rs. 10,000 and in default of the payment, to undergo nine months RI under Section 498A IPC and further sentenced to undergo seven years RI and a fine of Rs. 10,000 and in default of the payment, to undergo a further nine months RI under Section 306 IPC.

2. The case of the prosecution was that the Appellant and the deceased were married on 25th November 1974. They did not have any children. The sister of the deceased and the brother of the Appellant were also married. They had a child Arun Kumar (PW-7). However, the brother-in-law of the deceased died, and her sister of the deceased came to live with their mother Smt. Shanti Devi (PW-4). The child PW-7 from his childhood grew up with the Appellant and the deceased.

3. According to the prosecution about seven to eight months prior to the date of the incident the deceased had gone to live with her mother PW-4 and underwent an operation for removal of her uterus. She returned to the matrimonial home on 14th April 2002, i.e., one day prior to the date of the incident.

4. The case of the prosecution was that on 15th April 2002 at around 9:00 a.m. the deceased poured kerosene and set herself afire after locking her husband inside a room. When smoke came out of the house, the persons in the vicinity hearing the cries of the Appellant rushed to the house and found the door to the stairs bolted from inside. The door was broken and they found the deceased lying in a burnt condition in

front of the kitchen, groaning with pain. The Appellant was knocking at the door of the room which was bolted from outside. The lock was broken and the Appellant came out. The police was informed and reached the spot. They removed the deceased as well as the Appellant to LBS Hospital, Khichripur, Delhi. The deceased breathed her last at the hospital. The deceased purportedly made a dying declaration before one Dr. Moti Lal (PW-6) stating that there used to be altercations between her and the Appellant; that the Appellant was demanding Rs. 70,000 from her and that she was burnt by the Appellant. The Appellant was also medically examined.

5. The autopsy of the deceased was performed by Dr. L.C. Gupta (PW-12). The autopsy report (Ex. PW12 /A) was to the effect that the death was homicidal since the distribution of the burn injuries was upside down and there were multiple injuries of different durations.

6. Despite the autopsy report, the police could not reconcile the facts since the neighbours of the Appellant and the deceased gave statements inconsistent with a homicidal death. Incidentally PWs 4 and 7 also in their statements to the police did not mention about any strained

relations between the deceased and the Appellant. PW-4 went to the extent of saying that she did not suspect the Appellant and did not even want the post-mortem to be conducted. The note prepared by the SHO, Police Station Kalyanpuri on 1st June 2002 stated that the deceased was in some agony which probably drove her to commit suicide. The matter was then referred to the Assistant Commissioner of Police (ACP), Kalyanpuri, who noted that the opinion of PW-12 was totally unreliable. The ACP directed the registering of a case under Section 498A/306 IPC. Ultimately on 13th June 2002 an FIR was registered and investigation was taken up.

7. The Appellant was arrested and the investigation culminated in a charge sheet being filed against him. Charges under Section 498A and 306 IPC were framed against the Appellant to which he pleaded not guilty and claimed trial.

8. There were 13 prosecution witnesses. Both Head Constable Veer Sain as well as Dr. L.C. Gupta were wrongly mentioned as PW-12. Four neighbours of the Appellant in the locality i.e. Trilok Puri were examined as prosecution witnesses. They were Shiv Singh (PW-1),

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Smt. Kishan Maya (PW2), Kanwar Pal (PW-3) and Smt. Tulsi Kundra (PW-8). None of them spoke of any quarrel between the Appellant and the deceased.

9. The prosecution witnesses who spoke about strained relations between the Appellant and deceased were PW-4 Shanti Devi and PW-7 Arun Kumar. It appeared that both of them, for the first time in the Court made several improvements to the statements earlier made by them to the police under Section 161 CrPC. This is evident from the cross-examination of these witnesses. As far as PW-4 is concerned, although in her examination-in-chief she spoke about the deceased weeping and demanding money during her visits to the house of PW-4 and about the Appellant assaulting and harassing the deceased, in her cross-examination when confronted with her statement under Section 161 CrPC (Mark A), she denied making that statement to the police and added that she could not recollect what statement she had made before the IO.

10. The Court has perused the statement made by PW-4 to the police under Section 161 CrPC (Mark A). In the said statement, there is not a

whisper about the deceased telling PW-4 about the ill-treatment meted out to her by the Appellant or about the deceased demanding money. It does mention that the deceased lived with PW-4 for at least 7-8 months prior to the date of the incident during which she underwent surgery for removal of her uterus. PW-4 had, before the police, gone to the extent of saying that she did not want any case to be registered and that she did not suspect the Appellant.

11. The other witness who spoke about the strained relations between the Appellant and the deceased for the first time in Court was Arun Kumar (PW-7). It must be recalled that he virtually grew up with the Appellant and the deceased since childhood. He admitted that his previous statement (Ex. PW7/A) was recorded by the IO on 15th April 2002. His entire cross-examination shows that he was confronted with considerable improvements made by him over the said statement when he deposed before the trial Court. For instance he did not state before the IO that the deceased used to remain tense since she did not have a child. He had stated before the IO that the deceased used to say that her life was useless. He had in fact told the IO that the relations between the deceased and the Appellant were cordial. He had denied making

statement to the IO that the Appellant was “stubborn and a duffer type of person”. He did not made any statement to the IO that the Appellant did not have respect for elders or younger persons. He did not state before the IO that the Appellant used to beat the deceased after consumption of liquor almost four days in a week. He denied telling the IO in his previous statement that the Appellant used to abuse the deceased in a general routine or used to send her to bring cigarettes in odd hours of night or that the deceased was treated by the Appellant in inhumane way or about his lifting flour bin and hitting the deceased once she returned from her mother’s home on 14th April 2002 to make her understand that it was empty or that there was an altercation between the Appellant and the deceased on the night previous to the incident. Importantly, PW-7 had not stated to the IO that at the hospital the deceased told him that she was dying and that PW-7 should not leave the Appellant unpunished.

12. It is surprising that the trial Court has based its conclusions regarding the guilt of the Appellant for the offence under Section 306/498A IPC only on the depositions of PWs 4 and 7 which, as noted hereinbefore, were substantial improvements over their previous

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statements under Section 161 CrPC. In ***Sunil Kumar Sambhudayal Gupta v. State of Maharashtra 2010 XI AD (SC) 500***, the Supreme Court again explained the legal position that “where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence”. It was added that in view of the “discrepancies in the evidence of eye-witnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that prosecution proved its case beyond reasonable doubt”.

13. In ***Subhash v. State of Haryana 2011 (1) JCC 41 SC***, the Supreme Court held that the statements of witnesses who made substantial improvements over their statements under Section 161 CrPC did not inspire confidence.

14. The trial Court has, in the present case, completely overlooked the above factor and has committed a grave error in basing its conclusion as to the guilt of the Appellant on the wholly unreliable evidence of PWs 4 and 7. This has also to be viewed from the context of the evidence of the other public witnesses who are persons in the same locality and did not speak of any altercation or quarrel between the Appellant and the deceased.

15. What is significant is also the fact that the trial Court disbelieved entirely the dying declaration of the deceased since it was demonstrated that the Appellant himself had been locked inside the room from outside at the time the incident took place. It was proved from the evidence of the prosecution witnesses that the deceased had locked herself in the house and the door had been broken by the persons of the locality to go upstairs and find her in a burnt condition outside the kitchen. The trial Court has also disbelieved the autopsy report (Ex. PW12/A) which opined that it was a homicidal death. The trial Court came to the conclusion that it was not a suicide. In other words, barring the depositions of PWs 4 and 7 which were inherently unreliable there was no substantive evidence to bring home the guilt of the Appellant.

16. In the circumstances, the Court has no hesitation whatsoever in holding that the prosecution has miserably failed to prove the case against the Appellant beyond all reasonable doubt.

17. The impugned judgment of the trial Court dated 18th December 2007 as well as the order on sentence dated 18th December 2007 are hereby set aside. The bail bond and surety are discharged.

18. The appeal is allowed in the above terms.

MARCH 07, 2014
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S. MURALIDHAR, J.

