

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. No. 577 of 2010

SANJAY

..... Appellant

Through: Mr. Rajeev Sharma and Mr. Rupesh
Kumar, Advocates.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Ms. Isha Khanna, APP.

CORAM: JUSTICE S. MURALIDHAR

ORDER
18.12.2014

1. The present appeal is by Sanjay, Accused No.1, the husband of the deceased Rekha, against the judgment dated 21st April 2010 passed by the learned Additional Sessions Judge ('ASJ') in SC No. 129 of 2009 convicting him for the offences under Section 304B IPC and Section 498A IPC and the order on sentence dated 26th April 2010 whereby he was sentenced to undergo rigorous imprisonment ('RI') for 10 years for the offence under Section 304B IPC and simple imprisonment ('SI') for 1 year along-with fine of Rs.3,000 and in default to undergo SI for 3 months for the offence under Section 498A IPC.

2. It must be noted at the outset that as per the nominal roll dated 9th October 2014, the Appellant has already served 4 years 7 months and 11 days in imprisonment and also earned remission of 1 year 4 months and 3 days.

3. The deceased Rekha was married to Sanjay on 15th February 2004 and all was well for the first 2 to 3 months. According to Ram Bhool Singh (PW-6), the father of deceased, after three months of marriage Rekha visited their house with Sanjay and she was looking weak. When asked, Rekha told them she was being harassed by Sanjay and both her parents-in-law. Rekha told them they used to point out defects in the dowry articles and used to taunt her for not giving a motorcycle in dowry.

4. PW-6 stated that at the time of marriage, he had given dowry worth Rs.1.5 lakhs. Rekha told them that she was doing all the household work from morning till night. She requested PW-6 to take her back to the parental house since all the accused persons taunted her. PW-6 further stated that Rekha's father-in-law (the father of the Appellant) (who was Accused No.3) had told PW-6 that they should be given one last chance to show their bona fides and nothing as apprehended by Rekha would happen. On the said assurance, PW-6 permitted Rekha to continue staying in the matrimonial house. After about 1½ months i.e. on 3rd July 2005, A-3 gave PW-6 a telephone call stating that the Appellant and Rekha were fighting with each other. PW-6 was called to the matrimonial house. According to PW-6, the call was received at around 11.30 am. PW-6 was apparently not present at that time and reached home at around 4.30 pm when his grand-daughter Seema informed him about the said telephone call. PW-6 then asked his son Rajesh (PW-9) to call A-3 to tell him that since it was a dispute between husband and wife it was not appropriate for them to visit their

house every time. PW-9 then called up A-3 and asked A-3 to make the Appellant and Rekha understand.

5. PW-6 stated that on 3rd July 2005 itself at 11.30 pm, A-3 again called PW-6 to inform him that Rekha had died and they should take away her dead body. PW-6 along with his wife Krishna (PW-10), son Rajesh (PW-9), the neighbour Brahmanand (PW-5) and certain others visited the matrimonial home of Rekha and found her dead body on the ground floor. According to PW-6, for about 15 minutes none of the accused persons came downstairs and A-3 was called by someone. When PW-6 questioned A-3 as to how Rekha had died, A-3 replied that since she was suffering from loose motions she had died. Thereafter PWs-6, 9 and certain others went to the Police Station ('PS') Vasant Vihar and lodged a report. The statement of PW-6 (Ex.PW-6/A) was recorded. The police then accompanied them to the mortuary of Safdarjung Hospital. The statement of PW-6 was recorded in the presence of the Sub-Divisional Magistrate ('SDM') R.Chopra (PW-14). The SDM also met the Appellant and recorded his statement (Ex.PW-4/C-5). The SDM carried out the inquest proceedings.

6. It appears that the Appellant and his parents i.e. A-2 and A-3 took Rekha first to Dr. Ashok Kumar (PW-1) for treatment on that very day. According to PW-1, Rekha told him that she was feeling like vomiting and had been given some medicine by her in-laws and her husband. PW-1 then referred them to the Safdarjung Hospital without giving Rekha any treatment. He stated that when he saw Rekha he was able to

discern that she was not able to reply properly.

7. It appears that Rekha was next taken to the Charak Palika Hospital in Moti Bagh where she was supposed to have been treated by Dr. Savita Mishra (PW-3). This witness, however, turned hostile in the Court and did not stand by the statement made by her to the police under Section 161 Cr PC where she was supposed to have referred them to the Safdarjung Hospital since there were no proper arrangements for treatment of Rekha at her hospital. She deposed that she had not stated to the police that the persons accompanying Rekha told her that the patient was having vomiting and loose motions and was unconscious.

8. Dr. Sarvesh Tandon, Forensic Specialist, Safdarjung Hospital, Delhi (PW-4) conducted the post-mortem of Rekha at about 12 noon on 4th July 2005. There were no external injury/scuffle marks seen over the back. He noticed that the lungs were congested and stomach had watery fluid and semi digested material and abnormal smell was present. Uterus had menstrual blood. The viscera was preserved to be sent to the Forensic Science Laboratory ('FSL'). It appears that the viscera was sent to the FSL on 14th July 2005 i.e. ten days thereafter. After the receipt of the report of the FSL, PW-4 gave a final opinion on 29th September 2005 that the cause of the death was Aluminium Phosphide. In his cross-examination PW-4 maintained that the death was not on account of any kidney failure.

9. The three accused i.e. the Appellant and his father and mother were

charged with the offences under Sections 498A and 304B IPC. The prosecution examined 18 witnesses.

10. When the evidence was put to the accused under Section 313 Cr PC, the Appellant denied it and claimed that he had been falsely implicated. He stated that Rekha had been taken to PW-1 who had given her certain medicines and thereafter she was taken to the Charak Hospital. Rekha met with her death while being taken to the Safdarjung Hospital. He denied having demanded any dowry or harassing the deceased.

11. The trial Court relied essentially on the evidence of the parents of the deceased i.e. Ram Bhool, the father (PW-6) and Krishna, the mother (PW-10), Rajesh, the brother (PW-9), Jasram, brother-in-law (PW-12) as well as the neighbours of PW-6 namely Hoshiyar Singh (PW-13), Brahmanand (PW-5) and one other witness Om Prakash (PW-2) who is running a furniture shop from where PW-12 had purchased some furniture which was given in dowry to Rekha.

12. After analysing the ingredients of Section 304B IPC, the trial Court concluded that the testimonies of the above witnesses, which corroborated each other, showed that the deceased had been subjected to harassment in connection with the demand for dowry proximate to the day of her death and, therefore, the prosecution had proved the case against the Appellant Sanjay for the offences under Section 498A and 304B IPC beyond reasonable doubt. However, the trial Court held that the evidence against A-2 and A-3 “are weak in nature” and, therefore,

gave them the benefit of doubt.

13. This Court has heard the submissions of Mr. Rajeev Sharma, learned counsel for the Appellant and Ms. Isha Khanna, learned APP for the State.

14. It has come in the evidence of PWs-6, 9, 10 and 12 that there was a demand for motorcycle made by the parents of Sanjay. In particular, PW-12 states that when Rekha visited his house along with Sanjay in July 2004, he gave Rs.5,000 to Sanjay. He further states that he subsequently also gave Sanjay a cheque of Rs.10,000 in the office of Airtel, Phase-I where he had gone for re-charge of his mobile. Although there are some improvements made over the statement made to the police by PW-12 in this regard, the essential fact of his having given Sanjay the aforementioned sum of Rs.15,000 after there was a demand for motorcycle, appears to be consistently spoken to by him. This does find corroboration in the evidence of PWs-6, 9 and 10.

15. However, for the purposes of Section 304B IPC there are several ingredients which have to be conclusively established by the prosecution even before the presumption can be drawn under Section 113B of the Evidence Act that a dowry death has taken place. These three ingredients are that:

(i) the death should be caused by any burns or bodily injury or should occur 'otherwise than under normal circumstances'.

(ii) the death should occur within seven years of marriage.

(iii) it should be shown that soon before her death, the deceased was subjected to cruelty or harassment by her husband or his relatives 'for or in connection with any demand for dowry'.

16. In other words, it is not in any and every kind of harassment that would attract the offence under Section 304B IPC but only harassment which is in connection with the demand for dowry.

17. A careful perusal of the evidence not only of the aforementioned witnesses who are related to the deceased but even of the neighbours which includes PWs-5 and 13 shows that except the demand of motorcycle which resulted in a sum of Rs.15,000 being given to Sanjay, it is not clear that the demand for dowry persisted after October 2004 when the payment of Rs.10,000 by cheque was made to Sanjay. The payment of the aforementioned sum by cheque has been proved by PW-7, the Manager of Bank of Baroda who has proved that the cheque issued by PW-12 was credited in account of Sanjay on 9th October 2004. The death of Rekha took place on 3rd July 2005. Apart from the harassment having to be proximate to the date of death, it has to be shown that the harassment was 'for or in connection with the demand for dowry'. While the aforementioned witnesses do talk of the deceased being subjected to harassment and in fact on the date of death i.e. 3rd July 2005 there was a phone call made to the house of PW-6 stating that the quarrel had taken place between the husband and the wife, the statement was not categorical that the harassment was for and in

connection with the demand for dowry. On this crucial aspect which constitutes the important element of Section 304 B IPC, the trial Court appears to have based its conclusion, unfortunately, on surmises. It appears to have overcome this difficulty by surmising that “the demands are not raised by writing a letter or shouting in the public, the dowry demands were made within the four walls and in silent manner.” Considering that the penalty for a dowry death attracts a minimum punishment of seven years that can be extended up to an imprisonment for life, it would be wholly unsafe for the trial Court to base its conclusion regarding the proof of guilt in terms of that provision on surmises of the above nature. Every element constituting Section 304B IPC has to be conclusively proved by the prosecution.

18. For instance, in ***Kamlesh Panjiyar v. State of Bihar (2005) 2 SCC 388***, the Supreme Court underscored the importance of the expression ‘soon before her death’ occurring in Section 304 B IPC and Section 113B of the Evidence Act. It was observed that the determination would depend on the facts and circumstances of each case. In ***Baljinder Kaur v. State of Punjab 2014 (13) SCALE 6*** the Supreme Court stated that “the facts must show the existence of a proximate live link between the effect of cruelty based on dowry demand and the death of the victim.” The prosecution, therefore, cannot avoid having to prove beyond reasonable doubt the crucial ingredients of Section 304B IPC. The cruelty or harassment to which the deceased has been subjected should be for and in connection with the demand of dowry. On this critical aspect, in the present case, the prosecution evidence is wholly lacking. It, therefore, cannot be said that this element has been

conclusively proved by the prosecution.

19. Interestingly, even the other important ingredient of Section 304B IPC that the death should have been showed to have occurred 'otherwise than under normal circumstances' cannot also be said to be conclusively established in the present case. While the cause of the death has been established as the presence of Aluminium Phosphide, it is unclear whether this was a result of the Appellant or the relatives administering some medicine to her. This part of the case has not been thoroughly investigated.

20. Consequently, the Court is unable to concur with the conclusion reached by the trial Court that the Appellant's guilt for the offence under Section 304B IPC read with Section 113B of the Evidence Act has been proven beyond reasonable doubt. Consequently, the Court acquits the Appellant of the offence under Section 304B IPC and set aside the impugned judgment dated 21st April 2010 and the corresponding order on sentence dated 26th April 2010 concerning the offence under Section 304B IPC.

21. However as regards the offence under Section 498A IPC, the evidence on record is more than adequate to prove beyond reasonable doubt the guilt of the Appellant. The impugned judgment of the trial Court and the corresponding order on sentence holding the Appellant guilty of the offence under Section 498-A IPC is upheld. The Appellant has already served out the sentence awarded to him under Section 498A

IPC. There is no other case shown to be pending against the Appellant. His bail bond and surety bond will continue for a period of three months in terms of Section 437A Cr PC.

22. The appeal is disposed of in the above terms.

23. A certified copy of this order be sent to the Superintendent, Tihar Jail, forthwith. The trial Court record along with a certified copy of this order be sent back forthwith.

24. Order *dasti* to parties.

S. MURALIDHAR, J.

DECEMBER 18, 2014
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