

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. No. 726 of 2008

Reserved on: October 15, 2014

Decision on: October 31, 2014

LACHHMAN @ RAJU & ANR

..... Appellants

Through: Mr. Rajdeep Banerjee and
Ms. Joyeeta Banerjee, Advocates.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Ms. Isha Khanna, APP.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

31.10.2014

1. This appeal is directed against the impugned judgment dated 1st March 2008 passed by the learned Additional Sessions Judge ('ASJ') in Sessions Case No. 186 of 2006 convicting the two Appellants, i.e., Lachhman @ Raju and Kaushal Kumar @ Kallu, for the offence under Sections 498A and 304B of the Indian Penal Code, 1860 ('IPC') and the order on sentence dated 7th March 2008 whereby each of them was sentenced to undergo rigorous imprisonment ('RI') for three years each and to pay a fine of Rs. 5,000 each and in default to undergo RI for six months for the offence under Section 498A IPC. They were also sentenced to undergo RI for ten years each and to pay a fine of Rs. 10,000 each and in default of fine, to undergo RI for one year each for the offence under Section 304-B IPC. Both the sentences were directed to run concurrently.

2. The case of the prosecution was that Lachhman @ Raju, Accused No. 1

(A-1) was the husband of the deceased Sunita to whom he was married on 4th July 2003. Kaushal Kumar @ Kallu, Accused No. 2 (A-2) was the younger brother of A-1 and they were residing with the parents of A-1 in the matrimonial home, i.e., H-31/12, Street No. 23, Jai Prakash Nagar, near Village Gawadi, Delhi.

3. A DD entry No. 24A dated 28th September 2004 was received at Police Station (PS) New Usmanpur and assigned to Assistant Sub Inspector ('ASI') Devi Charan (PW-16) who visited the above address along with Constable Dev Dutt (PW-4). There he found the deceased Sunita lying dead on a bed in a room built on the ground floor of the house. A noose of electric wire was lying near the bed. The Sub Divisional Magistrate ('SDM'), Seelampur, Sameer C. Minz (PW-14) recorded the statements of Ram Chander (PW-2) and Dharam Singh (PW-3), both brothers of the deceased Sunita.

4. According to PW-2, after 2-1/2 or 3 months of marriage, Sunita informed him that A-1 was demanding a motorcycle. Sunita further told PW-2 that she was scolded by A-1 who had made it clear that in case she could not bring a motorcycle then she would not be allowed to stay in her matrimonial home. PW-2 further stated that thereupon he went to Sunita's matrimonial home and made it clear in the presence of A-1 as well as A-2 and their mother that PW-2 was not in a position to give a motorcycle. According to PW-2, the mother of A-1 and A-2 assured him that there would be no demand of any motorcycle in future. However after some time, the accused started behaving in the same fashion. On visiting her parental home, Sunita informed that A-1 and A-2 had started beating her. PW-2 stated that on 17th September 2004, Sunita made a telephone call to him and told him that she was being tortured by A-1 and A-2 and asked

him to take her to her parental home. On 19th September 2004, he along with PW-3 went to the matrimonial home of Sunita. A-1 was not in the house at that time. When A-2 was asked as to why they were treating Sunita with cruelty he is stated to have told PW-2 that "till their demand would not be fulfilled they would continue torture of Sunita." Since the mother of A-2 again assured PW-2 that Sunita would not be harassed in future, PW-2 did not take Sunita back to her parental home.

5. PW-3 also stated that 2-1/2 or 3 months after the marriage, Sunita told him that A-1 was demanding a motorcycle in dowry and further that A-1 and A-2 used to beat her. He stated that on 17th September 2004 a telephone call was received by his wife. PW-3 corroborated PW-2 stating that on 19th September 2004 both of them went to the matrimonial home of Sunita where A-2 had told him that "till a motorcycle would not be given, they would ill-treat Sunita."

6. That the death of Sunita was by suicide was opined by Dr. Yogesh Tyagi (PW-12), Safdarjung Hospital who performed the post mortem. He confirmed that cause of death was asphyxia due to antemortem hanging. Mr. C.L. Bansal, Senior Scientific Officer (PW-11) confirmed that the viscera wasnot found to contain any poison.

7. The Appellants were charged with the offences under Section 498-A and 304-B IPC. They were charged with causing a dowry death since it took place within seven years of marriage.

8. Apart from PW-2 and PW-3, brothers of Sunita, the prosecution also examined Yashoda (PW-10), sister of Sunita. Interestingly, when PW-10 was first examined on 3rd February 2007, she made no mention of her

visiting the matrimonial home of Sunita on her wedding anniversary. She also did not mention anything about Sunita weeping at that time because the accused was repeatedly asking for a motorcycle. On 3rd February 2007 when she was cross-examined by the accused PW-10 stated that she had attended the marriage anniversary of Sunita, along with her husband. Even at that stage she did not mention about having any conversation with Sunita. More than 10 months later, on 18th December 2007, when PW-10 was called for further examination, PW-10 stated that when A-1 celebrated his first wedding anniversary, she had gone to Sunita's matrimonial home, along with her husband and that Sunita was weeping at the time. Sunita told PW-10 that the accused was repeatedly asking for a motorcycle. Kiran (PW-9), sister-in-law of Sunita and PW-3's wife had also visited Sunita's matrimonial home to attend her wedding anniversary.

9. The trial Court also summoned Munni as CW-1 and Som Devi as CW-2, both being sisters of Sunita. CW-1 was also examined on 18th December 2007. She stated that when she visited Sunita's matrimonial home to attend the marriage anniversary, Sunita was weeping bitterly at that time. Sunita told CW-1 that "we should do something and fulfil dowry demand of accused Laxman @ Raju." CW-1 told that even two months prior to her death, during rakhi, Sunita met her at her parental home. Sunita told her that she was harassed and a motorcycle was demanded from her by A-1 and A-2. In her cross-examination, CW-1 stated that when she had visited Sunita's matrimonial home, there was a tense situation, therefore she had not taken meal there. CW-2 stated that she had met Sunita for the last time about one month prior to her death when she had gone to the house of her brother and that all sisters talked to each other for about two or three hours. She further stated that "Sunita told me that she was beaten by accused Laxman @ Raju. I had seen injury marks on her legs and waist, which had

become blue by then. I had not gone anywhere along with Sunita that day.”

10. In their respective statements under Section 313 Cr PC both the accused denied that they had harassed Sunita or demanded any motorcycle. When asked why Sunita died A-2 stated that she died due to post abortion depression and that she had three-four miscarriages. He further stated that on 11th August 2004 before her death she was medically examined by Dr. Usha Mohan (DW-1) who advised for pregnancy test. When he was asked if he had anything else to say, A-1 stated:

“Sunita lived with me in a very cordial atmosphere. She was unable to give birth to a child. She always used to tell me that you marry someone else and I used to console her. Due to miscarriage, she was suffering from depression and committed suicide, when no one of our family was present there. She was not getting any mental support from the side of her parents.”

11. The defence examined 13 witnesses with A-1 and A-2 being examined as DW-12 and DW-13 respectively. Dr. Usha Mohan (DW-1) was the doctor whom the deceased visited on 3rd June 2004. This witness proved that the deceased suffered miscarriage about one month prior to her death. The other witness who spoke about the deceased Sunita remaining sick and having two miscarriages was Smt. Savitra Devi (DW-2), a 65 year old neighbour of the accused. This witness also stated that A-2 had gone to play cricket on the day of incident and he was called by the local persons when this incident happened. DW-2 spoke about A-1 and A-2 treating the deceased with great love and affection.

12. Smt. Chanderwali, DW-3 was another neighbour of the accused living one house away from the house of A-1 and A-2 and stated that she had not noticed any kind of harassment by A-1 and A-2. This witness spoke about deceased Sunita having two miscarriages and being depressed for that

reason. Both DW-2 and DW-3 speak about Sunita asking A-1 to marry another girl as she was not able to bear any child. She also spoke about A-2 having gone to play cricket on the relevant date. Smt. Rajwati (DW-4), mother of A-1 and A-2, spoke about the deceased being depressed about her inability to bear child. She also stated that deceased was never harassed to bring any dowry. Mr. Richpal Singh (DW-5) aged 63 years and also a neighbour spoke about relations between the deceased and the accused being peaceful. He had never heard any kind of demand by the accused persons from Sunita or her parents. DW-6, Vimal Kumar, who was the friend of A-2, was playing cricket. He asserted that A-2 used to respect the deceased and he had noticed this when he visited the matrimonial home of the deceased.

13. After the written arguments were filed by the defence, the trial Court by an order dated 15th November 2007 re-summoned PW-10, Yashodha. By the same order CW-1, Munni Devi and CW-2 Som Devi were also summoned. PW-10 during her cross-examination, confirmed that she had gone to attend the wedding anniversary of Sunita, along with her husband and CW-1 and CW-2 had also attended. PW-10 also stated during her further cross examination by counsel for the accused that she had visited her brother's house at rakhi which was 25 days prior to the death of Sunita. She stated that all the sisters stayed in the house of brother i.e, PW-2 on the said night and that A-1 also stayed with Sunita there. CW-1 also attended the marriage anniversary of A-1. She made no allegation against A-2. Som Devi, CW-2 also spoke about meeting Sunita prior to the date of rakhi, i.e., one month prior to the date of death. She again made no allegation against A-2. Smt. Kamlesh (DW-7) the bua (paternal aunt) of the accused confirmed that the deceased had suffered miscarriage about seven days prior to rakhi. According to her, A-2 respected the deceased.

14. The task of the trial Court was to balance the two sets of evidence, one by the prosecution witnesses speaking of harassment of the deceased by the accused and those of the defence witnesses who spoke the opposite.

15. The trial Court analysed the defence evidence in paras 31 to 42 of the impugned judgment. The trial Court disbelieved some of the defence witnesses since they failed to explain "why Sunita took a decision to put an end to her life on 28th September 2004, long after her marriage anniversary." According to the trial Court, these witnesses had to explain why Sunita went into depression when her in-laws were treating to "soothe her sufferings."

16. In the considered view of the Court, the above approach of the trial Court to the defence evidence appears to have overlooked the fact that the presumption under Section 113B Evidence Act (EA) read with Section 304 B IPC is a rebuttable one. Inappreciating such evidence the standard by which the defence evidence is to be evaluated is one of preponderance of probabilities and not beyond all reasonable doubt.

17. The cross-examination of the defence witnesses did not yield anything to discredit their testimonies. The trial Court had discarded the defence evidence broadly on the ground that such evidence failed to explain why the deceased committed suicide and that they were speaking "only to help the accused." A number of defence witnesses were neighbours of the accused. There was no justification for the trial Court to simply characterise them as interested witnesses who were speaking only to help the accused. Such a conclusion cannot be based on surmises and conjectures. It will have to emerge from the cross-examination of the defence witnesses. A perusal of the evidence shows that the prosecution

failed to show that there was a deliberate attempt by the defence witnesses, i.e., neighbours of the accused, to somehow help the accused.

18. The probability that on account of repeated miscarriages the deceased was under depression cannot be completely ruled out. Strangely this aspect was not brought on the judicial record by the prosecution. It also shows that the investigation was unsatisfactory and not entirely fair. The fact that the deceased Sunita had repeated miscarriages was too obvious to be overlooked by the investigating agency. None of the prosecution witnesses, in their chief examination, spoke about Sunita having suffered miscarriages; about their attending the rakhi festival at the house of PW-2 and Sunita's wedding anniversary at her matrimonial home.

19. In light of the law explained in *Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116*, the incident preceding the death of the deceased due to suicide must be the proximate cause of her death. Viewed in that light it cannot be said that merely because deceased Sunita expressed unhappiness during her telephonic conversation on 19th September 2004, it was the proximate cause of her committing suicide. The possibility of Sunita weeping from depression on account of repeated miscarriages cannot be ruled out.

20. In *Harjit Singh v. State of Punjab (2006) 1 SCC 463*, the Supreme Court explained the ingredients of Section 304B IPC, as under:

“18. The ingredients of the aforementioned provisions are

(1) That the death of the woman was caused by any burns or bodily injury or in some circumstances which were not normal;

(2) such death occurs within 7 years from the death of her

marriage;

(3) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband;

(4) such cruelty or harassment should be for or in connection with the demand of dowry; and

(5) it is established that such cruelty and harassment was made soon before her death.”

21. It was reiterated in the above decision that it was not enough that there should have been harassment or cruelty but it should have happened ‘soon before her death’. In the present case the prosecution witnesses themselves speak about there being no demand of any dowry at the time of marriage.

22. There is also difficulty in uncritically accepting the evidence of the prosecution witnesses who are interested and related persons. While on the side of the defence, there are independent witnesses other than the interested persons who support the case of the defence, the same cannot be said for the prosecution witnesses. Even in the appreciation of the interested persons of both sides the trial Court appears to have overlooked the caution voiced by the Supreme Court in *State of U.P. v. Babu Ram (2000) 4 SCC 515* as under:

“23. Depositions of witnesses, whether they are examined on the prosecution side or defence side or as Court witnesses, are oral evidence in the case and hence the scrutiny thereof shall be without any predilection or bias. No witness is entitled to get better treatment merely because he was examined as a prosecution witness or even as a court witness. It is judicial scrutiny which is warranted in respect of the depositions of all witnesses for which different yardsticks cannot be prescribed as for those different categories of witnesses.”

23. In *T. Aruntperunjothi v. State through SHO, Pondicherry* (2006) 9 SCC 467, the Supreme Court reiterated the principles governing Section 304B IPC. In order to attract presumption under Section 113B of the Evidence Act, the proximity test had to be applied. The cruelty and harassment to which the deceased was subject should be shown to be “soon before her death”.

24. In the present case, there are several factors that persuade the Court to come to the conclusion that the case against the accused cannot be said to be proved beyond reasonable doubt. First, despite receiving a call on 17th September 2004 the brother of the deceased did not visit her matrimonial home until two days thereafter. Even then, he made no attempt to take her back. Secondly, twenty five days prior to her death, i.e., 30th August 2004 Sunita and A-1 visited her parental home to celebrate the rakhi festival. Three sisters of Sunita also visited their parental home with their respective families. A-1 also stayed at the deceased’s parental home and returned along with his wife on the next day. Thirdly, despite there being number of tenants in the house of the accused and it being located in a densely populated area, the police did not record the statements of the neighbours. Many of them appeared as defence witnesses and spoke about Sunita suffering post- miscarriage depression. Importantly, the police did not choose to record the statement of DW-1 who treated Sunita. Neither PW-2 nor PW-3 appeared to have lodged any complaint regarding alleged demand of a motorcycle by A-1 and A-2. In their cross-examination, PW-2 and PW-3 stated that there was no such demand at the time of marriage. PW-3 went to the extent of saying that he was sure that his sister was murdered by the accused. The medical evidence however clearly showed that her death was on account of suicide.

25. The Court must be careful to ensure that in case of such circumstantial evidence suspicion is not allowed to substitute proof and in particular proof beyond reasonable doubt. The Court is not satisfied that in the present case the prosecution has been able to prove the guilt of either of the accused beyond reasonable doubt.

26. For the aforementioned reasons, this Court sets aside the impugned judgment dated 1st March 2008 and the order on sentence dated 7th March 2008 of the trial Court. The Appellants are hereby acquitted for the offence under Section 304B and 498A IPC. The appeal is allowed in the above terms. In terms of Section 437A CrPC, the bail bonds and the surety bonds furnished by the Appellants will continue for a period of three months.

S. MURALIDHAR, J.

OCTOBER 31, 2014

rk