

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. No. 784 of 2008

MUKESH & ORS.

..... Appellants

Through: Mr. Atul Kumar and Mr. Binay
Kumar Jha, Advocates.

versus

STATE OF DELHI

..... Respondent

Through: Ms. Isha Khanna, APP.

CORAM: JUSTICE S. MURALIDHAR

ORDER
15.12.2014

1. This appeal is directed against the judgment dated 1st August 2008 passed by the learned Additional Sessions Judge ('ASJ') in SC No. 62 of 2006 convicting Mukesh, Accused No.1 ('A-1') and Krishna, Accused No.3 ('A-3') [Appellants herein] for the offence under Section 498A/34 IPC and the order on sentence dated 5th August 2008 sentencing each of them to undergo rigorous imprisonment ('RI') for 2 years and fine of Rs.5,000 each and in default to undergo RI for 2 months.

2. By the same judgment both accused were acquitted for the offence under Section 328/34 IPC and Ishwar, Accused No.2 ('A-2') was acquitted of all the offences.

The case of the prosecution

3. Sheela @ Sushila (PW-3) got married to A-1 on 12th November 2003. She and A-1 used to reside in the house of the maternal grandparents of

A-1. Ishwar, (A-2) is the *Mausa* (maternal uncle) of A-1. In other words, Krishna (A-3), the mother of A-1 and the wife of A-2 were real sisters.

4. It was stated that although A-2 and A-3 used to reside separately they used to come to the maternal home at Inderlok and stay there for days together.

The investigation and trial

5. The starting point of the case was DD No. 18A dated 13th June 2005 received at Police Station ('PS') Anand Parbat, New Delhi. The said DD entry states that information had been received by Constable ('Ct.') Hoshiyar Singh from the Police Control Room through the wireless that in the house of Lal Chand at Gali No. 5, Nehru Nagar, one Mukesh had murdered his wife. The information was handed over to Ct. Sikander through whom it was conveyed to Sub-Inspector ('SI') Arjun (PW-9) for necessary action. Significantly, neither Ct. Hoshiyar Singh nor Ct. Sikander was examined by the prosecution.

6. PW-9 in his evidence states that when he was handed over the said DD No. 18A (Ex.PW-9/A), he and Ct. Naresh (PW-4) went to the spot and found two broken glasses. He states that nothing was found there and no person was present there. He left PW-4 at the spot and proceeded to DDU Hospital.

7. The person who apparently reached the spot first was Head Constable ('HC') Ram Mehar (PW-6). He was in a PCR van which was stationed

in the Anand Parbat area. On 13th June 2005 when he received the call from the PCR at around 5.15 pm in terms of what was stated in DD No. 18A, he rushed to the place of occurrence and found PW-3 there in an unconscious state. He then took her to the DDU Hospital and got her admitted there. According to PW-6, PW-3 could not speak to him prior to her admission to the hospital. After getting her admitted, PW-6 returned to the place where the van was stationed. In his cross-examination PW-6 stated that “Except Sheela, I did not find any other family member. Sheela was found lying on the cot inside the house.” The medico-legal certificate (‘MLC’) of PW-3 (Ex.PW-7/A) shows that she was brought to the DDU Hospital by PW-6. The MLC was prepared by Dr. Rishi (PW-7) and noted that “alleged h/o ? unknown poisoning as told by b/by (no detailed history available).” When asked in his cross-examination as to how he knew that PW-3 was possibly poisoned, he stated that it was because PW-6 told him so.

8. In the MLC it is noted that PW-3 was having froth in her mouth, a linear abrasion extending up to her left forearm and another linear abrasion over the neck. PW-7 noted that the aforementioned abrasions were caused by ‘sharp object’. He took the gastric lavage i.e. the stomach wash and sealed it and handed over to the police.

9. Meanwhile PW-9 reached the spot and after finding no one there he proceeded to the DDU Hospital where he collected the aforementioned MLC. He states that the Station House Officer (‘SHO’) of PS Anand Parbat also reached the hospital. Incidentally, the SHO was not

examined. The Sub-Divisional Magistrate ('SDM') of the area Mr. K.K. Sharma (PW-5) on being informed by both PW-9 and the SHO also reached the DDU Hospital. There he recorded statement of PW-3 (Ex.PW-3/A). In the statement made by her to the SDM at around 9.15 pm, PW-3 stated that she was staying in the house with her husband and his maternal grandparents i.e. Lal Chand and his wife and for 10 to 15 days her mother-in-law i.e. A-3 had also come. A-3 otherwise used to stay in her village. PW-3 stated before the SDM that after her marriage she was being harassed for dowry. She stated that on the morning of 13th June 2005 when she made tea in the morning and offered it to A-3, the latter refused tea by saying that she would not accept tea from '*Do Takey Ki Aurat*'. PW-3 protested against being harassed at which A-1 started beating her for answering back to her mother-in-law. She then alleged that A-1 went out of the house stating that she should not be allowed to leave the house. Thereafter during the day, A-3 kept abusing PW-3. PW-3 was bleeding from her mouth and she stated that she was already receiving treatment for it. When A-1 later returned, PW-3 asked him to fetch some medicines. When he returned he was also with A-2, Ishwar. She stated that both A-1 and A-2 went to fetch the medicines and when they returned she had made tea for them. They threw away the tea and started again quarrelling with her. Thereafter both A-1 and A-2 tried to forcibly administer to PW-3 the medicines which they had brought, after which she became unconscious. She claimed that she had gone to the PS thrice but no one listened to her. On the basis of the above statement of PW-3, the FIR was registered. A-1 to A-3 were charged with offences under Sections 498A/328/34 IPC.

Statements of the accused under Section 313 Cr PC

10. The prosecution examined 9 witnesses. When the evidence was put to the accused A-1 in his statement under Section 313 Cr PC, he denied the allegations. He denied that any such occurrence as spoken to by PW-3, ever took place on 13th June 2005. When asked to if he had anything else to say, A-1 stated as under:

“Sheela used to quarrel with me. She used to leave my house without telling me and used to go to her parents’ house. Sheela has now re-married. Her father used to telephone me after registration of this case and used to demand Rs.1.00 lakh for settling this case. I had noted down the telephone number of that particular telephone from where he (father of Sheela) used to telephone me. In fact he had taken Rs.20,000/- from us and has gone away. When I had contacted brother of Sheela and told him that his father had taken away Rs.20,000/- from me, he (brother of Sheela) had assaulted me.”

11. As far as A-3 was concerned, she claimed in her statement under Section 313 CrPC that she was not even present at the spot and that she used to visit her son occasionally. She denied giving any beatings to PW-3. The maternal grandmother of A-1 Smt. Ram Pyari was examined as DW-1. She stated that she and her husband used to live in the first floor while A-1 and PW-3 used to live at the ground floor. She claimed that she had never seen A-1 and PW-3 quarrelling. She claimed that on 13th June 2005 she remained on the first floor and came to know that the police had come only when she came downstairs. She claimed that at

that time A-3 was outside the house in the *gali*. She stated that however A-2 was not present at that time.

The defence evidence

12. A tenant from the house of DW-1, Manik Ram Verma was examined as DW-2. He stated that on 13th June 2005 he was unwell and, therefore, remained at home. He stated that when police arrived there, PW-3 had herself opened the door. He did not hear any sound or noise of quarrelling from the house in which PW-3 was residing. In his cross-examination he stated that he did not have any rent receipt to show that he was a tenant of DW-1, nor any medical certificate to show that he was indisposed on 13th June 2005.

The judgment of the trial Court

13. The trial Court on an analysis of the evidence concluded that no offence under Section 328/34 IPC could be said to be made out against any of the accused. This was primarily because the report of the Central Forensic Sciences Laboratory ('CFSL') (Ex.PW-9/E) showed that no common poison could be detected in the stomach wash of PW-3 or on the broken glass tumblers which were collected from the spot. It must be noticed at this stage that although in her deposition in Court PW-3 stated that she was attacked both by A-1 and A-2 with the broken glass of tumblers, the broken pieces were not examined for any blood stains. The trial Court nevertheless found the evidence of PW-3 to be trustworthy to return a finding of guilt against A-1 and A-3 for the offence under Section 498A/34 IPC. According to the trial Court, the MLC corroborated PW-3 when she stated that she had received injuries.

The trial Court proceeded to convict A-1 and A-3 in the manner indicated hereinbefore.

The evidence of PW-3

14. The central plank of the prosecution case is the evidence of PW-3 herself. When her evidence in Court is compared with her statement made to the SDM (Ex.PW-3/A), it is seen that she has made several improvements. She gave a very detailed description of the kind of ill treatment she is alleged to have received at the hands of A-1 and A-3 which she had not mentioned in the first instance before the SDM. The only point of concurrence with the statement made before the SDM is that A-3 is stated to have refused to receive tea offered to her by PW-3 by stating that she would not like to have tea from ‘*Do Takey Ki Aurat*’. However, it is seen that in her statement before the Court PW-3 for the first time alleged that A-3 had slapped her while making the above comments. She also for the first time claimed that A-1 and A-2 caused injuries to her with the glasses which had been broken by them. She further improved upon her previous statement by stating that she was not inclined to take the medicine which was brought by A-1 as “that medicine was different from the one which I used to take.” In other words, the version of PW-3 is that she had been forcibly administered some medicine and as a result of being forced to consume that medicine, she fell unconscious. However, the stomach wash of PW-3 contradicted her aforementioned statement inasmuch as it did not disclose any poisonous substance which could cause her to fall unconscious. If there was any medicine which was harmful and which she was forced to consume then certainly the CFSL report did not

indicate its presence. In other words, the entire case sought to be made out by PW-3 about her being poisoned was disproved by the forensic evidence.

15. The question then arises as to the reliability and trustworthiness of PW-3 even as regards her allegations about being subjected to cruelty. Previous to the incident there was no complaint made at any point of time by PW-3 about being subjected to any cruelty. During her cross-examination, she volunteered that when she visited her parents' home on 5 or 6 occasions, she had conveyed to them about dowry being demanded by A-1 and A-3 and of her being given beatings on that score. She also stated that her parents then tried to convince A-1 to refrain from beating her. She also claimed that both she and her parents made oral complaints to the police. However, the parents of PW-3 were never examined nor were their statements recorded by the police. Consequently, barring the single allegation in her statement before the SDM (Ex.PW-3/A) where she states that after marriage she was harassed for dowry, there was no specific instance of PW-3 being subjected to cruelty or harassment for dowry. As noticed by this Court in *Sanjeev Kumar Aggarwal v. State 2007 [4] JCC 3074*, in the absence of clear and specific allegations regarding cruelty it would be unsafe to return a finding of guilt on the basis of a single vague statement without any reference to particular incident. The said decision refers to several judgments of the Supreme Court and the High Courts on this aspect.

Lapses in investigation

16. There are several questions about the manner of investigation of the

case. PW-6 who reached the spot first states that he found only PW-3 there in an unconscious state. He is unable to say how he came to know about her name and how he came to know that she had been poisoned. This is even more mysterious as to how the DD entry was able to name A-1 and also made a serious allegation that he had murdered his wife. Yet on the basis of the DD no FIR was straightway registered. The FIR was registered only after the statement of PW-3 was recorded by the SDM. Another feature of the case is that at least two witnesses i.e. PWs-5 and 7 had to be handed over the entire judicial file in the Court even before they started deposing in Court. A third feature is about the incomplete investigation carried out by the police. They found the two broken glasses at the site of occurrence. If the allegation of PW-3 about her being attacked by two broken glasses which resulted her in getting abrasions had to be verified, clearly the two broken glasses had to be examined by the FSL for possible blood stains. This was not done. If it is true that PW-3 and her parents gave oral complaints to the police about dowry demands then this aspect ought to have been investigated. The statement of parents of PW-3 ought to have been recorded and they should have been examined as prosecution witnesses. One of the tenants in the house where PW-3 was residing with A-1 was examined by the defence and he supported the defence.

17. Consequently, the Court is of the view that the evidence brought on record by the prosecution is wholly inadequate to prove beyond reasonable doubt the guilt of A-1 and A-3 for the offence under Section 498A/34 IPC. The Court is, therefore, not able to concur with the conclusion drawn by the trial Court on the basis of its analysis which

overlooks the above aspects of the evidence.

Conclusion

18. The Appellants are accordingly acquitted of the offence under Section 498A/34 IPC.

19. To the above extent the impugned judgment of the trial Court and the impugned order on sentence are hereby set aside. The appeal is allowed with no order as to costs. The bail bonds and surety bonds of the Appellants shall continue for a period of three months in terms of Section 437A Cr PC.

20. The trial Court record along with a certified copy of this order be sent to the trial Court forthwith.

S. MURALIDHAR, J.

DECEMBER 15, 2014

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