

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

% *Judgment reserved on : 11.09.2014*

Judgment delivered on : 15.9.2014

+ CRL.L.P. 261/2009
STATE

..... Petitioner

Through Mr.Ravi Nayak, APP for the State
along with SI Deepak.

versus

RAMESH & ORS.

..... Respondents

Through Mr. Javed Hashmi, Adv.

+ CRL.REV.P. 416/2009 & Crl. M.A. No.3207/2011
HAWA SINGH

..... Petitioner

Through Mr. Sarvesh Bisaria, Adv.

versus

GOVT OF NCT OF DELHI & ORS.

..... Respondents

Through Mr.Ravi Nayak, APP for the State
along with SI Deepak.
Mr. Javed Hashmi, Adv.for R-2
to R-4.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 Crl. Leave Petition No.261/2009 has been preferred by the State.
Crl. Revision Petition No.416/2009 has been preferred by the
complainant in FIR No.680/2005 Hawa Singh. Both the parties are
aggrieved by the impugned order dated 04.07.2009 vide which the
Sessions Judge had acquitted the respondents Ramesh, Paras Ram and

Laxmi of the offence under Sections 306/498-A/34 of the Indian Penal Code, 1860 (IPC). Respondent Ramesh was the husband of the victim Sulochna. Paras Ram and Laxmi were her father-in-law and mother-in-law respectively.

2 Record reflects that on 08.12.2005, DD No. 15-A was recorded at P.S. Narela giving information that inside the Air Force Station, Ghogha, one girl had committed suicide. This DD discloses the time as 01:20 PM in the afternoon of 08.12.2005. Information was marked to SI Suraj Bhan (PW-12) who along with Constable Niraj Kumar (PW-11) reached the Air Force Station, to House No.96/97 where the deceased Sulochna was found hanging from the ceiling fan. She was already dead. Crime team was called. Crime team report was proved as Ex.PW-12/B. The photographer Constable Sushil Kumar (PW-2) had taken photographs of the scene of crime, which were proved as Ex.P-1 to Ex.P-6, and negatives of which were proved as Ex.P-7 to Ex.P-12.

3 The post-mortem on the body of the victim was conducted by Dr. Anil Shandil, Senior Resident of DDU Hospital (PW-4). His opinion on the cause of death, noted in the post mortem report (Ex.PW-4/A) was that it was asphyxia as the result of ante mortem hanging. The statement

of the brother of the victim Hawa Singh (PW-3) was recorded. It was this statement (Ex.PW-3/A) which had formed the basis of the FIR. This statement was recorded on 09.12.2005. The statements of other brothers of the victim namely Suresh Kumar (PW-5) and Sahabuddin (PW-6) were also recorded. The statement of Smt. Jagwanti Devi (PW-8) sister-in-law of the victim was also recorded. The statement of a neighbour Jagbir Singh, who was also known to the family of her in-laws, was recorded as PW-7.

4 In the statement of the accused recorded under Section 313 of the Cr.PC, they had pleaded innocence. Their submission was that the victim had committed suicide primarily because of the reason that she was not keeping good health.

5 No evidence was led in defence.

6 The trial Court on the basis of the aforementioned evidence both oral and documentary had acquitted the accused. It was of the opinion that abetment of suicide, which is the essential ingredients of the offence under Section 306 of the IPC, was not made out and the allegations of cruelty as detailed by the relations of the victim were by and large general; there were vast improvements in their versions; their

depositions did not establish the offence either under Section 498-A or Section 306 of the IPC.

7 The State as also the complainant brother (Hawa Singh) are aggrieved by the impugned order. The first primary submission is that there has been no improvement, and attention has been drawn to the statement of Hawa Singh (Ex.PW-3/A) as also the statements of the other witnesses of the prosecution which were recorded under Section 161 of the Code of Criminal procedure, 1973 (Cr.P.C.). It is pointed out that all of them in unison had stated that a fridge and a scooter had been demanded by the husband and in-laws of the victim right from the inception of the marriage, and this was the reason for the harassment and cruelty which was continuously meted out to the victim. The fact was that she had given birth to a female child, and she had to undergo abortion 3-4 times, and for which she was taunted by her in-laws and her husband. It was for this reason also that the victim had committed suicide. This death having occurred in the matrimonial home of the victim and even presuming that it was after seven years of marriage, the onus was upon the accused persons to explain as to how the death had taken place in the matrimonial home in the afternoon hours. Their
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defence that the victim was suffering from ill-health has not been substantiated by any documentary evidence. On all counts, the impugned judgment is perverse and liable to be set aside.

8 Arguments have been refuted by the learned counsel for the respondents. It is pointed out that a judgment of acquittal cannot easily be interfered with, and unless and until, there is a patent illegality in the finding of the Court below, no interference is called for. Learned counsel for the respondents has placed reliance upon 2010 (4) LRC 268 (SC) Dr. Sunil Kumar Sambhudayal Gupta and Others Vs. State of Maharashtra as also another judgment of the Apex Court reported as 2013 (3) Crimes 8 (SC) S. Anil Kumar @Anil Kumar Gupta Vs. State of Karnataka. It is pointed out that only in exceptional and compelling circumstances where the appellate Court finds the judgment to be totally perverse, can the High Court interfere with the order of acquittal. On merits it is pointed out that the testimony of the complainant was rightly appreciated by the trial Court, and the trial Court had rightly noted that there were major improvements in the versions of the prosecution witnesses which destroy their credibility.

9 Arguments have been heard. Record has been perused.

10 The complainant in this case was Hawa Singh. He was the brother of the victim. His statement was recorded in the early morning of 09.12.2005 which had formed the basis of the FIR. This statement was proved as Ex.PW-3/A. The gist of this statement was that the victim was taunted by her in-laws from the beginning of her marriage for not bringing a fridge and a scooter. She had given birth to a female child (who at the time of the incident was four years of age); this was also a bone of contention for the in-laws and husband of the victim who wanted a male child. On oath in Court, PW-3 testified that they were a family of 12 brothers and sisters, of whom four were sisters. The deceased was his youngest sister. She had been married to Ramesh as per Muslim rites on 04.04.1998.

11 The incident is dated 08.12.2005 i.e. more than seven years after the date of the marriage. It was for this reason that the SDM had not been summoned and the statements of the relations of the victim were not recorded by the SDM but only by the Investigating Officer.

12 Further version of PW-3 is that after a few months of his sister's marriage, her husband and his parents started harassing her for bringing insufficient dowry. They had demanded a fridge and a scooter and it was

for this reason that his sister was continuously harassed and tortured by physical beatings. A female child was born to his sister whose name was Muskan. Since male child had not been born, his sister was harassed by the accused. His sister had to undergo abortion 3-4 times. On 08.12.2005, he received information that she had died by hanging.

13 In his cross-examination, PW-3 stated that the marriage had taken place in their village. He was evasive on the question as to whether his brother-in-law Ramesh had purchased a scooter in the year 2002. He was also evasive on the question as to whether the family of the accused had a fridge or not, as well as on the question as to where his niece was studying. Even on a specific question put to him that Muskan was studying in Airforce Children School, he gave an evasive answer. In his cross-examination, he however admitted that a panchayat had been organized in the matrimonial home of his sister to settle the disharmony between the couple. He did not remember the nursing home where his sister had undergone an abortion. He admitted that he had not told the Investigating Officer that his sister was made to undergo abortion 3-4 times.

14 The second brother of the victim Suresh Kumar (PW-5) had also

deposed on the same lines, his deposition being to the effect that the accused persons were not behaving well with his sister because of demand of dowry in the form of fridge and scooter and for this reason, she was harassed. Between 09th and 20th September, 2005, they had visited the house of their sister to work out an amicable settlement. In his cross-examination, he admitted that to visit the house of his sister which is located the Air Force Colony, entry has to be made in the register but no such record was available. He admitted that respondent Ramesh (husband of the victim) had purchased a Maruti van in the year 2003 and that he possessed a scooter before the marriage. He admitted that he had not told the Investigating Officer that his sister was beaten between 09th and 20th September, 2005 and that they had gone to the house of the victim to settle their disputes.

15 The third brother of the victim Sahabuddin was examined as PW-6. He had also reiterated the deposition that a fridge and a scooter were the bones of contention with the respondents, and for not bringing these two items, the victim was harassed by them. He admitted that a sister was blessed by his daughter and on her birth, she was again harassed. He also admitted that the birthday of Muskan (niece) was

celebrated whereas the other two witnesses i.e. PW-3 and PW-5 had given evasive denials on this count. In his cross-examination, he also admitted that for the cantonment area, permission is required to enter the house. He was also evasive as to whether Ramesh had bought a Maruti van in 2003.

16 PW-8 Jagwanti Devi was the sister-in-law of the victim, and the wife of PW-3. She also deposed on the same lines stating that the victim was harassed for not bringing a motor-cycle and a refrigerator. In her deposition, motor-cycle has been introduced for the first time whereas in the deposition of the other witnesses, it was a scooter. However, she later corrected herself and clarified that the demand was of a scooter, and not a motorcycle. She had also deposed that the victim was harassed because she had given birth to a female child; the accused wanted a male child and the victim was made to undergo abortions also.

17 In her cross-examination, PW-8 admitted that the victim used to come to their house with Ramesh in a car. She denied the suggestion that the victim was not harassed.

18 PW-7 Jagbir Singh, was a neighbour in the deceased's parental village. He had also deposed that the victim was harassed for not

bringing sufficient dowry. He denied the suggestion that the victim was harassed for not giving birth to a male child.

19 It was these depositions which had been noted by the Court to draw a conclusion that there were vital improvements in their deposition. This finding returned by the Sessions Judge suffers from no infirmity.

20 There appear to be two reasons for the relations of the victim to have deposed against the accused. They have stated that the victim was harassed for not bringing a fridge and a scooter at the time of marriage. However, this is countered in the testimony of PW-8 (the sister-in-law of the deceased) who stated that respondent Ramesh used to visit their home along with his wife Sulochana in a car. PW-5 (Suresh), brother of the deceased had also stated that respondent Ramesh had bought a Maruti van in 2003. Why would he demand a scooter? It is also difficult to believe that a person who admittedly has a Maruti car would not have a fridge in his house; a fridge is no longer a luxury; it is a necessity. Thus the deposition of the witnesses that the victim was being harassed for not bringing a fridge or a scooter appears to pale into insignificance.

21 That apart, all these witnesses had deposed that this harassment

was immediately after the marriage of the deceased, which was in the year 1998. The incident as noted supra is of 08.12.2005 i.e. more than seven years after the marriage of the victim. Did the harassment on this count continue for almost 8 years? Logic also does allow the Court to believe that in such a scenario, a persistent demand of a scooter would be made. The demand of a fridge also does not appear to be plausible as a man who owns a car could well be owning a fridge as well.

22 The second reason for the harassment was allegedly for the reason that the victim was blessed with a female child; who was four years of age at the time of incident; and being taunted by her in-laws and husband for not giving birth to a male child, and she had been forced to undergo abortion on several occasions for this reason. The details of the abortions have not been substantiated by any documentary evidence. Be that as it may, even otherwise the finding of the trial Court that this is an improvement and the deposition qua the abortion suffered by the victim did not find mention in the statements of the witnesses recorded under Section 161 of the Cr.P.C. is substantiated. Although in one part of the statement (Ex.PW-3/A), PW-3 stated that the victim had given birth to a female child and this was the grievance of family members of the

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husband, yet all the other witnesses only stated that Muskan, a girl child, was born to the victim. There is no averment that the victim was harassed on this count. There was no intention whatsoever of the abortions.

23 All the witnesses in Court had made substantial improvements. They all deposed that the victim was harassed for having given birth to a female child and so much so, she had to undergo abortion 3-4 times. The fact of abortion did not find mention by any of the witnesses in their statements under Section 161 of the Cr.P.C. It is also not the case of the prosecution that this abortion had been suffered by the victim at the behest of the accused and it was for the reason that they knew that this was a female fetus as is now sought to be argued by the learned counsel for the revisionist. These were thus rightly noted to be vital improvements, going to the root of the matter.

24 Thus on both counts the arguments of the petitioner on the alleged cruelty meted out to the victim fails.

25 That apart, this Court also notes that three statements of three neighbours had been recorded by the Investigating Officer namely Sunil, Virender and Sheetal Prashad. They were neighbours and living in the
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same neighbourhood i.e. Air Force Colony, Ghogha. Their statements are on record and have been marked in the version of the Investigating Officer (PW-12). Their statements reveal that they had learnt that an untoward incident had taken place in the house of Paras Ram who was not present in the house at the relevant time. They all stated that the door was bolted from inside and after great difficulty, they managed to break open the door and on breaking it open, they found Sulochana (the victim) hanging from a ceiling fan. Police was informed.

26 These persons were not cited as witnesses by the prosecution. The explanation that since they were witnesses who would have not favoured the prosecution and thus dropped again casts a doubt on the veracity of the version of the prosecution. They were the first witnesses to have reached the spot. True picture had been seen by them which was to the effect that Paras Ram was not even present in the house at the time of incident. The defence of the accused that the victim had died because of ill-health was no doubt not expounded in the cross-examination of the witnesses of the prosecution but it is well settled law of criminal jurisprudence that the prosecution must stand on its own legs, and it is for the prosecution to prove its case to the hilt. The prosecution, in view

of this Court, has not discharged its onus. This was rightly noted by the Sessions Judge.

27 The Apex Court in this context noting the powers of the appellate Court in dealing with the judgment of acquittal had in (2003) 1 SCC 761 Shailendra Pratap & Anr. Vs. State of U.P. made the following observations:-

“Having heard learned counsel appearing on behalf of the parties we are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was a reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the voice of vice of perversity. ”

28 The impugned judgment calls for no interference. Crl. Leave petition and revision petition are dismissed.

INDERMEET KAUR, J

SEPTEMBER 15, 2014

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