

\$~ Part-B (R-33A)

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

Reserved on: 27.11.2015

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Date of Decision: 08.12.2015

+ **CRL.A. 203/2000**

RAJESH KUMAR GUPTA

..... Appellant

Through: Mr. Sumer Kumar Sethi & Ms. Dolly
Sharma, Advs.

versus

STATE

..... Respondent

Through: Ms. Aasha Tiwari, APP.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R. K. GAUBA

R. K. GAUBA, J:

1. On 9.10.1994, Anju, wife of Rajesh (“the appellant”), aged 22 years, suffered burn injuries in the evening hours at her residence in property No. RZ 59 F, Dharam Pura Colony, Najafgarh. She was brought to Deen Dayal Hospital (“the hospital”) at 9 p.m. on the same night by her husband (the appellant). She succumbed to the burn injuries during treatment in the hospital at 5.05 a.m. on 15.10.94. The First Information Report (“FIR”) was registered (vide Ex.PW4/A) on 17.10.94 at 1 p.m., under directions dated 16.10.94 (Ex.PW10/J) of Mr. Virender Kumar (PW-10), the Sub Divisional Magistrate (“SDM”) on the basis of statement (Ex.PW10/H) of Smt. Shanti, mother of the victim, and the matter taken up for investigation into offences under Sections 498 A and 304 B of the Indian Penal Code, 1860 (“IPC”).

2. On conclusion of investigation into the aforementioned FIR, report under Section 173 of the Code of Criminal Procedure, 1973 (“Cr.P.C”) was submitted. This led to the appellant (husband of the deceased) being brought to trial (in Sessions Case No. 139/1997) on the charge for offence punishable under Section 304 B IPC. By judgment dated 16.2.2000, appellant was held guilty as charged and upon conviction was sentenced, by order dated 18.2.2000, to imprisonment for life with fine of ₹ 25,000, in default further Simple imprisonment for two years.

3. The appeal at hand was preferred challenging the above mentioned judgment and order on sentence.

4. The prosecution rested its case against the appellant primarily on the basis of oral testimony of Subhash Chand (PW-1), Jagwati (PW-3) and Dayanand Sharma (PW-7), the brother, sister and brother-in-law respectively of the deceased. All the said witnesses deposed about the background facts concerning mainly the illicit demands of the appellant for valuable gifts to be arranged by the parental family of the deceased, constituting cruelty meted out to her soon before her unnatural death in the matrimonial home. The appellant, on the other hand, pleaded innocence. He questioned the veracity of the abovementioned three witnesses and, *inter alia*, referred to the statement (Ex.PW-10/C) of the victim made before the SDM (PW-10) on 12.10.97 absolving everyone, including himself, of any misdemeanor.

5. There is lack of clarity concerning the marital status of the deceased and the appellant. It was admitted by her brother (PW-1) and sister (PW-3) that she had been earlier married to one Vinod. The said marriage,

according to these witnesses, had been dissolved by divorce in 1993. No document concerning divorce was shared with the Investigating Officer or the Court. Since these witnesses are categorical in the stand accepting prior marriage and divorce, and the appellant does not take any position to the contrary, we may safely conclude that the factum of earlier marriage of the deceased with Vinod would have no bearing on the case at hand. However, the date of legal separation is not forthcoming and established.

6. It is, however, also a common case for both sides that the appellant had been in alliance with another woman named Poonam, who, in fact, appeared as a witness in his defence (DW-1). According to the testimony of DW-1, she had entered into the marriage with the appellant on 30.11.93. Sheela Gupta (DW-3), the mother of the appellant also testified to the said fact though she tried to show ignorance as to the connection of the appellant with the deceased (Anju). This need not distract us inasmuch as the presence of Poonam (DW-1) in the life of the appellant, along with Anju (the deceased), has been conceded during the evidence of material prosecution witnesses (PW-1, 3 and 7).

7. Questions have been raised, but no clear answers offered by either side, as to the specific date on which the appellant entered into the wedlock with the deceased. Jyotish Chander Jha (PW-11), the priest who had solemnized the said marriage in a temple in Najafgarh, Delhi vaguely deposed about the said event having occurred in 1993. The deceased in her statement (Ex.PW10/C) to the SDM (PW-10), on 12.10.97, only stated that her marriage had entered the second year. She also disclosed, and the evidence confirms, that she had given birth to a daughter, who was two

months old on the date she suffered the burn injuries. Her sister Jagwati (PW-3) falsely tried to show that Anju had been married to the appellant more than 3 ½ years prior to the incident. This obviously cannot be the correct state of facts as Anju had obtained divorce from her first husband Vinod only in 1993. Subhash Chand (PW-1) and Dayanand Sharma (PW-7) were, however, consistent in their version that Anju had got married to the appellant in 1994, it being a marriage of her own choice and volition, after a love affair.

8. If we accept the word of PW-1 and PW-7 about the marriage of Anju with the appellant having been solemnized in 1994, propriety of her relationship with the appellant would be questionable as the evidence of DW-1 and DW-2 unmistakably shows that he was already married to the former witness (DW-1). Conversely, if we were to accept the statement (ExPW-10/C) of the deceased to the SDM, given on 12.10.97 that her marriage was already one year old, which is quite probable given the fact that she had given birth to a daughter who was two months old, the date of the marriage ceremony of Anju with the appellant would relate to October, 1993 or thereabouts. This, however, would be too close for comfort to the date of marriage (30.10.1993) of Poonam (DW-1) with the appellant.

9. Notwithstanding the lack of clarity as to the date of marriage, given the consistent evidence of PW-1, PW-3 and PW-7 in this regard, coupled with the fact that the evidence shows the deceased had given birth to a daughter and the appellant was the father, and the testimony of PW-11 (the priest), we proceed on the assumption that the marriage of the deceased with

the appellant was legally valid and, thus, she was living with him under the same roof as his lawfully wedded wife.

10. There is ample proof to establish the fact that the deceased suffered an unnatural death in the matrimonial home within seven years of her marriage. The MLC (Ex.PW10/A) prepared by Dr. Uttam Singh in the Deen Dayal Upadhyay Hospital ('the hospital') on 9.10.94 at 9 p.m. shows that she was brought to the casualty with burn injuries, by the appellant (the husband). Though in the MLC, the examining Medical Officer has referred to the appellant as brother of the victim, this observation was erroneous as the first intimation to the police station vide DD No. 33 C (Ex.PW-5A) by the duty constable referred to the presence of the husband with the victim at the time of her admission. The record shows that she had suffered 45 per cent burns. The notings on the MLC (Ex.PW-10/A) indicate that she was unfit for statement during the initial period. On 12.10.94 she was certified to be fit for statement at 3.20 p.m. There is another similar certificate recorded on the MLC at 5.10 p.m. on 12.10.94. It is around this time that the SDM (PW-1) was called in to record her statement. The evidence further shows that the condition of the victim later deteriorated. Eventually, she died at 5.05 p.m. on 15.10.94. The autopsy conducted by Dr. L.K. Barua (PW-9) on the dead body on 16.10.94 resulted in report (Ex.PW-9/A) being issued. This report proved by autopsy doctor leaves no room for doubt that the death had occurred due to the burn injuries suffered on 9.10.94.

11. The moot question, however, is as to whether the evidence of PW-1, PW-3 and PW-7 about the conduct of the appellant vis-à-vis the deceased deserves to be believed so as to draw conclusions to the effect that she was

subjected to cruelty by him in the matrimonial home soon before her unnatural death for or in connection with demands for dowry. An answer in the affirmative would obviously attract the presumption of his complicity in the dowry death in terms of Section 113 B of Indian Evidence Act, 1872 (“Evidence Act”). Conversely, an answer in the negative would mean that the prosecution would have to fail.

12. Dayanand Sharma (PW-7) is a witness whose testimony cannot be believed. He is brother-in-law who was living in Delhi (Tri Nagar) during the relevant period. He would, thus, be in close contact with the family and ordinarily be aware of all the affairs. He did not confirm the word of PW-1 or PW-3 about the illegal demands of dowry or harassment of the deceased at the hands of the appellant on such account. He rather claimed that on receiving the information about the hospitalization of the victim with burn injuries he had visited her in the hospital three days after the incident. He claimed that initially he was unable to have a frank conversation with her for the reason the appellant would invariably be around. He has stated that on one occasion when the victim had gone out for some time he was able to engage the victim and had some talk at which stage the victim told him she had been set afire by the appellant. This apparently is a figment of imagination as the investigation did not show that the burn injuries suffered by the victim were homicidal in nature. As would be seen even from her own statement (Ex.PW-10/C), quoted verbatim later, the victim had set herself ablaze even while the husband (the appellant) was standing outside the house. We may add that even the investigating police had not found it to be a case of intentional burning of the victim by the appellant. No charge of

murder was brought to trial. The appellant was prosecuted for having caused dowry death with no allegation made about he having set his wife afire. Thus, the appellant could not be asked to meet a case with which he was not charged. The statement of PW-7 to above effect was made to the investigating officer on 12.1.95 (vide Ex.PW-7/A). Such theory coming after three months from the incident has no legs to stand on and, therefore, must be discarded.

13. We may now examine the statement of Subhash Chand (PW-1) and Jagwati (PW-3) about the cruelty meted out to the victim in the matrimonial home for or in connection with the demands for valuable gifts allegedly made by the appellant. Though both of them did depose about the demands raised by the appellant for cash assistance, as we shall note at length hereinafter, the narration of each witness in this regard materially differs from that of the other.

14. Subhash Chand (PW-1) testified that that couple (the appellant and the deceased) had lived peacefully during the initial period but, after 5/6 months of the marriage, the appellant started asking the deceased to bring ₹20,000/- from their parental family. He has stated that he had had a talk on the subject with his mother (Smt. Shanti) but due to lack of resources the family was unable to fulfill the demand. He testified that after a few days the victim had told the parental family that the appellant had extended threats that he would kill the children of Jagwati (PW-3) whereupon the parental family had raised the finance by mortgaging a plot of land and paid ₹20,000/- to the deceased and the appellant at the time of their joint visit. He added that the appellant had assured at that stage that he would repay the

amount of money within 7 to 9 months. This gives the impression that the understanding between the parties at that stage was that the money had been given as a loan.

15. Jagwati (PW-3), on the other hand, testified that after 1 / 1½ months of the marriage (which initial period was peaceful), the appellant started remaining absent from home during nights though she would herself state that this was on account of his business. She deposed that about 2 ½ / 3 months after the marriage, the deceased had come to her to inform that she was being harassed by the appellant as he wanted her to arrange ₹ 20,000 or ₹ 25,000 so that he could set up a saree shop. She has stated that the deceased had told her that earlier their mother (Smt.Shanti) had paid some amount to the appellant after selling a gold chain, the money having been given on the demand being conveyed to the mother by the deceased. She has stated that about 6/7 months after the marriage, money was given to the appellant on two occasions by the mother (Smt. Shanti) first in the sum of ₹20,000 and second time in the sum of ₹ 10,000/-, the finance having been arranged by their mother (Smt. Shanti) having sold her house. She added that the demand of money was conveyed by the deceased who would inform the family on the parental side that the appellant had been harassing her and would do nothing but demand money.

16. The version of PW-1 and PW-3 is at variance from one another. Going by the word of these witnesses, the demands were never made by the appellant. They were conveyed, as per the witnesses, by the deceased at the instance of the appellant. As narrated by PW-1, however, there was only one occasion of demand that too in the sum of ₹ 20,000. As observed

earlier, the manner in which the said amount of money was asked for and received by the appellant indicated a mutual understanding that it was by way of financial help sought by the appellant so that he could set up some business, the money taken being a loan which was to be refunded in due course. The evidence of PW-3 about money having been demanded by or paid to the appellant, through the deceased, on more than one occasion is not corroborated by PW-1. Being the brother, he was in a better position to testify about the payment of ₹ 20,000 or ₹ 25,000 by the mother to the appellant 2 ½ / 3 months after the marriage after upon it being arranged by the mother having sold her gold chain. This is not even spoken about by PW-1. In fact, he is clear in his statement that the solitary demand for money came 5/6 months after the marriage. The two witnesses contradict each other about the source of finance for payment of ₹ 20,000. While PW-1 claimed the mother had mortgaged a plot of land for the purpose, PW-3 stated that the mother had sold her house in this context. These oral statements are not supported by any documentary proof about disposal of an immovable property, be it a plot of land or a house by the mother.

17. As noticed earlier, the deceased had suffered burn injuries in the evening of 9.10.94. She died in the morning hours of 15.10.94 at about 5.05 a.m. In between, her condition had remained fluctuating. When brought to hospital she was conscious and oriented but not fit for giving statement. The MLC (Ex.PW-10/A) shows that she continued to be unfit to give her version till 3.20 p.m. on 12.10.94. As this provided some window of opportunity to the investigating police for gathering her side of the story, the Investigating Officer informed the SDM (PW-10) who came to the hospital and

ascertained her status at 5.10 p.m. Since the doctor attending on the victim certified her fitness for the purpose on the MLC, he recorded her statement (Ex.PW-10/C) from 5.10 p.m. onwards on 12.10.94. The statement is in question and answer form recorded in Hindi. Its translated version may be quoted as under:-

“Q: What is your name?”

Ans: Anju Gupta

Q: Your husband’s name?”

Ans: Rajesh Gupta

Q: When did you get married?”

Ans: It is the second year.

Q: How did you catch fire?”

Ans: We had gone to Vishal Bhagwati Jagran in Nangal Dairy on Saturday. From there I and my husband had come home in the morning and had gone to sleep. Then we had woken up and ate Rice and Daal. Thereafter we saw a film on TV. Thereafter, at about 7.30 -7.45. p.m. my husband was standing outside and I don’t know what happened to me as I poured kerosene oil bottle on myself and lit fire.

Q: Why did you set yourself on fire?”

Ans: I don’t know what had happened to me. We were watching picture and laughing. There was no other issue.

Q: See, there is nobody from your family present here? Only I Magistrate am taking your statement. Tell the truth.

Ans: By God, I take oath of Mata Rani I am telling the correct facts. I don’t know why I did not think of my two months old daughter and set myself afire.

Q: Was there anyone who had been harassing you?”

Ans: No, my marriage has completed one year and it is the second year. There has been no untoward issue.

Q: Have your mother-in-law, father-in-law or other members of your family been demanding dowry or harassing you?

Ans: No, we live separately from the mother-in-law and father-in-law.

Q: Do you want to say anything else?

Ans: Would I be alright? I would like to have darshan of Mata. Make me alright for the sake of my daughter.

Q: (After reading over the statement). Is this what you want to say?

Ans: I have heard. It is recorded correctly."

18. The above is the only statement made by the victim after the incident and before she died.

19. It appears the SDM had also examined Smt. Shanti, the mother of the deceased, around the same time as her statement. The statement made by Smt. Shanti, at that stage has not been shown in the light of the day. It has been withheld from the record for reasons which have not been explained. From what Smt. Shanti stated before the SDM (PW-10) on 16.10.94 (vide Ex.PW10/J), however, it is clear that the statement made by her (Smt. Shanti) during the period the deceased was still alive but under treatment was not incriminating. She began her statement (Ex.PW-10/J) of 16.10.94 by claiming that the earlier statement had been given under pressure from the appellant as he had given a threat that if any statement was given against him he would kill the husband and children of her elder daughter. In this

statement (of 16.10.94) Smt. Shanti stated that Anju (the victim) had demanded ₹20,000 which she had given after placing her house under mortgage. She stated that her daughter (the victim) did not need such money. She speculated that the victim must have demanded this money under pressure from the son-in-law (the appellant) (*"Anju ne ye paise mere damad ke dabav me aake mange honge"*). She added that her daughter (the victim) had been unhappy because of the second marriage of her husband. She stated she did not know anything else beyond the payment of ₹20,000 and the issue of second marriage of the appellant. She stated that in her view the deceased had not given a correct statement out of fear for the safety of her nephews (children of PW-3). She also stated that in her assessment the appellant had set her daughter afire.

20. Smt. Shanti, the first informant, could not be examined at the trial. As per the trial court record she died on 15.10.99. Her statement (Ex.PW-10/J), in the facts and circumstances, cannot be accepted on its face value. Her impression that the amount of ₹20,000 must have been demanded by her daughter (the deceased) under pressure from the appellant was her opinion which cannot be acted upon. Her statement, in fact, cuts at the root of the testimony of her son PW-1, according to which the money had been given jointly to the victim and the appellant at the time of their visit to the parental family. The assertion of Smt. Shanti in her statement (dated 16.10.94) that there was a threat to the safety of husband and children of Smt. Jagwati (PW-3) is not supported by PW-3 herself. As already observed, her assertion about the appellant having intentionally put the victim on fire is unfounded and, thus, incredible.

21. What stands out from the evidence on record is that the deceased was deeply disturbed over the fact that her husband had another woman in his life. Though in her own dying declaration (Ex.PW-10/C), she would not even remotely refer to this, immediately after her death on 15.10.94, her family raised this issue. As mentioned earlier, her mother (Smt. Shanti) in the statement (Ex.PW-10/J) made to the SDM on 16.10.94 mentioned the factum of the second marriage of the appellant as the cause for her unhappiness. This is what her brother (PW-1) also had to say in his own statement (Ex.PW-10/K) made to the SDM on the same date (16.10.94). PW-1, in the course of court testimony, mentioned that the appellant used to spend his nights with the second wife, presumably referring to Poonam (DW-1). Her sister PW-3 also spoke about the second marriage entered into by the appellant in suspicious circumstances. As observed earlier, there is lack of clarity as to whether the appellant was married to the deceased first or whether this marriage was entered upon during the subsistence of his marriage with Poonam (DW-1). Whatever be the truth on this score, the fact remains that the deceased had a cause to feel disturbed since her husband (the appellant) was spending more time with the other woman, Poonam (DW-1), who also claimed to be his lawfully wedded wife.

22. The allegations about undue demands for money were leveled, after the death, by the parental side of the deceased. Inherently contradictory statements of PW-1 and PW-3 render these accusations unconvincing. In these circumstances, the connection with the other woman (DW-1) seems to be the only reason proved for the victim to feel disturbed about or to feel constrained to take the extreme step of setting herself on fire. Her anxieties on this score can be well appreciated inasmuch as she had suffered a failed

marriage in the past. It is perhaps for such reasons that she was not very forthright in telling the SDM as to what was the background against which she became emotionally charged to indulge in self-immolation. Her statement to the SDM absolving her husband (the appellant) and members of his family of any conduct bordering on harassment for or in connection with demand of dowry cannot be trashed.

23. On the foregoing facts, and in the circumstances, the evidence of the prosecution, in general, and that of Subhash Chand (PW-1) and Jagwati (PW-3) in particular, does not inspire confidence. Thus, we find it difficult to uphold the view taken by the trial court in the impugned judgment.

24. Therefore, the appeal is allowed. The impugned judgment and order on sentence are set aside. The appellant is acquitted of the charge under Section 304 B IPC. He was released on bail by order dated 13.9.2000 pending consideration of the appeal. The bail bonds furnished by him stand discharged.

R.K. GAUBA
(JUDGE)

SANJIV KHANNA
(JUDGE)

DECEMBER 08,2015

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