

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 10th February, 2015
Judgment Pronounced on: 12th March, 2015

CRL.REV.P. 515/2001

NEERAJ KUMAR

..... Petitioner

Through: Mr. Abinash K. Mishra & Mr. S.S.
Mishra, Advocates

versus

SURAJ PRAKASH & OTHERS

..... Respondents

Through: Mr. M.L. Yadav, Adv. for R-1 to R-3
Mr. Dinesh Garg, Adv. for R-4
Mr. P.K. Mishra, APP for State

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. Aggrieved by the judgment of acquittal passed by learned Additional Sessions Judge (hereinafter referred to as trial court) dated 10.07.2001 vide which the respondent nos.1 to 4 have been acquitted in FIR No.97/1995, PS Mansarovar Park, Neeraj Kumar, brother of the deceased (hereinafter referred to as the petitioner) filed the present revision petition to set aside the same and to punish the respondent nos.1 to 4, as the State has not filed appeal against the acquittal.

2. Factual matrix, as emerges from the record, is that the sister of the petitioner, namely, Sangeeta (hereinafter referred to as deceased) was married with respondent no.1 Suraj Prakash on 02.05.1990 and it has been alleged that on 10.06.1995, dowry death of the sister of the petitioner was caused by the respondent nos.1 to 4 due to cruelty in connection with demand of dowry. Deceased died due to burn injuries on 10.06.1995. After the inquest proceedings by the SDM, an FIR of the case was recorded. On completion of investigation, charge-sheet was filed. After compliance of provisions of Section 207 Cr.P.C, the learned MM took the cognizance and committed the matter to the Court of Sessions as the matter was exclusively triable by the Court of Sessions.
3. The learned trial court framed the charges for offences punishable under Section 498A read with 34 IPC as well as under Section 304B read with 34 IPC against the respondent nos.1 to 4 on 31.08.1996.
4. To prove its case, the prosecution examined 17 witnesses. After conclusion of prosecution evidence, the statements of the respondent nos.1 to 4 were recorded under Section 313 Cr.P.C. in which they have claimed innocence. The respondent nos.1 to 4 examined 2 defence witnesses to prove their defence. The learned trial court vide judgment dated 10.07.2001 arrived at the decision to not found guilty of the commission of the crime, acquitted all the accused persons/respondent nos.1 to 4 of the charges under Section 498A/304B read with 34 IPC.

5. Argument advanced by the learned counsel for the petitioner is that though the case was registered under Section 498A/304B IPC, but no FIR was registered for the death of two minor girls and for the offence of the killing of the child in womb as the deceased was pregnant at that time. No investigation was conducted with regard to injuries on the body of the deceased and no charges were framed under Section 302 IPC.
6. The contention made in the revision petition and the synopsis filed on the behalf of the petitioner demonstrates the prayer of the petitioner seeking punishing of the respondent nos.1 to 4 for commission of murder of the deceased. During the course of the arguments, the learned counsel for the petitioner give up the prayer of punishing the respondent nos.1 to 4 for the offence of murder and restricted his arguments for the punishment for cruelty on account of dowry and dowry death under Section 304B IPC.
7. Argument advanced by the learned Counsel for the petitioner is that the evaluation of the material/evidence available on the record would lead to conviction. So, it resulted into procedural irregularity, overlooking of material evidence, misreading of the same, miscarriage of justice and renders the judgment of the learned trial court dated 10.07.2001 redundant as not sustainable in the eyes of the law; deceased had died within seven years of her marriage with two minor daughters and at the time of incident she was also pregnant; disputes between the deceased and her in-laws had started immediately after the marriage with respondent No.1; complaint

regarding dowry demand was lodged by the deceased; death taken place shows the proximity of demand of dowry immediately before the death of deceased; the contradictions taken place were minor in nature and does not affect the case of the prosecution and the trial Court has ignored the presumption under Section 113B of the Evidence Act.

8. On the other hand, learned counsel for the respondent nos.1 to 4 have submitted that the petitioner has not pointed out as to what error of procedure or the miscarriage of justice has occasioned in the judgment of the trial Court; statements of prosecution witnesses are full of contradictions, improvements, embellishments and exaggerations; Neeraj Kumar (PW2), the brother of the deceased has not mentioned in his statement about the visit of his mother to the house of deceased on 08.06.1995 or staying there at night and his brother Sanjay had gone to the house of the deceased on 09.06.1995 to bring his mother; mother of the deceased introduced new story to show cruelty soon before death; allegations of demand were not there; Rs.50,000/- was given for withdrawing the divorce petition and not as a demand for dowry; the presumption under Section 113B of the Evidence Act is not applicable in the present case as the essential ingredients for this purpose have not been fulfilled and the prosecution failed to prove the charges under Section 498A and 304B IPC.

9. Further argument advanced by the learned counsel for the respondent nos.1 to 4 is that there was no demand of dowry or

harassment or cruelty on account of dowry and no such complaint to any person or authority had ever been made or stated to be made by the parents of the deceased. He further argued that the respondents have suffered the agony of arrest, trial and remained behind the bars for a considerable period during the pendency of trial and now, the present revision petition is pending for the last about 14 years. He has referred to judgments reported in case of *Hydru vs. State of Kerala (2004) 13 SCC 374*, *Thankappan Nadar & Ors. vs. Gopala Krishnan & Anr. 2002 (4) Crimes 36 (SC)*; *Kumar Etc. vs. Karnataka Industrial Coop Bank Ltd. and Anr. 2012 Law Suit (SC) 874* and *Ramesh Babulal Doshi vs. State of Gujarat* to press the contention that revisional court does not function as a court of appeal and, therefore, cannot re-appreciate the evidence. It cannot interfere with an order of acquittal unless it is an exceptional case of procedural irregularity or overlooking of material evidence or misreading of the same, which is manifest and, which results in a flagrant miscarriage of justice.

10. ***Perusal of evidence*** led before the trial Court shows that the first witness in the present case is PW1 Jaimala, mother of the deceased who stated that Sangeeta was her daughter; she was married to accused Suraj Parkash; her in laws consisted of father in law, mother in law and sister in law; all the accused used to quarrel with the deceased for bringing less dowry; after marriage they gave Rs.50,000/- to their daughter when Tulsi Ram and Suraj Kumar came to take back Sangeeta to her matrimonial home; after 2, 3 or 4

months she was sent back to her house and stayed there for one and a half year; deceased gave birth to a son in her parental house; they sent the deceased back and gave Rs.30,000/- as Suraj Parkash demanded the same for business to install a Chakki; after six months deceased was turned out of the house after giving beating; when Suraj Parkash came to take her back, they again gave Rs.21,000/- as the same was demanded for a marriage of her sister in law; after 3 or 4 months accused Suraj asked deceased to bring Rs.70,000/- or Rs.80,000/- as he intended to buy a new car; they gave Rs.21,000/-; when they refused to pay Rs.70,000 or 80,000/-, deceased was again beaten up; on 08.06.1995 when PW1 went to the house of deceased alongwith her daughter Priyanka to give certain gifts on the eve of Ganga Snan, deceased asked her whether PW1 brought money or not; when PW1 replied in negative, deceased started weeping and told that accused would beat her and they had planned to finish her; on the next day Suraj gave 2/3 slaps to deceased; her mother in law scolded PW1 that she was teaching her daughter; PW1 was not allowed to leave; her son Sanjay got her released; on the same night her daughter was killed along with her two daughters by pouring kerosene oil by all the accused.

11. PW1 was cross-examined at length. During cross-examination, PW1 has shown to have made various improvements therein. The improvements made by her are that on 08.06.1995 she came to the house of her daughter alongwith daughter of her daughter; Suraj gave 2/3 slaps on the face of her daughter; mother of Suraj did not

allow PW1 to move from their house; Sangeeta telephoned Sanjay and called him. There are certain contradictions also in her statement that she never paid any cash to any of the accused with her own hands; she could not tell as to when the payment of Rs.50,000/- was made; no police complaint was lodged when Sangeeta told them that Suraj was demanding money; she used to reside at Shamli; on 08.06.1995 she came from Shamli to the house of her son Sanjay and from there she went to the house of accused after informing Sanjay that she would stay in the house of deceased; she had never stayed at night in Sangeeta's house prior to that day; she did not use to take food in the house of her daughter.

12. PW2 Neeraj has made similar deposition as made by PW1. During cross examination, Neeraj made several contradictions that in Roka ceremony only a sum of Rs.101/- was given to Suraj Parkash; lastly he spent Rs.15,000/- for meeting out the demands raised by the accused; on Tika ceremony a sum of Rs.15,000/- in cash was paid by him to accused for purchase of colour TV; Panchayat was held as accused had thrown the deceased out of the house on the allegation she was pregnant prior to marriage; said differences continued for about 7/8 months. He also made various improvements that he gave money for purchase of TV; after 2/3 months of marriage his sister came to his house and told him that she was being blamed for being pregnant prior to marriage; his sister stayed in his house till January 1991 and he told that her pregnancy time was over; her in laws felt sorry and realised their

mistake; last demand raised by accused Suraj Parkash was of Rs.80,000/- for purchase of car which continued for 2 months; Sangeeta made a complaint to a CAW cell Shalimar Park; on 08.06.1995 his mother had gone to the house of Sangeeta with her daughter to offer the gifts and she stayed in her house; on 09.06.1995 his brother Sanjay brought his mother back.

13. PW8 Sanjay, another brother of deceased has deposed that after marriage all the accused started harassing and beating his sister Sangeeta; they used to turn her out of the house after beating her; after 3 or 4 months of marriage his sister informed that all the accused were demanding Rs.50,000/- which was given by his elder brother; accused again started harassing his sister and demanded Rs.30,000/- which was met by them; again a demand of Rs.21,000/- was made which was also met; on the occasion of marriage of his brother Neeraj, deceased was sent to attend the marriage only on fulfilling the demand of the accused of one gold ring and almirah; deceased told them that Suraj Parkash wanted to purchase a new car and he needed Rs.70,000-80,000/-; said demand continued for 1 month and after 1 month his sister died; he went to her house on 09.06.1995 when deceased told that she was being harassed as demand was not fulfilled; she was apprehending that accused would kill her.
14. During cross examination PW8 stated that at the time of marriage of Sangeeta, he was 15 years old; Rokna ceremony took place at the house of his maternal uncle Satish at Shahdara; he did not recollect

where the Tika ceremony took place; he did not know who purchased colour TV and from where; he did not know who spent money in marriage as he was too young; deceased visited their house after two days her marriage; no demand for dowry was made by accused persons in his presence.

15. The basic charge against the respondent nos.1 to 4 is under Section 498A read with 34 IPC. The testimony of PW1 Smt. Jaimala, PW2 Neeraj Kumar and PW8 Sanjay, as discussed above, shows that various improvements were made in their statements in the Court. There are also material contradictions in the testimony of these witnesses. Perusal of examination in chief of these witnesses shows that no specific time, date, month or event has been mentioned with regard to cruelty and harassment made against the deceased Sangeeta on account of dowry and the allegations levelled are general in nature.
16. The Hon'ble Apex Court has laid down the consistent law to establish the offence under Section 498A IPC in ***Vipin Jaiswal Vs. State of A.P. Rep. by Pub. Prosecutor 2013 STPL 198 SC***. It was held that the prosecution is required to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the accused. It was observed from the evidence of the prosecution witnesses and in particular PW1 and PW4 that they have made general allegations of harassment by the appellant towards the deceased and have not brought in evidence any specific acts of cruelty or harassment by the appellant on the deceased. The onus

was on the prosecution to prove beyond reasonable doubt the ingredient of Section 498A IPC. Relevant portions from the judgment read as under :

“In any case, to hold an accused guilty of both the offences under Sections 304B and 498A, IPC, the prosecution is required to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the accused. From the evidence of the prosecution witnesses, and in particular PW1 and PW4, we find that they have made general allegations of harassment by the appellant towards the deceased and have not brought in evidence any specific acts of cruelty or harassment by the appellant on the deceased.....

In our considered opinion, the evidence of DW1 (the appellant) and Ext.D19 cast a reasonable doubt on the prosecution story that the deceased was subjected to harassment or cruelty in connection with demand of dowry. In our view, onus was on the prosecution to prove beyond reasonable doubt the ingredient of Section 498A, IPC and the essential ingredient of offence under Section 498A is that the accused, as the husband of the deceased, has subjected her to cruelty as defined in the Explanation to Section 498A IPC. Similarly, for the Court to draw the presumption under Section 113B of the Evidence Act that the appellant had caused dowry death as defined in Section 304B, IPC, the prosecution has to prove besides the demand of dowry, harassment or cruelty caused by the accused to the deceased soon before her death. Since the prosecution has not been able to prove beyond reasonable doubt this ingredient of harassment or cruelty, neither of the offences under Sections 498A and 304B, IPC has been made out by the

prosecution.”

17. As per the ratio of the law settled down by Hon’ble Apex Court in ***Vipin Jaiswal’s*** case (supra), in the absence of specific allegations like date, time and incident i.e. too by witnesses PW1, PW2 and PW8 who were not found reliable and trustworthy, the prosecution had failed to establish beyond reasonable doubt that the deceased was meted out with cruelty and harassment by the respondent nos.1 to 4 for or in connection with demand of dowry.
18. From the evidence mentioned above and the law laid down by Hon’ble Apex Court in case of ***Vipin Jaiswal*** (supra), the allegations levelled against the respondent nos.1 to 4 are general in nature and the evidence led does not inspire the confidence of the Court to hold the guilt of the respondent nos.1 to 4 under Section 498A read with Section 34 IPC.
19. The contention made by the counsel for the petitioner is that Section 113B of the Evidence Act has been added to give aid to reach into the logical end while deciding the matter under Section 304B IPC and the aid of Section 113B of the Evidence Act has not been used in the present case by the learned trial Court. The presumption in the dowry death case is to be drawn on the fulfilment of the ingredients mentioned in Section 304B IPC read with Section 113B of the Evidence Act.
20. Section 113B of the Indian Evidence Act reads as under :

“113B. Presumption as to dowry death.—When the

question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.”

The presumption under Section 113B of the Evidence Act can be drawn only where the ingredients of Section 304B IPC are fulfilled.

21. In the present case, the trial Court has framed the charge under Section 498A read with 34 IPC along with Section 304B read with 34 IPC against respondent nos.1 to 4 for causing dowry death of the deceased.
22. The Hon’ble Apex Court in its judgment in case of ***Kamesh Panjiyar @ Kamlesh Panjiyar Vs. State of Bihar (2005) 2 SCC 388*** has categorically mentioned the ingredients for the application of Section 304B IPC which are as under:
 - (i) *The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.*
 - (ii) *Such a death should have been occurred within seven years of her marriage.*
 - (iii) *She must have been subjected to cruelty or harassment by her husband or any relative of her husband.*
 - (iv) *Such cruelty or harassment should be for or in connection with demand of dowry.*

(v) *Such cruelty or harassment is shown to have been meted out to the woman soon before her death.*

23. As death of the deceased is concerned, according to post mortem report Ex.PW5/A prepared by PW5 Dr. K.K. Banerjee and the deposition of doctor, the cause of death was shock as a result of deep superficial *ante mortem* burns covering 100% of body surface which were likely to be produced by flame. The observation made by the doctor is that the deceased was having 100% body surface burns all over the body. The report and opinion of the doctor proves that the death of the deceased was not under normal circumstances and was due to the bodily injuries which fulfil the first ingredient for the commission of offence under Section 304B IPC.
24. The second ingredient that the death of the deceased had taken place within seven years of her marriage with the respondent no.1 is established from the evidence, as marriage had taken place on 02.05.1990 and death took place on 10.06.1995 i.e. within five years of marriage.
25. The next and the most important ingredients required to be proved from the evidence are that the deceased was subjected to cruelty and harassment on account of demand of dowry by her husband or any relative of her husband. The prosecution has produced PW1, PW2 and PW8 to prove these ingredients. PW1 happened to be mother of the deceased and PW2 & PW8 happened to be brothers of the deceased. The detailed discussion to this effect has already

been made in the foregoing paragraphs while discussing the charge for offence under Section 498A IPC. In other words, to establish the offence of Section 304B IPC, it is necessary to prove the charges under Section 498A IPC. The evidence discussed above is not sufficient to hold the respondent nos.1 to 4 guilty for the offence under Section 498A IPC, the basic requirement to prove the offence under Section 304B IPC.

26. The prosecution has failed to establish the necessary ingredient of dowry death i.e. cruelty or harassment meted out to the deceased by respondent nos.1 to 4 what to say soon before death. As mentioned above, the prosecution has failed to prove the chain of necessary ingredients to raise the presumption under Section 113B of the Indian Evidence Act.
27. The judgment delivered by the Court below is well reasoned judgment, based on due appreciation of evidence on record and relevant law related thereto. In view of the judgments referred by the respondents in case of *Hydru* (supra), *Thankappan Nadar* (supra), *Kumar Etc. vs. Karnataka Industrial Coop Bank Ltd. and Anr. 2012 Law Suit (SC) 874* and *Ramesh Babulal Doshi* (supra), the present case is not a fit case to exercise the revisional jurisdiction for re-appreciation of the evidence.
28. From no stretch of imagination, from the evidence led by the prosecution, the present case could be culminated into conviction of the respondent nos.1 to 4 under Section 498A read with 34 IPC as

well as 304B read with 34 IPC. This Court does not find any procedural irregularity, overlooking of material evidence, misreading of the same or miscarriage of justice. There is no jurisdictional error in the judgment passed by the learned trial Court. Neither there is any failure to exercise the jurisdiction or exceeding of jurisdiction by the learned trial Court while passing the judgment.

29. *I am of the considered opinion that to establish the offence under Section 304B IPC of dowry death, the presumption under Section 113B of the Evidence Act cannot be raised against an accused until independently the offence under Section 498A IPC is proved by leading evidence to the specific allegation with regard to time and date of such demand and cruelty and furthermore establishing the proximity live link between the effect of cruelty based on dowry demand (offence under section 498A IPC) and the death of the victim and the evidence led by the prosecution to establish the offence under Section 498A IPC needs to be analysed more meticulously, particularly when it could result into the conviction under Section 304B IPC punishable with imprisonment for life and that is too in appeal/revision against acquittal having a view of the trial Court is already on the record.*

30. The present revision petition has been filed by the petitioner against the judgment dated 10.07.2001 of learned trial Court for set asiding the same and holding the respondent nos.1 to 4 guilty for the commission of offences under Section 498A/304B read with 34

IPC. The discussion made above in the light of evidence/material led by the prosecution, does not warrant any interference in the conclusion drawn by the learned trial Court.

31. Thus, the judgment dated 10.07.2001 cannot be said to be not sustainable in the eyes of the law and the present revision petition deserves to be dismissed.
32. Consequently, the present revision petition is dismissed as devoid of merit. Trial court record be sent back.

P.S.TEJI, J.

March 12, 2015
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