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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.APPEAL No.1051/2013

Date of Decision: AUGUST 23rd, 2016

YOGENDER KUMAR @ RINKU AND ANR.

.... APPELLANTS

Through Mr.Vivek Sharma, Adv.
versus

STATE (GOVT. OF NCT OF DELHI) RESPONDENT

Through Mr.M.P.Singh, APP.

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

P.S.TEJI, J.

1. The present appeal has been filed under Section 374 read with Section 482 Cr.P.C. against the impugned judgment of conviction dated 19.06.2013 and Order on Sentence dated 03.07.2013 passed by the Addl. Sessions Judge in FIR No.194/2011 whereby the appellants were sentenced to RI for ten years with fine of Rs.10,000/- each under Sections 304-B/34 IPC in default of payment of fine, to undergo RI for six months each. The appellants were also sentenced to undergo RI for

three years with fine of Rs.5,000/- under Section 498A/34 IPC and in default of payment of fine to undergo RI for four months. It was also ordered by the Sessions Judge that the sentences awarded to the appellants/convicts shall run concurrently and they would be entitled to the benefit of Section 428 Cr.P.C. for the period during which they had already remained in custody during investigation/trial.

2. The case of the prosecution is that on 15.06.2011 at about 5 am, Duty Constable Omjeet passed telephonic information at Police Station Kalyan Puri that one Meenakshi, wife of Yogender, was admitted in the hospital by her Jeth Rajbir in a burnt condition. On this information, DD No.4-A was recorded. On receipt of DD No.4-A, SI Haroon Khan reached LBS Hospital where injured Meenakshi was found in a burnt condition. She was not in a position to give statement and was referred to GTB Hospital. Since the burn injuries were received by Smt. Meenakshi within seven years of marriage, SDM Preet Vihar was informed. The crime team was called at the spot and the exhibits were seized from the

spot. The injured was unfit for statement. She expired at GTB Hospital on 15.06.2011. On 16.06.2011, SDM came at GTB Hospital. Sh.Vijay Pal Singh, father and Smt.Kaushal mother came at the hospital with their son Rinku. After proceedings under Section 176 Cr.P.C., the body was sent for post mortem. The body was then released to the kins of the deceased. The statement of Sh.Vijay Pal Singh was recorded wherein he stated that the marriage of his daughter was solemnized with the appellant No.1 on 08.03.2011. He gave dowry articles as per his capacity. After marriage, Yogender and his father Mahabir made demand of motorcycle and started beating his daughter. He further stated that he was told by his daughter that appellant No.1/husband was having illicit relations with a girl and that on 15.06.2011 he came to know from a person that his daughter had been burnt and had been admitted to GTB hospital. He further stated that when they went to hospital, they were not allowed to meet their daughter. He stated that the appellants and the Mausli Babli were responsible for her death. An FIR was registered under Section 498A/304-

B/34 IPC. On 21.06.2011, accused Yogender was arrested in the present case. Appellant No.2/accused No.2 was arrested on 19.07.2011 after he surrendered in the court. As per the post mortem report, the cause of death was shock as a result of ante-mortem flame burns involving 80% of total body surface. No evidence was found against Babli. On completion of investigation, the charge sheet was filed against the appellants under Section 498A/304-B/34 IPC.

3. I have heard the learned counsel for the parties and gone through the record of the case.

4. The learned counsel for the appellants in support of his case has raised the grounds that the story set up by the prosecution is based on concocted facts; that the Trial Court without considering the defence taken by the appellants and without applying its judicial mind, passed the impugned order and order on sentence which shows that the Trial Court has wrongly interpreted the statements of the prosecution witnesses, the same being bald statements without any cogent evidence; that the Trial Court has failed to consider the fact

that the prosecution witnesses PW-4 to PW-6, being the father, mother and brother of the deceased respectively, had not disclosed any particular date and month of alleged demand from the appellants; therefore, it clearly shows that they are simple allegations; that it is settled principle of law that a person shall not be held guilty on the basis of mere conjectures and implications unless the case is proved beyond reasonable doubt; that Trial Court committed a grave error in shifting the burden to prove innocence upon the appellants whereas it is trite law that the accused is presumed innocent until proven guilty; that the FIR in the present case was registered on the statement of complainant Sh. Vijay Pal (father of the deceased) without any cogent evidence and investigation. PW-13 SI Haroon Khan in his statement dated 21.04.2012 and cross examination dated 07.09.2012 categorically admitted that the parents of the deceased had not made any complaint to him about cruelty or other things at the time when he reached the hospital; that a perusal of the judgment shows that the High Court proceeded with a pre-determined mind which is a classic

example in line with famous observation of Saleilles ‘One wills at the beginning the result; one finds the principle afterwards’; that the Trial Court sketched the circumstances which were completely at variance to each other to meet the pre-decided goal of conviction while disregarding the serious discrepancies in prosecution’s case; that the Trial Court totally ignored the defence statement of DW-3 and the documents produced by him where the appellant No.1 produced the RC of his motorcycle and casualty card of LBS Hospital and MLC of GTB Hospital regarding his treatment for burn injuries and also the fact that the DW3 was cross examined by the APP, however the prosecution failed to budge the defence witness in his defence.

5. In support of its case, the prosecution examined 15 witnesses.

6. PW-1 is HC Veer Pal, Duty Officer. He had recorded DD No.4-A, Exhibit PW1/A.

7. PW-2 is Sh.Hukam Singh, the then SDM, Preet Vihar. He deposed that on 15.06.2011 at about 10-10.30 am on

receipt of a call from police that a lady had burnt herself at 9 Block, Khichri Pur Colony and was first taken to LBS Hospital and from there to GTB Hospital, he immediately rushed to the hospital and met the doctors. The lady named Meenakshi was declared unfit for statement. At about 3.15 p.m., he again went to GTB hospital but she was still unfit for statement. At about 5 pm, he again went to the hospital and came to know that Meenakshi had expired. On 16.06.2011, the family members of deceased met him with police officials at GTB Hospital. The body was identified by Vijay Pal Singh, father and Sh.Chander Pal, uncle of the deceased vide Exbt. PW-2/A and Exbt. PW-2/B. He then recorded the statement of Vijay Pal and conducted inquest proceedings. After post mortem, he directed the police to hand over the body of the deceased.

8. PW-4/Vijay Pal is the father of the deceased Meenakshi. He deposed that his daughter/Meenakshi got married to appellant No.1 on 08.03.2011. At the time of marriage, he had given dowry as per his capacity. After about a month of her marriage, the appellants and Babli, mausi of appellant No.1

started demanding motorcycle from his daughter and used to beat her for the said demand. His daughter informed him when she visited him that the appellant No.1 was having illicit relations with a girl. He further deposed that he could not fulfil the demand of the appellants for the motorcycle. About one month before the death of his daughter, he along with his wife had gone to the house of the appellants on receipt of a telephone call by his daughter that she was being beaten by the accused/ on account of demand of motorcycle. He deposed that he had brought back his daughter to his house and after about 8-10 days, the appellant No.1 and Babli came to their house and took her back and 5-7 days later, his daughter again informed on telephone that the appellants and Babli had again started beating her for demand of a motorcycle. He deposed that on 15.06.2011 a person informed him telephonically that his daughter had been burnt and was admitted in GTB Hospital. He along with his wife went to GTB Hospital, but they were not allowed to meet their daughter by the IO/Mr.Haroon Khan. He deposed that on 16.06.2011, they

were called in the mortuary for identification of the body of their daughter. He identified the body of their daughter and his statement Exbt. PW-2/A was recorded in this regard. After post mortem, the dead body was handed over to them and he performed her last rites and ceremonies. He deposed that the SDM recorded his statement Exbt. PW-2/C.

9. PW-5 Smt.Kaushal is the mother of the deceased. She has deposed that her daughter was kept well for about one month after marriage and after that the appellants along with mausi of appellant No.1/husband started demanding a motorcycle from her daughter and on account of this she was harassed and beaten up by them. She further stated that the deceased had also told them that the appellant No.1 was having illicit relations with a girl. She further deposed that when she and her husband visited the house of accused where again her daughter informed about the demand of motorcycle by accused and that she was being beaten on account of the said demand. Therefore, they had brought her back but after a week, appellant No.1 and his mausi/Babli came to their house and

took her daughter back.

10. PW-6/Rinku is the brother of the deceased. He also deposed that his sister was kept well for about a month but thereafter the appellant No.1 and his Mausi started demanding motorcycle from them. They were not able to meet their demand and therefore his sister was being harassed and beaten by both the accused and his mausi/Babli for the demand of motorcycle. He further deposed that his deceased sister/Meenakshi had told them that the appellant No.1 was having illicit relations with a girl. He further stated that in the last week of April he and his mother went to the house of appellants and tried to counsel them and expressed their inability to give the motorcycle, but the appellants did not mend their ways. He also stated that his sister had informed them on telephone that the appellants were harassing her for demand of motorcycle and that the appellant No.1/husband was telling her that he would marry some other girl and would get a lot of dowry in return. He stated his sister also told them the appellant No.1 was not did not like her and was threatening

to eliminate her.

11. PW-7 is Const. Mohan Lal. He had assisted SI Haroon Khan in the investigation of the case. On receipt of DD No.4-A by SI Haroon Khan, he along with SI Haroon Khan had gone to LBS Hospital and thereafter to the spot. He stated that a plastic can in burnt condition and another plastic containing a little amount of kerosene were recovered from the first floor of the house. Two partly burnt shirts were also lying there. The cans and shirts were seized.

12. PW-10 is the doctor who had conducted post-mortem on the body of the deceased. She stated that smell of kerosene was present and there were deep burns on the arms and forearm which involved 80% of the total body surface and according to her, the cause of death was shock as a result of ante mortem flame burns involving 80% of the total body surface area.

13. PW-13 SI Haroon Khan is the first IO of the case. On receipt of the DD, he along with Const. Mohan reached LBS hospital and tried to record the statement of Meenakshi but she was not in a position to give the statment and was referred to

GTB hospital. He telephonically informed the SDM and asked the crime team to reach the spot. He stated that at the first floor of the house in a room there were two plastic cans, one of which was in a burnt condition while the other was having little kerosene. Two partly burnt gents' shirts were also found to be lying there. He inspected the spot and prepared the site plan. Both the plastic cans and shirts were kept in a cloth pullanda and the same was sealed. He further deposed that the SDM could not record the statement of the injured as the doctor declared her unfit for the same. She was unfit for recording the statement even at 3.15 P.M. In the evening, he came to know from Duty Officer, that Meenakshi had expired in GTB Hospital. He stated that on 16.06.2011, the SDM recorded the statement of Sh.Vijay Pal, father of the deceased/Meenakshi, conducted inquest proceedings and got conducted post mortem of the deceased. On 17.06.2011, investigation was handed over to Inspector Om Singh and on 21.06.2011, he along with Insp. Om Singh, on receipt of secret information, went to House No.9/491, Khichri Pur, First Floor

and from there appellant No.1 was arrested.

14. PW-14 is the Inspector Om Singh. On 21.06.2011, he arrested the appellant No.1 from his house and seized the wedding card and marriage album. He also arrested appellant No.2 after he surrendered in court.

15. After conclusion of recording of prosecution evidence, statements of accused were recorded and an opportunity was afforded to the appellants to lead defence evidence and in their defence, three witnesses including appellant No.1 were examined.

16. DW-1/Rajnish Kumar is the nephew of appellant No.2. He deposed that he, along with his family, lives on the ground floor while the appellants with their family live on the first floor of the property in question. He deposed that on 14.06.2011 at around 11.30-11.45 pm, his younger sister Sangeeta informed him 'Bhabhi Ne Aag Laga Li Hai'. He immediately rushed to the spot and saw appellant No.1 bringing Meenakshi, since deceased, to the ground floor via stairs after wrapping her in a blanket. She was conscious at

that time. He deposed that he helped the appellant No.1 in bringing down Meenakshi and while doing so, her head collided with wall of staircase resulting in a cut on her head. He deposed that on enquiry at the hospital as to how she got burnt, she responded that she was not burnt by anyone but herself caught fire. He deposed that police recorded the statement of Meenakshi and asked her to put her thumb impression but she insisted that she would sign the statement and accordingly did the same. He deposed that the appellant No.1 had received burn injuries on his head and he was provided first aid for the same at the hospital.

17. DW-2/Devender Kumar is the mediator of the marriage. He deposed that he had arranged the marriage between appellant No.1 and deceased/Meenakshi and at the time of marriage there was no demand of dowry and after the marriage, he neither visited the house of appellant No.1 nor heard anything about any quarrel of dowry demand from the side of the appellants.

18. The appellant No.1 examined himself as DW-3. He

deposed that his wife Meenakshi, since deceased, was short tempered and used to quarrel with her parents. He deposed that on the occasion of Holi, Meenakshi had gone to her parents where a quarrel took place between her and her uncle. On 23.03.2011, Meenakshi telephoned him to take her back. He deposed that on the night of 14/15.06.2011 his father/appellant No.2 was not at home and no quarrel took place between him and Meenakshi. At about 11.30 PM, Meenakshi got up and went to kitchen and got burnt. She was taken to hospital where she deposed that while cooking food, she got burnt and also signed the statement. He deposed that while trying to extinguish the fire, his hands got burnt. He deposed that Meenakshi's family was informed about the incident over phone, but they visited the hospital only the next day and stayed there only for 15 minutes, but Meenakshi refused to talk to them. He stated that he was having a motorcycle since 2009 and that in January, 2011, he bought a Pulsar motorcylce vide cash receipt, delivery receipt, pollution certificate and insurance documents. He also produced a copy of his MLC

and treatment record.

19. In his cross examination, PW-4 stated that at the time of marriage, accused made no dowry demand. His deceased-daughter came for phera ceremony after 5-7 days of marriage and at that time also, she made no complaint against the accused as she was kept well by them for about a month. He stated that about 5-7 days after the first month of the marriage, his daughter complained for the first time to which the appellants and the mausi of the appellant No.1 assured that they would not harass her. He stated that he had informed the mediator about the same who assured that the accused would not harass his daughter again and asked him to send her back to the matrimonial house.

20. In her cross-examination, PW-5, mother of the deceased has stated that demand for dowry was first made by the appellants after one month of the marriage. She stated that she did not notice any injury on her daughter when she came to her house for a week, but after going back to her matrimonial house, she again complained about dowry demand and

beatings by the accused.

21. PW-6/Rinku, brother of the deceased, also stated in his cross-examination that no dowry demand was made at the time of marriage. He stated that he had gone to the matrimonial home of his sister after about one month of marriage. He denied that she was of quarrelsome nature. He denied that the appellant No.1 was having motorcycle prior to the marriage with his sister.

22. On a conjoint reading of the aforesaid testimonies of parents and brother of the deceased, this Court does not find any discrepancy about the demand of motorcycle and harassment meted out to the deceased Meenakshi as their testimonies were unequivocal, consistent and cogent. PW-4 to PW-6 have consistently maintained that there was no demand of dowry at the time of marriage, but after about one month, accused made demand of motor cycle and beat the deceased to compel her to meet the said demand, therefore, the case was covered under the third occasion as provided under Section 2 of the Dowry Prohibition Act which provides for demand of

dowry after the marriage.

23. As for the determination of whether the cruelty and harassment was meted out to the deceased soon before the death, this Court observes that the marriage was solemnized on 08.03.2011 and deceased expired on 15.06.2011. As per the testimony of PW-4 to PW-6, there was no demand of dowry for a period of one month after the marriage and thereafter dowry demand and harassment was meted out to the deceased during the last two months prior to her death. As for the head injury sustained by the deceased, DW-1 deposed she had collided with the wall of staircase while being brought down whereas the DW-3/appellant No.1 deposed that the head of the deceased collided with the wall while he was in the process of putting blanket on her due to which she received cut on her forehead. Thus, there are contradictory explanations for the injury. Thus, presence of injury on the forehead of the deceased is a strong circumstance from which it can be inferred that she was beaten by the accused. There is existence of a proximate and live-link between the effects of cruelty

based on dowry demand and the concerned death and once that is proved by virtue of legal fiction created by Section 113-B of Evidence Act, it can safely be presumed that it was a dowry death.

24. Section 304-B of IPC provides for punishment in a dowry death case. There are three essential ingredients to make out a case of dowry death which are: i) Death of a woman is caused by any burns or bodily injury other than under normal circumstances; ii) such death has been caused within seven years of her marriage; and iii) Deceased was subjected to cruelty or harassment by her husband or any of his relative for or in connection with demand of dowry soon before her death.

25. It is an admitted case that the marriage of deceased with the appellant No.1 was solemnized on 08.03.2011 and she expired on 15.06.2011 i.e. within seven years of her marriage.

26. As per post mortem report Exbt. PW-10/A, deceased died due to ante mortem burn injuries, which duly proves one of the ingredients of Section 304-B IPC that the death of deceased occurred due to burn and not under normal

circumstances.

27. As per the testimony of parents and brother of the deceased, the deceased was subjected to cruelty and harassment by her husband i.e. appellant No.1 and father-in-law i.e. appellant No.2 on account of demand of dowry. They categorically stated in their testimonies that deceased was harassed and meted out with cruelty by the appellants on account of demand of dowry soon before death. Thus, the prosecution has successfully established the third ingredient of dowry death.

28. The defence of the appellants is that it was an accidental death as deceased caught fire while cooking food. Two plastic cans were recovered from the spot. The FSL result Exbt. PW-13/PX confirms the presence of kerosene residue in the plastic cans. As per MLC Exbt. PW8/A, there was an apparent smell of kerosene oil. PW-8/Dr.Razdan who had examined Meenakshi at LBS Hospital also deposed that Meenakshi was brought in a burnt condition with apparent smell of kerosene. Even the PW-10/Dr.Meghali Kelkar, who conducted post

mortem on the dead body of the deceased, confirmed the presence of kerosene oil. DW-1/Rajnish Kumar in his cross examination stated that cooking gas is used in the kitchen of the appellants/accused. DW-3 in his cross examination stated that Meenakshi was working on the cooking gas at the time of the incident. If Meenakshi had received burn injuries accidentally while working on the cooking gas, the smell of kerosene would not have been there on her body as found by the doctors. Also, DW-3 himself stated that he and Meenakshi were sleeping and at about 11.30 P.M., Meenakshi got up and went to kitchen and got burnt. 11.30 P.M. is not the usual time when people get up and go to kitchen to cook food. Thus, the plea taken by the accused with regard to deceased going to kitchen to cook food and getting accidentally burnt while cooking food on the gas is not substantiated by any material.

29. DW-1 Rajnish Kumar deposed that Meenakshi told the police in the hospital that she was not burnt by anyone but herself caught fire. DW-1 deposed that at that time Dr.Mukherjee was also present, but they have chosen not to

examine the said Dr.Mukherjee in their defence. Per contra, as per the endorsement of the doctor on MLC, the victim was not oriented within time, place and person and so she was unfit for statement. IO also denied that Meenakshi had made such a statement. Even the SDM deposed that he tried to record the statement of deceased twice but since the deceased was declared unfit to make the statement by the doctor, her statement could not be recorded. DW-1 stated that the accused were arrested 6-7 days of the incident, but he did not approach the police or any other authority and also did not file any complaint in court against false implication of the accused. He came to depose in the court after about two years of occurrence and therefore the possibility that he deposed only at the instance of accused being a close relative, cannot be ruled out. Thus, the appellants were found to have failed in proving that the death was accidental or that the deceased had made any such statement prior to her death to the IO saying that she herself had caught fire.

30. The appellant No.1 placed on record the photocopy of

the RC of motorcycle No. DL 7S-AA-6081 on which a receipt has been executed by one Ved Prakash to the effect that he has sold the motorcycle to the appellant No.1/Yogender on 13.01.2011 for Rs.13,500/-. However, original RC of the same was not produced. The photocopy of the RC placed on record is in the name of R.N.Yadav but as per the receipt, the motorcycle was sold by one Sh.Ved Prakash who is not the registered owner of the vehicle. Thus, it is not known in what capacity he had sold the motorcycle to the appellant No.1. Also, even if it is presumed that he had a motorcycle it cannot be presumed that he would not raise the demand of a motorcycle from the deceased merely because he was already having a motorcycle.

31. Thus, in view of the aforesaid, the prosecution was held to have made out a case that the deceased died within seven years of her marriage due to burn injuries and she was subjected to cruelty and harassment for demand of dowry from the deceased and said demand was made soon before her death.

32. In view of the detailed discussed made above, this Court does not find any ground to interfere with the impugned judgment of conviction dated 19.06.2013 and Order on Sentence dated 03.07.2013.

33. The appeal is accordingly dismissed.

AUGUST 23, 2016
dm/dd

(P.S.TEJI)
JUDGE

