

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : July 04, 2017

+ Crl. A. No. 363/2002
KRISHNA

..... Appellant

Through: Mr. Hitender Kapur, Advocate

versus

STATE

..... Respondent

Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State

+ Crl. A. No. 405/2002
RAMESH KUMAR

..... Appellant

Through: Mr. R.K. Kohli, Advocate

versus

STATE

..... Respondent

Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State

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

JUDGMENT

P.S.TEJI, J.

1. The present appeals have been filed by the appellants being aggrieved by the common judgment of conviction dated 05.04.2002 passed by the learned Additional Sessions Judge, Delhi holding the

appellants guilty for the offence punishable under Section 304-B/34 of Indian Penal Code (hereinafter referred to as I.P.C.), and vide order on sentence dated 08.04.2002, they have been sentenced to undergo rigorous imprisonment for a period of seven years each.

2. Since the trial of both the applicants was commonly conducted and both the appellants have been convicted by the common impugned judgment and have been awarded sentence by the common order on sentence, therefore, both these appeals are hereby disposed of by this common order. It would be relevant here to mention that the appeal of the appellant – Krishna was heard and reserved on 02.05.2017, while the appeal of appellant – Ramesh Kumar was heard and reserved on 09.05.2017.

3. The allegations leveled in the present case are that Kusum wife of appellant-Ramesh Kumar died due to burn injuries on 15.01.1987. Som Prakash, brother of the deceased Kusum made a statement to the police that his deceased sister was harassed by the appellants for demand of dowry. He had given a sum of Rs.10,000/- to the appellants but a further demand for giving a VCP and a scooter was made by the appellants. He also alleged that his deceased sister had written two letters to him regarding harassment and demand of VCP and a scooter. It was also alleged that his deceased sister had advised him to sell the house to meet the demands and her mother in law used to beat her. A complaint was made to the SHO on 13.08.1996 and a case was registered, but the matter was settled between the parties. On 15.01.1987 at about 4 p.m., the complainant had gone to the house of

his deceased sister on the occasion of Lohri, but the mother in law of the deceased returned the fruits and gifts by demanding VCP and a scooter.

4. On the basis of statement made by the complainant, FIR of the instant case was registered. After completion of investigation, charge sheet was filed in the Court.

5. A charge under Section 304-B/34 IPC was framed against the appellants by the trial court to which they pleaded not guilty and claimed trial.

6. To prove its case, the prosecution had examined 28 witnesses, namely, PW1 Veer Bhan, PW2 Som Prakash, PW3 Sushil Kumar, PW4 Ct. Om Parkash, PW5 ASI Naubat Ram, PW6 Udaibir Singh, PW7 Insp.Davinder Singh, PW8 SI Man Mohan Singh, PW9 SI Sukhbir Singh, PW10 Smt.Neelam, PW11 Smt.Ranjana Batra, PW12 Mange Ram, PW13 Ram Chander, PW14 Rajiv Kumar, PW15 Smt.Nutan Guha Biswas, PW17, Dr.S.D. Sharma, PW18 Fireman Mange Ram, PW19 HC Shashi Kant, PW20 J.C. Narula, PW21 ASI Sher Pal, PW24 HC Ajit Singh, PW25 HC Irfan, PW26 HC Dhak Lal, PW27 HC Dhani Ram and PW28 HC Suresh Chand.

7. After conclusion of prosecution evidence, statements of the appellants under Section 313 Cr.P.C. were recorded in which they denied the entire case of prosecution and claimed innocence. No evidence in defence was adduced by the appellants.

8. The appellants have filed the instant appeals challenging the aforesaid judgment on conviction as well as order on sentence.

9. Argument advanced by the learned counsels for the appellants is that there was no evidence to show that there was any demand of dowry by the appellants. The deceased was never harassed or tortured by the appellants for or in connection with demand of dowry. PW1 had admitted during his testimony that no dowry was ever demanded by the appellants at the time of marriage. It was wrongly held that the appellants had demanded Rs.10,000/-, VCP and scooter. The letters Ex.PW1/A and Ex.PW1/B allegedly written by the deceased cannot be relied upon. It was even admitted by PW1 that complaint Ex.PW2/A and Ex.PW1/A were drafted after consultation with a lawyer. It was further submitted that the alleged demand of VCP and scooter was made before reaching a compromise between the parties on 02.09.1986 and the same is of no consequence. The only demand came on record is of Rs.10,000/- which was demanded as loan and not as a dowry. There is no other evidence on record to connect the appellants with the commission of dowry death of the deceased.

10. On the other hand, learned APP for the State has argued that there is sufficient evidence on record in the form of testimony of relatives of the deceased to hold the appellants guilty. There is enough material on record that the deceased was harassed on account of demand of dowry and there is also sufficient evidence to prove that she was subjected to harassment on account of demand of dowry soon before her death. All the ingredients of dowry death have been duly

proved by the prosecution before the trial court and the appellant has rightly been convicted.

11. I have gone through the submissions made from both the sides and the material available on record.

12. PW1 Veer Bhan had deposed that his sister Kusum Kumari was married to accused Ramesh Kumar on 13.02.1986. His sister visited their house after 2-3 days of marriage. She had complained to him that she was being harassed by the accused persons for dowry. He further deposed that once accused Ramesh had demanded a sum of Rs.2,000/- from him which he had given to him from withdrawing the same from the account of Kusum. He had been receiving letters from his sister regarding harassment caused to her. He brought her back from her matrimonial home on 13.08.1986 as she was being maltreated by the accused persons. Before that, he had lodged a report at Police Station Sadar Bazar. He had proved the said letters as Ex.PW1/A and Ex.PW1/B. After about 10 days, both the accused along with some other relatives came to their house and requested him to send Kusum with them. They also assured that nothing unpleasant would happen. He settled the controversy with them and sent his sister with the accused persons. He further deposed that in late September 1986, accused Ramesh came to him and made a request to give him a lona of Rs.10,000/-. PW1 sold his goods lying in the shop and gave Rs.10,000/- to accused Ramesh as loan. He further deposed that Kusum made a complaint in Anti-dowry cell Ex.PW2/E. He

identified the signatures of his sister at point 'A' which was made in respect of compromise reached between them.

13. During cross-examination, PW1 had stated that about 35/40 days of marriage, his sister withdrew Rs.2000/- from bank to go to Bombay with the accused for honeymoon. He stated that deceased had herself withdrawn the money while going on honeymoon. He further stated that after coming from Bombay from honeymoon, accused Ramesh had requested him for a loan of Rs.10,000/- which he had given to him. He had stated that on 13.08.1996, he had detailed all the events in his report to the police Ex.PW1/C. He further stated that in that report, he had not named the persons who used to harass his sister. When PW1 was confronted with said report, there was no mention of any demand of dowry or harassment or torture in that connection.

14. PW2 Som Parkash had deposed that Kusum was his younger sister who was married with accused Ramesh on 13.02.1986. Immediately after marriage, her in-laws started raising demands. They demanded VCR, colour TV and a scooter. Deceased was being threatened and beaten and she wrote a letter to them. He proved the letters as Ex.PW1/A and Ex.PW1/B. They lodged a report with PS Sadar Bazar vide Ex.PW1/C. On receipt of summons from Dowry Cell, Jai Bhagwan, sister's husband of Ramesh came to them and assured that misbehavior with Kusum shall not be repeated. Then they sent Kusum with Ramesh and Jai Bhagwan. After sometime accused sent back Kusum with directions to bring Rs.10,000/-. Thereafter,

accused Ramesh and his mother demanded Rs.10,000/- from them which his brother Veer Bhan gave to accused after selling his shop. He lodged the report Ex.PW2/A with the police after the death of his sister.

15. The other public witnesses have also stated that the deceased used to be harassed by the accused persons for or on account of demand of dowry, but no specific date and time of the incident or the demand of any article has been given by them.

16. In the case of **Keshab Chandra Panda v. State 1995 Cri.L.J. 174**, it was held by Orissa High Court that :

“7.In the case at hand, there is no evidence whatsoever about any ill-treatment by the accused after 2-6-1989, or even after 28-1-1990 when decision by well wishers was taken. Deceased stayed in the house of her parents for about three weeks immediately prior to her death on 26-3-1001. There is nothing in the evidence of P.Ws 1 and 4 to show that she made grievance of cruelty or harassmt after 28-1-1990. Evidence of P.W.1 in this regard is significant. He has accepted not to have received inforamtion about any ill-treatment and assault by accused on the deceased on other occasions. Obviously he has referred to the incident on 2-6-1989 and not to have received any information subsequent to 2-6-1989. In other words, there is no evidence whatsoever of any cruelty or harassmt having been meted out by accused to the deceased after 28-1-1990 till death of deceased on 26-3-1991. Therefore, basic requirement of cruelty or harassmt soon

before death to bring in application of Section 304-B, IPC is absent.”

17. In the present case, it has come in the evidence that before making the complaint to police in the instant case, another complaint prior to the same was also made but the said matter was compromised between the deceased and the accused persons. A complaint Ex.PW2/E was made by the deceased to the police on 14.08.1986 and the allegations levelled in the said complaint were compromised between the parties and the said fact has been admitted by PW1, brother of the deceased himself. Thus, it has been duly come on record that prior to any harassment or cruelty for or in connection with demand of dowry to the deceased, she had herself entered into compromise with the accused persons. There is no allegation of harassment or cruelty meted out to the deceased by any of the accused after 14.08.1986. The relatives and friend of the deceased examined by the prosecution had not stated any such incident from which it could be inferred that the deceased was subjected to harassment or cruelty by any of the accused for or in connection with demand of dowry after 14.08.1986 what to say soon before her death.

18. The only allegation remains in the present case as per the deposition of the relatives of the deceased, is with regard to demand of Rs.10,000/- by accused Ramesh Kumar. From the testimony of PW1, it has come on record that accused Ramesh had demanded Rs.10,000/- from him as a loan and he gave the said amount to accused Ramesh by selling the goods lying in his shop. Though PW2 another brother of the deceased had deposed that accsued persons had demanded

Rs.10,000/- from his brother Veer Bhan (PW1), but PW1 had clarified that the said demand of Rs.10,000/- by accused Ramesh Kumar was in terms of loan and not a demand of dowry. So, from the testimony of PW1, the demand of Rs.10,000/- that too as a loan by accused Ramesh Kumar, cannot be termed as demand of dowry.

19. As discussed above, the essential ingredients of dowry death as envisaged in Section 304-B IPC are missing. The prosecution has failed to prove beyond reasonable doubt that the deceased was subjected to harassment or cruelty by any of the accused soon before her death.

20. From the totality of evidence and the facts and circumstances brought on record, it is not safe to rely upon the testimony of the prosecution witnesses to base the conviction of the appellants as the prosecution has failed to prove beyond reasonable doubt the necessary ingredients of dowry death as per Section 304-B of the IPC.

21. Consequently, the judgment of conviction and the order on sentence passed against the appellants are set aside. The appellants are already on bail. Their bail bonds and surety bonds stand discharged.

22. Both the appeals are accordingly allowed and disposed of.

(P.S.TEJI)
JUDGE

JULY 04, 2017
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