

\$~R-30

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 14th November, 2018

+ CRL.A. 741/2000

DINESH & ANR.

..... Appellants

Through: Mr. M.C. Dhingra, Advocate
with appellant Dinesh in
person.

versus

STATE N.C.T. OF DELHI

..... Respondent

Through: Mr. K.S. Ahuja, APP for the
State

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Babli, daughter of Som Prakash (PW-15) and Ramkali (PW-8) was married to the appellant Dinesh on 20.04.1988 and thereafter lived with him, as his wife, in his house at 5/373, Khichri Pur, Delhi. She was carrying a foetus of twenty-eight weeks on 29.07.1990 when her father-in-law Kedari Lal (father of the appellant Dinesh) took her in unconscious state to a private medical facility (Walia Nursing Home) in the close vicinity of the locality. The private nursing home did not attend on her and she was eventually brought to Lok Nayak Jai Prakash Narayan Hospital where she was examined, vide medico-legal certificate (MLC) (Ex.PW-17/B), by Dr. Sanjiv Kumar Madan (PW-19). She was found to have been “*brought dead*”.

2. The father-in-law, who was accompanying her at that time, had given the history of convulsion followed by vomiting and frothing from mouth, such event having occurred around 8:30 a.m. on that day. In the MLC, it was noted that there were no external injuries. The dead body was sent for post-mortem examination to the mortuary of Maulana Azad Medical College and Associate Hospitals (MAMC), it having been conducted by Dr. George Paul, Associate Professor. The post mortem examination report (Ex.PW-13/A) indicated that the dead body bore a number of ante-mortem external and internal injuries.

3. Mr. K.K. Siam (PW-4), Sub-Divisional Magistrate (SDM) of the area was notified. He held inquiry and besides making request for the post-mortem examination by formal communication (Ex.PW-4/A) to the concerned authorities on 30.07.1990, took note of the brief facts (Ex.PW-4/B) on the same date and called upon the authorities to hand over the dead body to the father and brother of the deceased (vide Ex.PW-4/C). He recorded statements of Ramkali (Ex.PW-4/G), Som Prakash (Ex.PW-4/H) and of Mahender Kumar (Ex.PW-3/A), the last mentioned being the brother of the deceased.

4. Eventually, the police registered first information report (FIR) (Ex.PW-7/A) on the basis of directions of the SDM (vide Ex.PW-4/J) issued on 01.08.1990, this being based on the above mentioned statements of the parents and brother of the deceased.

5. On conclusion of the investigation, the appellant Dinesh (A-1) and his mother Attar Pyari (A-2) were brought before the court of sessions (in sessions Case No.587/1994) where they were put on trial

on the charge for offences punishable under Section 498-A/304-B read with Section 34 of Indian Penal Code, 1860 (IPC). It may be mentioned here that Avnesh, brother of the appellant Dinesh, who was a juvenile at the relevant point of time, was also sent up for criminal proceedings before the Juvenile Justice Board (JJB). It is stated that the JJB acquitted Avnesh at the end of the inquiry held by it.

6. During the trial in the court of Sessions, the prosecution examined nineteen witnesses. These included Ramkali (PW-8), Som Prakash (PW-15), the mother and father respectively of the deceased, besides her brother Mahender Kumar Gupta (PW-3), Kusum (PW-2), wife of the said brother, and Harish Kumar (PW-1). The prosecution also examined the SDM (PW-4), the medical officer (PW-19) of LNJP hospital and Dr. P.C. Dixit (PW-18) of MAMC who proved the post-mortem report (Ex.PW-13/A) in the absence and non-availability of Dr. George Paul who had conducted the said autopsy.

7. After the prosecution had adduced its evidence, the statements under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.) of the accused persons being prosecuted, i.e., including the appellant herein and his mother Attar Pyari (A2) were recorded. In the said statements both the said accused simply denied the prosecution case and evidence claiming to have been falsely implicated, stating that they had not made any demand. Though at that stage they had indicated that they wished to lead evidence in defence, the opportunity given was not availed of.

8. The trial Judge considered the evidence that had been adduced and, by judgment dated 31.10.2000, held both the said accused, including the appellant Dinesh, guilty, as charged, on both counts. By subsequent order dated 01.11.2000, the sentence of rigorous imprisonment for ten years was awarded for the offence under Section 304-B IPC along with sentence of rigorous imprisonment for two years with fine of Rs.10,000/- for offence under Section 498-A IPC, it being added that in case of default in payment of fine, the convicted persons would undergo further simple imprisonment for five months. Both the substantive sentences were directed to run concurrently and the benefit of set off for the period of incarceration undergone was granted in terms of Section 428 Cr.P.C. The trial Judge also directed that out of the fine recovered, Rs.5,000/- would be paid to Ramkali, mother of the deceased under Section 357 Cr.P.C.

9. The appeal at hand was filed challenging the above noted result of the Sessions trial including the order on sentence both by the appellant Dinesh and his mother Attar Pyari (A2). During the pendency of the appeal, the appellants were released on bail, their remaining sentences having been suspended by two different orders. While the appeal remained pending, Attar Pyari (A2) died on 06.09.2012. This fact having been verified, the proceedings against her stood abated and were consequently dropped as per the order recorded on 19.11.2013.

10. The appeal, thus, has been pressed by appellant Dinesh to challenge the judgment and order on sentence of the trial court.

11. As noted earlier, the appellant was married to the deceased on 20.04.1988. She died on 29.07.1990, this within a period of seven years of the marriage. She was 22 years old at the relevant point of time. As per the testimony of her mother, she had conceived once earlier but the said pregnancy did not fructify. She was pregnant again carrying a foetus of twenty-eight weeks when she died on 29.07.1990.

12. The evidence clearly shows that when Babli was brought to Walia Nursing Home from where she was taken to L.N.J.P. hospital, the history given was of she having convulsions in the morning followed by vomiting and frothing from mouth. There is nothing on record, as is sought to be argued in appeal, that she was suffering from any ailment leading to, or having a history of, fits or such medical condition of convulsions in the past. It was a one of a kind episode.

13. The mother-in-law had informed Ramkali (PW-8) that the deceased had taken milk in the morning where after she had started vomiting. There seems to have been no probe as to whether the milk contained any such substance as could have given a trigger for such convulsions followed by vomiting or frothing from mouth, which was the medical condition noted in the MLC by the examining medical officer. The post-mortem report would indicate that the viscera had been preserved. However, the viscera result did not give any finding about any poisonous substance that could have been ingested orally or otherwise. The theory of deliberate poisoning being the cause of death remained in the realm of speculation.

14. Be that as it may, what is crucial and of great import, as has been highlighted by the trial Judge in the impugned judgment, is that the deceased was found, during the autopsy, to have suffered nineteen ante-mortem external injuries. These have been noted in (para 12 of) the impugned judgment and bear repetition here under:-

- “1. Deep bruise area in 6x4 cm showing pinkish purplish appearance on the middle inner back of right arm.*
- 2. Bluish green bruise area 6x5 cm on the lower inner aspect Rt. Arm, joint above Rt. elbow region.*
- 3. Bluish colour bruise 2x1 cm on the lower inner back of Rt. elbow.*
- 4. Reddish bruise area in 1.5x1 cm on the middle inner border of Rt. forearm.*
- 5. Reddish bruise area in 2x1.5 cm on the inner back part of the Rt. wrist.*
- 6. Bluish bruise area in 2.5x1.5 cm on the upper inner front of Rt leg.*
- 7. Bluish bruise area in 4x2.5 cm at the junction of middle and lower 1/3 of front of Rt. leg.*
- 8. Reddish bruise area in 2x1.5 cm on the lower 1/3rd of front of Rt. Leg just below Inj. No.7.*
- 9. Bluish bruise area 2x1.5 cm on the upper inner front of Lt. leg just below knee region.*
- 10. Bluish bruise area showing deep bruising underneath in 9x2.2 cm in an inverted ‘c’ manner on the outer front part of lt. knee.*
- 11. Reddish purple bruise area in 8x8 cm in two large patches on the back of lt. hand.*

12. Abrasion 1x0 cms., with bruise around in 9x5.5 cms on the middle inner back of lt. forearm extending down to the upper inner back of ltd. wrist, showing greenish bluish colouration at places.

13. Bruise area 7x5 cm on the outer back part & outer aspects of lt. elbow.

14. Bruise area showing bluish pink appearance in 8x8 cms. at the junction of middle and upper 1/3rd of outer aspect of left arm.

15. Abrasion 0.8x0.5 cm on the outer part of top of left shoulder with purplish pink bruise area around in 9x7 cm extending to the inner part of top of the left shoulder as well as its upper back.

16. Reddish bruise area with deep bruising underneath in 3.5 x 2 cm on the upper inner front of left side chest, inner end of the injury being 4 cm from midline being 1 cm above lt. nipple.

17. Bluish bruise area showing deep bruising underneath in 1.5 x 1 cm on the upper front of left side chest, 1.2 cm above inj. No.16.

18. Three bruise area in 5.5 x 4 cm on the upper front of right side chest, 8 cm to the left of middle and 7 cm above right nipple.

19. Reddish bruise area in 2x1.5 cm in the middle front of the lt. side chest, 6.5 cm from midline and 2 cm above the right nipple.”

15. The autopsy report also noted the following internal injuries:-

“Scalp shows deep effusion of blood in patches in lt. parietal region in its front part rt. Parietal region and rt. temporo occipital regions in the lower back parts of scalp at places showing overlying tissue ochre staining thick organized somewhat encapsulated subdural haemorrhage

showing separation of the red and white constituents and showing membrane formation, thin on its inner aspect somewhat thick membrane formation on its outer aspect showing only slight adherence to the overlying dura and producing moderate flattening of rt. Cerebral outer aspect of hemisphere being 16x9x2.5 cm thick.

Patchy subarachnoid of inner aspect of rt., cerebral hemisphere & upper outer aspect of lt. cerebral hemisphere thick subarachnoid haemorrhage in the inner back part of rt. temporal base. Marked herniation present at rt. uncus region with bilateral tonsillar multiple small discrete peripheral hemisphere present in the lt. side midbrain. Brain congested somewhat oedema wt. 1100 gms.”

16. The Medical Officer, Dr. Sanjiv Kumar Madan (PW-19) who had recorded the MLC has regretted omission on his part to take note of the external injuries. There is no doubt that this omission was on account of cursory examination, there being no challenge to the correctness of the contents of autopsy report.

17. Though Dr. George Paul, who had conducted the autopsy did not give opinion as to the cause of death, Dr. Professor P.C. Dixit (PW-18), in his court testimony, gave a very clear opinion which has been taken note of by the trial Judge (in para 14), the relevant part of judgment reading thus:-

“14. The injuries No.4,5,8,16 & 19, doctor opined, were about one day old, injury No.1,13,14 & 15, two days old and injuries at No.3,6,7,9,10,17 & 18 were three days old while the injuries No.1,12, were about 4-5 days old. The intra cerebral injuries were opined to be about a week old. The stomach contained 50 ml of grayish and watery liquid material. The viscera was preserved and

sealed for chemical analysis to rule out any poison. Dr. George Paul, on conclusion of his examination, opined “no definite opinion can be given regarding the cause of death in this case as viscera preserved and sealed in my presence for chemical analysis to rule out poisoning – nature not known.” So long as the Chemical Analysis Report of poisoning or absence of it was not available to the doctor, it was fair on his part not to give any definite opinion regarding the cause of death. The Chemical Analysis Report failed to locate any common poisoning in the viscera. Dr. P.C. Dixit, Professor and Head of the Department in Maulana Azad Medical College, who proved the post mortem report, given his opinion on the basis of the observations in the report. He said as under”-

“I have perused the whole of the post mortem report and injuries found during the post mortem on the body of Babli and after perusal of all the injuries given in the post mortem, I think that cause of death in this case is combined effect of all the contusions alongwith the head injury/brain haemorrhage. Multiple contusions are themselves sufficient to cause death in the ordinary course of nature and head injury is also sufficient to cause death in the ordinary course of nature.”

18. The oral testimony of PW-8 and PW-3, mother and brother respectively of the deceased clearly bring out that the deceased would often complain to her parental family that she was being subjected to physical beatings in the matrimonial home. The fact that the external injuries found on the dead body were inclusive of those which were almost one week old, there being no theory propounded at any stage of the process (inclusive of investigation) of the deceased having suffered any fall or having suffered from convulsion or fits during the said period, it has to be concluded that the injuries noticed on her dead

body were the product of physical assaults to which she had been subjected to.

19. Since the death is opined to be the collective result of the external injuries, there being no other possible or plausible explanation, it has to be concluded that the death of Babli on 29.07.1990 was a case of unnatural death. It must at the same time, also be observed that the investigating agency and the prosecution have not pressed the case on the charge of it being a homicidal death. The trial having concluded eighteen years ago, there being no appeal by the State, the case now has to be examined from the perspective of accusations primarily of "*dowry death*".

20. It is against this backdrop that the evidence led by the prosecution to bring home the case for presumption to be raised under Section 113-B of the Evidence Act vis-a-vis the prime charge of dowry death under Section 498-A IPC has to be examined. It is trite that in order to bring home the charge of dowry death it must be found in the evidence that the deceased woman had been subjected to cruelty or harassment connected with any demand for dowry "*soon before her death*".

21. Both the mother (PW-8) and the brother (PW-3), as indeed the wife of the said brother (PW-2), have spoken consistently about the harassment meted out to the deceased in the matrimonial home in the context of demand for dowry which was primarily connected to the desire to have a colour TV being given instead of black and white TV which had been arranged and given at the time of marriage. The

prosecution also relied upon the testimony of the father (PW-15). But then, he was candid enough to say that he remained busy in his business (as a shopkeeper), the subject relating to the dealings with the desires of the family of the son-in-law (appellant Dinesh) being taken care of by his wife Ramkali (PW-8). The evidence of PW-15, from this perspective, being more in the nature of hearsay, may be kept aside. Having gone through the testimonies of PW-2, PW-3 and PW-8, however, there is no escape from the conclusion that there was a demand for a colour TV to be given and that non-fulfillment of such illicit demands for dowry led to the deceased being subjected to harassment that included physical assaults.

22. The learned counsel for the appellant argued that demand for colour TV, and the passing away of gifts in the nature of cash of Rs.9,000/-, two gold rings and chain have been referred to in the context of festival of Diwali. It was his argument that after marriage on 20.04.1988 and till the death on 29.07.1990, two such occasions had passed by. It was his submission that there is no clarity as to whether such demands had been raised at the time of first Diwali or the second Diwali. In the considered view of this court, the issue cannot be examined through such narrow lens. The evidence of the three above-mentioned witnesses clearly shows that there was a pattern of cruelty towards the woman in the matrimonial home, the demand for colour TV or other gifts being only part of such continuous cause for harassment.

23. There has been no explanation offered for the extensive injuries suffered by the deceased in the days immediately prior to she being taken to the hospital where she was declared brought dead on 29.07.1990. The age of the said injuries itself shows that the harassment had continued till such time as would definitely fall within the meaning of expression “*soon before the death*”.

24. The learned trial Judge has examined and subjected the evidence to acute scrutiny. There are no such contradictions in the testimony of the above-mentioned close relatives of the deceased as could be treated as demolishing the case or rendering it incredible. There is no reason why the evidence of the said witnesses should be disbelieved. In the result, this court upholds the findings returned by the trial court in the impugned judgment on the basis of which the appellant was held guilty on the charge for offences under Sections 304-B and 498-A IPC.

25. Having regard to the facts and circumstances of the case, this court finds no good reason to take any soft approach in the matter of sentence. The offence under Section 304-B IPC attracts maximum punishment of imprisonment for life. The trial judge was lenient enough to award rigorous imprisonment for ten years only. There being no scope for any reduction, the appeal will have to fail.

26. Thus, the appeal is dismissed. The interim bail granted to the appellant Dinesh is cancelled. He is directed to surrender to jail forthwith to suffer the sentence awarded against him.

27. A copy of this judgment shall be sent to the trial court and also to the Superintendent Jail. The learned Trial court shall ensure that the sentence is properly executed and enforced. For this, the SHO of Police Station Kalyan Puri shall render all assistance.

R.K.GAUBA, J.

NOVEMBER 14, 2018/vk

