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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 6th March, 2019

+ Crl. Appeal No. 764/2002

RAJIV MITTAL & ORS. Appellants
Through: Mr. Javed Hashmi, Adv.

versus

STATE (NCT OF DELHI) Respondent
Through: Mr. K.S. Ahuja, APP for the
State.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The appeal at hand was presented in October, 2002 to bring a challenge to the judgment dated 10.09.2002 and the order on sentence dated 12.09.2002, passed by the additional sessions judge in sessions case (no. 262/1996) registered on the basis of order of committal passed by the Metropolitan Magistrate on the report (charge-sheet) on investigation into first information report (FIR) no. 574/1995 of police station Samaipur Badli, it involving offences punishable under Sections 498A/304B of Indian Penal Code, 1860 (IPC). By the impugned judgment, the appellants were held guilty and convicted, as charged, and by the impugned order, sentenced to rigorous imprisonment for seven years for the offence under Section 304 B IPC with rigorous imprisonment for three years and fine of Rs. 5,000/- for offence under Section 498A IPC, both substantive sentences directed

to run concurrently, the benefit of set off under Section 428 Cr.P.C having been accorded.

2. The case at hand concerns unnatural death of Meenu Mittal (the deceased) as a result of burn injuries suffered in an incident that took place on 29.09.1995 in the matrimonial home described as house no. A-79, Sarup Nagar, Delhi. The deceased concededly was married to the first appellant Rajiv Mittal (A-1) on 27.11.1991. She was daughter of Jai Chand (PW-13), a resident of district Palwal in Haryana. She was youngest amongst eleven siblings, they including her brothers Ram Avtar Goel (PW-4) and Ashok Goel (PW-6), both residents of Delhi. It has come out by evidence which is beyond reproach that out of cohabitation of the deceased with A-1, she had given birth to two sons, first born in 1992 and the second in 1994. She was around 24-25 years at the time of death. The second appellant Rajinder Mittal (A-2) is concededly the father of A-1 and, thus, father-in-law to the deceased. Similarly, third appellant Saroj Mittal (A-3) is mother of A-1 and consequently mother-in-law to the deceased. Admittedly, till the registration of the FIR in the present case, there was no formal complaint of any ill-treatment or harassment of the deceased in the matrimonial home lodged with any authority including the police.

3. The prosecution evidence also included the testimony of a child named Varsha (PW-3) who was about 6 years old on the relevant date. It appears that initial suspicion of the parental family was that Meenu Mittal had been intentionally set on fire to be killed. Some indication in this regard seemed to be provided by the said child Varsha (PW-3)

through her statement to the police and also Sub Divisional Magistrate (SDM). But, it is now conceded that no evidence confirming such theory could be gathered during investigation and consequently, by the charge-sheet, prosecution was sought for offences under Section 498A and 304 B IPC. For purposes of the latter charge, reliance was placed on evidence about the deceased having been subjected to harassment and cruelty in relation to illicit demands for dowry and precious gifts “soon before her death” in the matrimonial home, within seven years of the marriage, reference being made to the presumption that could be raised under Section 113 B of Indian Evidence Act, 1872.

4. The prosecution brought its case before the trial court primarily on the strength of oral testimony of PW-13, PW-4 and PW-6, the former being the father and the later two being the brothers of the deceased woman, each of them seeking to testify that Meenu Mittal was harassed for illicit demand for dowry.

5. The defence, on the other hand, submitted before the trial court that the deceased was sensitive, and at the same time arrogant, she being immature, childish and pampered and in the habit of concealing and keeping money even by stealing, this habit having led to frequent quarrels between the couple leading to her throwing tantrums. The defence also submitted that, after her death, a suicide note (marked ‘A’) had been discovered in the matrimonial home which had been shared immediately with the investigating agency as also with the court of Sessions in the context of application for bail under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C.) The appellants also

submitted that they had made a prayer for verification of the authenticity of the said document through comparison by the hand writing expert on the basis of admitted writings which they had volunteered to arrange but neither the investigating agency nor the trial judge paid any heed. It is pointed out that the said document (mark 'A') was referred to during the course of evidence for the prosecution, particularly in the statement of the investigating officer Inspector Ajay Sharma (PW-14) but was not subjected to proper scrutiny. It is pointed out that, in the impugned judgment, the trial court did not appreciate the effect of the said material and instead (by observations in para 54) trashed it on the ground that the defence had failed to prove the said document and the same consequently being not worthy of consideration.

6. The original trial court record had been called for by the registry and added to the file of the appeal as per the penciled notes below the proceedings recorded on 01.10.2002 followed by certain subsequent proceedings as well. It is upon consideration of the said trial court that the order of suspension of sentence was granted initially in favour of A-3 on 19.02.2003 followed by similar order in favour of A-1 and A-2 granted on 15.07.2005.

7. The trial court record, however, went missing from the registry. This seemingly was part of similar loss in more than one hundred such criminal appeals, there have been reports made to the Court about some administrative action taken to fix responsibility against the concerned officials though with no clarity. Be that as it may, the fact

remains that the trial court record in original remains missing and pursuant to the directions issued under orders of the Chief Justice some effort was made to reconstruct it to the extent possible, the report dated 03.07.2010 in this regard having been received from the concerned additional sessions judge.

8. This appeal came up for hearing against the above backdrop, on the basis of re-constructed record, it being conceded by both sides that given the loss of the original record, there is no other option left. During the course of hearing, however, it came to light that the counsel for the appellant has available with him the copies of the proceedings recorded in the trial court beyond what was submitted by the additional sessions judge with his report dated 03.07.2010 as the re-constructed record. Pursuant to further directions given, the counsel for the appellants has submitted a photocopy of the entire material available with him, with index dated 22.02.2019, its copy having been supplied to the prosecution as well.

9. Having heard both sides and having gone through the available re-constructed record, this Court finds no reason to dissociate itself from the finding returned by the trial court that the death of Meenu Mittal due to burn injuries suffered in the matrimonial home on 29.09.1995, was not homicidal but, in all probability, suicidal, it not being the case of any side of party that it was accidental. The fact that it was a case of suicide is re-affirmed by the suicide note (mark 'A') on which the defence has been placing heavy reliance. This court accepts the argument of the appellants that it was unfair and improper

to discard the said document from consideration with the reasoning that the defence had failed to prove its authorship. In a criminal trial, it was the obligation of the investigating agency to rule out the possibility of it being the case of accident or suicide for reasons other than harassment, particularly in view of the initial suspicion that it was a case of homicide. The investigating agency concededly found it to be not a case of culpable homicide. It seems there was no effective investigation to find out as to whether it could possibly be a case of accident. The third possible cause could be that of a suicide for which harassment in matrimonial home could be one reason. The defence had shared with the investigating agency and the court of Sessions, along with the application for bail, a copy of the said document (mark 'A') as early as in August, 1996. After such material had been brought to light, it was incumbent on the investigating agency, may be in exercise of its power under Section 173 (8) Cr.P.C., to subject the same to deeper probe. The defence had persisted with reliance on the said document as late as on 04.02.2000 when the investigating officer (PW-14) was under cross-examination, he being the last witness to be examined by the State. Interestingly, during his cross-examination, the investigating officer pleaded loss of memory about he having been called upon to scrutinize the document in question. It was conceded by him that there had been no verification as to the hand writing of the document (mark 'A').

10. It may be that the document (mark 'A') was not formally proved. But then, in a criminal trial, the defence could only point out

the possibility. The burden to prove requisite facts beyond all reasonable doubts to bring home the guilt is squarely on the prosecution. It cannot derive undue advantage from its own failure to subject the said document to closer scrutiny. Interestingly, in the said document, the deceased seems to have declared that she was committing suicide out of her own free will and volition, there being no responsibility of her matrimonial family, their conduct towards her over the last four years (of married life) having been good and proper, she being against any probe by the police in the matrimonial home.

11. The fact remains that the death of Meenu Mittal cannot be presumed to be anything but suicidal. It being unnatural, it was obligation of the trial court to subject the evidence brought on record for purposes of raising presumption under Section 113 B Evidence Act to a close scrutiny. It is in the said scrutiny that the approach of the trial court has been too casual, unfair and unjust. This would need elaboration.

12. As mentioned above, the prosecution case rests on the evidence of three witnesses (PW-4, PW-6 and PW-13). PW-4 and PW-6 did speak about demands for precious gifts raised by A-1 and members of the matrimonial family. PW-4, at the same time, during his cross-examination conceded that no demand had been made directly from him, he being privy to the said demands being raised only from information gathered by him from his elder brother (PW-6) or his father (PW-13). This renders his statement in the examination-in-chief about demands in the nature of TV, fridge, wrist watch, gold

chain and gold ring to be hearsay. PW-6 also testified about A-1 having demanded gifts or presents on certain festivals but, as in the case of his brother (PW-4), during his cross-examination he also admitted that he had not made any such allegation prior to his court deposition. He was confronted with his statement (PW-6/A) made before the SDM and also the statement under Section 161 Cr.P.C. (Ex.PW-6/DA), when it came out that he had not mentioned the demands made by A-1 for gifts or presents to be given on certain festivals. It was suggested to him that the deceased used to secretly hide money which was the cause of quarrel between the couple. He did not deny the said suggestion and rather gave a vague reply pleading more of ignorance.

13. The above nature of the evidence of PW-4, PW-6 leaves the prosecution case dependent only on the evidence of the father of the deceased. The said witness (PW-13) deposed about A-1 having come to his house at Palwal about one year after the marriage (and therefore, in 1992) which would be three years prior to the death. He stated that in that visit, A-1 had demanded Rs.5,000/- which was duly paid. He also spoke about another visit by A-1, one and half years after the said visit. This would take it to a period at the end of 1993 or early 1994 (more than one year prior to the death). According to PW-13, during the said second visit, A-1 had complained to him that he had not given him *“suit and wrist watch”*. He stated that he had purchased the said items for him at Palwal. He also spoke about the deceased having

been given beatings by A-1, but then he would not specify the dates or backdrop of such assaults.

14. During the cross-examination of PW-13, it was brought out vividly that the story of Rs. 5,000/- having been paid on demand was an improvement, there being no such allegation in the statement (Ex.PW-7/G) made before the SDM. Similarly, he had also not stated before the SDM that he had arranged for a suit or a wrist watch against the backdrop of complaint of A-1. He disowned any statement attributed to him by the police.

15. In the opinion of this Court, the above nature of evidence is hardly sufficient to pin down responsibility on the grave charge of dowry death against the appellants. Allegations made by PW-4, PW-6 and PW-13 are rendered unworthy of reliance. The appellants are entitled to benefit of doubts.

16. In the result, the appeal must succeed. The impugned judgment and order on sentence are set aside. The appellants are hereby acquitted.

17. The appeal is disposed of in above terms.

R.K.GAUBA, J.

MARCH 06, 2019

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