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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 13th August, 2019

+ CRL.A. 795/2002

MANJEET SINGH

..... Appellant

Through: Mr. Amit Khatana, Advocate

versus

STATE N.C.T. OF DELHI

..... Respondent

Through: Ms. Meenakshi Chauhan, APP
for State with SI Rajender
Prasad, PS Delhi Cantt.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Darshan Kaur, daughter of Mahender Singh (PW-5) was married to the appellant, then serving in the Indian Army, on 08.11.1992. PW-5 hailed from village Khudda Alisher, which falls within the area of Union Territory of Chandigarh. The appellant, on the other hand, hailed from village Kharad of District Mohali (Punjab). During the relevant period, PW-5 was serving as a peon in Post Graduate Institute (PGI) of Medical Sciences at Chandigarh. On the other hand, father of the appellant was then working in Pant University located in district Nainital (now in Uttarakhand).

2. After marriage, Darshan Kaur was taken to Nainital where she stayed with her in-laws for about a month and a half. Over the period,

she resided in the company of the appellant moving with him to different stations including Delhi where he came to be posted.

3. On 28.02.1998, when she was living in an army residential accommodation in Delhi Cantt, she suffered burn injuries, this fact having been brought to light at about 1100 hours, she being shifted to hospital but declared to have died at spot.

4. Inquest proceedings were carried out as part of which the dead body was subjected to post-mortem examination. During the said inquiry, Mr. Arun Kumar Misra (PW-3), Sub Divisional Magistrate (SDM) recorded the statement of Darshan Singh (PW-1), brother of the deceased, who had come to Delhi upon learning about the above-mentioned events. On the basis of statement (Ex.PW-1/1) of Darshan Singh (PW-1), the SDM found it to be a case involving cognizable offences having been committed. This led to registration of first information report (FIR) (Ex.PW-8/1) in police station Delhi Cantt on 01.03.1998.

5. The investigation into the above FIR culminated in report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) being submitted seeking trial of the appellant for offences under Sections 498A/304B of Indian Penal Code, 1860 (IPC). Cognizance on the said charge-sheet was taken and the appellant was summoned. Eventually, the case was committed and came before the court of Additional Sessions Judge (as sessions case no. 113/1998) wherein the appellant was put on trial on 24.08.1998, the trial court having found sufficient material placed before it to

frame charges for offences under Sections 498A/304 B IPC and, in the alternative, under Section 306 IPC.

6. During trial, the prosecution examined, in all, fifteen witnesses they including Darshan Singh (PW-1), brother of Darshan Kaur (the deceased); Karamjeet Singh (PW-2), uncle (younger brother of the father of the deceased); Arun Kumar Misra (PW-3), SDM; Gurdial Singh (PW-4), *sarpanch* of village; Mahender Singh (PW-5), father of the deceased; Dr. Alaxander (PW-6), who had conducted the post-mortem examination on the dead body; Head Constable Ramesh Kumar (PW-7), who was a witness to seizure of the marriage photo of the deceased with the appellant; Head Constable Phool Chand (PW-8), who had registered the FIR; Subedar P.C. Kumar (PW-9), who was the witness to the arrest of the appellant on 03.03.1998; Subedar Amar Giri (PW-10), who is similarly placed as PW-9; ASI Hari Shankar (PW-11), who had taken the photographs of the place of occurrence; Constable Shahjad Singh (PW-12), who had accompanied the investigating officer at various stages of the investigation; SI Harish Chander (PW-13), who was in charge of the crime team that had inspected the scene of incident; Constable Anandvir (PW-14), who had deposited the exhibits with forensic science laboratory; and Sub Inspector Rajiv Gunwant (PW-15), the investigating officer.

7. The appellant's statement under section 313 Cr.P.C. was recorded in which he claimed to be innocent and falsely implicated. He denied that he had ever made any demand of dowry. He claimed that he had properly maintained the wife. No evidence in defence was led by the appellant.

8. By judgment dated 07.05.2002, the trial court concluded that the charge under section 304-B IPC had not been brought home, this for the reason that there was no evidence adduced to establish that the deceased had been subjected to cruelty for dowry soon before her death. The trial Judge, however, found the evidence on the charge for offences under sections 498-A/ 306 IPC to be credible and, thus, held the appellant guilty and convicted him accordingly.

9. By subsequent order dated 07.10.2002, sentence of rigorous imprisonment for three years with fine of Rs.2,500/- on each count was awarded as the punishment with further direction that in the event of failure to make the payment of fine, the appellant would undergo rigorous imprisonment for additional three months. Both the substantive sentences were directed to run concurrently with benefit of section 428 Cr.P.C. duly accorded.

10. Feeling aggrieved, the appellant filed the present appeal challenging the judgment of conviction and order on sentence, the prime contention being that the trial Judge has failed to appreciate the evidence in proper light, in his submissions, the evidence of the three crucial witnesses – Darshan Singh (PW-1), Karamjeet Singh (PW-2) and Mahender Singh (PW-5) – being unworthy of reliance. The sentence of the appellant was suspended and he was released on bail pending hearing on the appeal by order dated 11.10.2002. The turn of the appeal for hearing and final adjudication has come up almost seventeen years thereafter.

11. From the evidence, certain irrefutable facts emerged which stand established beyond all doubts through evidence that is beyond

reproach. The deceased was about 26 years' old at the time of her death. She had spent six years in the company of the appellant as his wife. Over the period, she had given birth to three sons. The eldest Jaspreet was about 3½ years' old when the death occurred, the junior ones named Jasvinder @ Sunny and Manpreet Singh being two years and six months old respectively. The evidence would also suggest that after stay of 1½ months at Nainital, immediately after the marriage, the deceased had become ill. Her father (PW-5) himself is on record to state that she had developed some psychiatric condition and had to be shifted to PGI, Chandigarh where she remained under treatment for a while, the family not being agreeable to send her back on the completion of the said treatment. The appellant, on the other hand had admittedly come and persuaded the father-in-law (PW-5) to send the wife back with him. The deceased apparently was pregnant with a child at the time of such hospitalization. The first child took birth after she had returned to the matrimonial family. Interestingly, it is also on record that the appellant would encourage the wife (the deceased) to live with him rather than be at his native village with his family, his condition being that in case she did not want to be with him at the station of his posting she should move to her parental home. A statement to this effect came on record during cross-examination of PW-5 (the father of the deceased).

12. It is admitted case of the prosecution that the deceased was alone at home when she suffered burn injuries. The evidence collected with regard to the circumstances leading to her death has brought out that the appellant was away on duty at that point of time.

No evidence came forth, including by inspection of the scene of incident or the material gathered thereafter, to show even remotely the possibility of it being a case of culpable homicide. Yet, when the brother (PW-1) came from Punjab to Delhi, to participate in the inquiry into the death, he raised suspicion by his statement (Ex.PW-1/1) that she may have been intentionally done to death. The post-mortem examination report, the FSL report or for that matter the entire evidence gathered from the scene of incident, on the other hand, only reinforce the conclusion reached by the trial court that it was a case of suicidal death, the possibility of it being a case of homicidal or accidental death having been totally ruled out.

13. It may be added here that the investigating agency had also not pressed it to be a case of culpable homicide, it relying instead on evidence concerning cruelty for dowry to seek prosecution of the appellant on the prime charge of dowry death punishable under section 304-B IPC, with the aid and assistance of presumption under section 113-B of the Indian Evidence Act, 1872.

14. In above facts and circumstances, the fate of the prosecution case rested primarily on the evidence of Darshan Singh (PW-1), Karamjeet Singh (PW-2) and Mahender Singh (PW-5). But then, as also noted by the trial court in its judgment which is impugned, Karamjeet Singh (PW-2) is younger brother of Mahender Singh (PW-5) and his evidence is in the nature of hearsay inasmuch as he was not directly privy to any information about the alleged harassment of the deceased in the matrimonial home whether in connection with the illicit demands of dowry or otherwise. Thus, the trial court has gone

by appreciation of the evidence of Darshan Singh (PW-1) and Mahender Singh (PW-5).

15. On careful reappraisal of the evidence and the reasoning set out in the impugned judgment, this court finds the approach adopted by the trial court to the matter to be inherently contradictory. On one hand, the trial Judge was not satisfied with the sufficiency of evidence on the charge of cruelty in connection with illicit demands for dowry soon before the death and rejected the charge under section 304-B IPC. On the other hand, it found the charge under section 498-A IPC to have been brought home accepting the proof of cruelty having been meted out to the deceased at the hands of the appellant throughout her stay of about six years in his company as his wife. It is on this basis that the trial court instead of raising presumption under section 113-B of Indian Evidence Act, held the appellant guilty on the alternative charge under section 306 IPC, i.e., of he having abetted the commission of suicide by his wife.

16. While conviction on the charge under section 306 IPC could have been recorded even while the charge under section 304-B IPC was being held not proved, the error in the approach of the trial Judge lies in the fact that it acted upon the evidence concerning cruelty for dowry, also holding the appellant guilty under section 498-A IPC in such regard, this on the basis of evidence of PW-1 and PW-5, whose testimony, in the opinion of this court, in the given facts and circumstances of the case was not worthy of such implicit reliance. The reasons may be set out hereinafter.

17. In his statement (Ex.PW-1/1) to the SDM, PW-1 (brother of the deceased) stated that the life of his sister (the deceased) in the matrimonial home was not good. Though dowry had not been asked for in the marriage, the husband had made a demand for TV which was given. She had become ill in the matrimonial home on account of harassment whereafter she was left under the care of the parental family, the husband not taking care to even ask about her welfare. He stated that on her visits she would complain of being ill-treated. He deposed that the appellant had then brought the deceased to Delhi in 1995 without informing the parental family and that even at the new station she used to be harassed, threatened in loud voice, goods and money being demanded, the appellant having once even extended threats to her that her entire family would be killed. Noticeably, in the said statement, no timelines were indicated. All references to ill-treatment, demands, etc. were kept vague without any specifics. Similar is the statement of Mahender Singh (PW-5) who added that the appellant used to treat her as if she were a servant, ridiculing her or inflicting on her physical injuries. He also spoke about he having given a bed, *diwan* and Rs.500/- at the time of *bidai* (send off of the bride) after marriage. He spoke about he having given a television set at the time of her send off on conclusion of subsequent visit and also having heard the news about she having been subjected to harassment on various occasions.

18. During the course of trial, at the time of examination of the above mentioned witnesses, the defence relied upon a letter (Ex.PW-1/D2) which was a communication sent by the appellant to his father,

the date of the letter being 21.10.1996, apparently addressed from Delhi his then station of posting. At the end of the said letter written by the appellant, a note was added, presumably by the deceased, it admittedly bearing her signatures. The said note (Ex.PW-1/D2) was meant to convey respects of the deceased to her parents-in-law, she enquiring about their welfare, appreciating their conduct towards her, seeking apology for error, if any, committed by her, also adding that children remembered them. This communication hardly comes across as a letter written by a harassed daughter-in-law to the parents of the husband who, it is projected, had been the cause all along for intense harassment.

19. During cross-examination of PW-1 and PW-5, it was demonstrated that both of them had made material improvements in their court testimonies, each going beyond what was narrated initially in the statements to the SDM, or to the investigating police officer. The story narrated by PW-1 about harassment for dowry in one and half months' period when she had stayed at Nainital immediately after the marriage is unbelievable in the face of the admitted statement of her father that she was suffering from a psychiatric condition at that stage. It has not been the prosecution case that psychiatric condition was the off-shoot of harassment. Admittedly, no report was lodged either by the deceased, or by her kith and kin, during the period of over six years' the marriage survived. The evidence of PW-1 and PW-5 clearly shows that the furniture items and television were given by the parental family on their own without there being any demand. Reference is made to some demand by the mother of the appellant.

But then, she was never arraigned as an accused. Her conduct cannot be used to prove the charge against the appellant without further evidence being brought on record to show any sharing of common intention between the two.

20. In above facts and circumstances, this Court finds it unsafe to affirm the conclusions reached by the trial court respecting the cruelty alleged to have been meted out to the deceased by the appellant. The charge under Section 498A IPC, therefore, cannot be held to have been proved.

21. *In Ashok Kr. Gupta vs. State, 2018 SCC Online Del. 11591*, this Court having noted the relevant case law on the subject of “*abetment*” as defined under Section 107 IPC, with particular reference to the offence of “*abetment of suicide*” punishable under Section 306 IPC, including judgments reported as *State of West Bengal vs. Orilal Jaiswal (1994) 1 SCC 73*; *Mahendra Singh & Anr. vs. State of M.P. 1995 Supp (3) SCC 731*; *Ramesh Kumar vs. State of Chhattisgarh (2001) 9 SCC 618* ; *Sanju @ Sanjay Singh Sengar vs. State of M.P. (2002) 5 SCC 371*; *Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi) (2009) 16 SCC 605*; *Gangula Mohan Reddy vs. State of Andhra Pradesh (2010) 1 SCC 750*; *S.S. Cheena vs. Vijay Kumar Mahajan & Anr. (2010) 12 SCC 190* and *Madan Mohan Singh vs. State of Gujarat & Anr. (2010) 8 SCC 628*, summarized the relevant principles as under:-

“62. *It is well settled that in order to prosecute a person on the charge of abetment of suicide of another, there must be evidence presented to show the requisite mens rea and this requires proof of commission of certain*

act(s) with the “intention” to push the deceased into a position that he commits suicide. The act(s) may take the shape of providing intentional aid to the doing of certain acts that lead to the suicide or by instigation. The “instigation” may be by offering provocation, incitement, urging, encouraging, goading or stimulating into action. To put it simply, commission of suicide must be the intended objective to be achieved by the person accused of abetment. While examining the culpability, the court would undoubtedly discount hyper-sensitivity to ordinary petulance, discord or differences as happen in day-to-day human interaction. In case of suicide of a married woman in certain circumstances there may be raised presumption of “abetment” (in terms of Section 113-A of Evidence Act, 1872). But, in other cases involving allegations of abetment of suicide, the court must search for evidence of aiding or instigation etc. Further, the court must bear in mind the evidence as to mental state of the deceased while construing the other material, particularly the suicide note, if any. The live link or nexus is to be generally judged by contiguity, continuity, culpability and complicity.”

22. In the case at hand, the live link or nexus is missing. On the contrary, the trial Judge seems to have erred by short-shrifting the defence plea with reference to psychiatric ailment of the deceased. The admission of PW-5 in this regard cannot be sidelined. The possibility that the deceased may have committed suicide for reasons not connected to the appellant cannot be ruled out.

23. The impugned judgment and order on sentence are, thus, set aside. The appellant is acquitted. The bail bonds are discharged.

24. The appeal is disposed of accordingly.

R.K.GAUBA, J.

AUGUST 13, 2019

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