

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 21.10.2018

+ **CRL.A. 616/2016 & Crl. M. (Bail) No.689/2018**

ROHIT GUPTA

..... Petitioner

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. H. S. Sharma, Advocate.
For the Respondent : Mr. Amit Gupta, APP with
: SI Ashish Sharma, P.S. Burari.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant (hereafter also referred to as the accused) has challenged the judgment dated 03.05.2016 passed by the ASJ-03 (Central), Tis Hazari Courts, Delhi whereby he has been convicted of the offences punishable under Section 498-A and Section 306 of the Indian Penal Code, 1860 (IPC). He also impugns an order dated 11.05.2016, whereby he has been sentenced to serve rigorous imprisonment for a period of two years and to pay a fine of ₹10,000/- for the offence punishable under Section 498A of the IPC and to serve a period of six years of rigorous imprisonment and pay a fine of ₹20,000/- of the offence under Section 306 of the IPC. In the event of

default in payment of fine imposed, the accused is required to serve a further sentence of simple imprisonment of three months for the offence punishable under Section 498-A of the IPC and for a further period of six months for the offence punishable under Section 306 of the IPC. In terms of the order dated 11.05.2016, benefit of Section 428 of the Code of Criminal Procedure, 1973 (CrPC) has been accorded to the appellant and both the sentences are to run concurrently. It is relevant to note that although the accused was also charged with commission of an offence under Section 304 of the IPC, he has been acquitted of the said charge.

2. The accused has assailed the impugned judgment on several grounds, including the ground that he could not be held guilty of commission of an offence under Section 498-A IPC as the Court has found that there was no material to establish that the accused or his family members had demanded any dowry. The accused also claims that the facts, as brought out do not indicate that he had abetted the commission of suicide by his deceased wife.

Factual Background

3. On 25.03.2015, at around 01:20 A.M., information was received via a telephonic call that one Moni Gupta, wife of one Rohit Gupta was declared brought dead on having consumed thinner. The aforesaid information was recorded vide DD No. 17A (Ex.PW 14/A) and assigned to ASI Balraj Singh, who along with Ct. Arun, reached Babu Jagjivan Ram Hospital and MLC No.93848/15 (Ex.PW7/A) was prepared. Vide the seizure memo, four pairs of silver toe rings, one

gold nose pin and one copper ring were seized from the body of deceased. Later, the dead body was sent to the mortuary of the abovementioned hospital where Ct. Arun was deputed to take care of the body. On coming to know that the deceased was married in 2010, he informed the SHO of the concerned police station. The SDM was also informed. Executive Magistrate/SDM, Amrinder Kumar Singh, came to B-57, Gali No.2, Satya Vihar, Burari, Delhi and he had inspected the spot. Crime Team was also called to the scene and photographs were taken of the crime scene. The Executive Magistrate had taken the bottle of thinner in his possession with the help of cotton and also seized one notebook written by deceased from her possession vide memo Ex.PW11/B, C& D On 26.03.2015, Executive Magistrate recorded the statement of the parents of the deceased, Sh. Prakash Gupta (Ex.PW 1/A) and Smt. Dev Wati (Ex.PW2/A) respectively and the same was given to the SHO of the police station.

4. The statement of Sh Prakash Gupta (Ex. PW 1/A) recorded by the Executive Magistrate/SDM led to the registration of FIR No.373/15 under Sections 304-B/498-A of the IPC at P.S. Burari. Inquest proceedings were conducted in the presence of the Executive Magistrate and he seized the exhibits from the doctor who conducted the investigation vide seizure memo Ex.PW15/B and the accused was, thereafter, arrested. On 08.06.2015, the Investigating Officer collected the account opening form of the deceased from Bank of Baroda vide seizure memo Ex.PW16/A, bearing her signature at point 'B'. He sent the disputed note (Ex.PW11/D) to the handwriting division of FSL

and got it examined. After completion of investigation, the chargesheet was filed. Vide order dated 23.07.2015, charges were framed for the offences punishable under Sections 498A/304-B of the IPC.

Evidence

5. Sh Prakash Gupta (PW-1), father of the deceased, deposed that a neighbor of the deceased informed him that his daughter was brutally beaten by the appellant on 25.03.2015 and had consumed some chemical and she was being taken to hospital. He, along with his wife reached Delhi and thereafter, got to know that his daughter had expired.

6. PW-1 has deposed that he got his daughter married to the accused in 2010 and gave the customary *stridhan* (bed, utensils, etc) at the time of marriage and everything appeared to be normal during the first six months of his daughter's marriage. He further deposed that a demand of ₹50,000 was made by the accused (PW-1's son-in law) after marriage at the time of birth of the deceased's elder daughter, though no such demand was made at the time of marriage. PW-1 did not accede to this demand. It was also deposed that the deceased and her husband demanded ₹10,000 from his wife, Dev Wati (PW-2). He also stated that he witnessed the accused beating up his daughter at his own residence and he and his neighbor intervened to resolve the dispute. The main reason behind the dispute, as stated by PW-1, was the consumption of *ganja* by the accused which the wife objected to.

7. Smt. Dev Wati (PW-2), mother of the deceased, stated that after six months of the marriage of her deceased daughter with the accused, the deceased would tell her that the accused would beat her on petty issues (though the real cause is unknown) and after the birth of deceased's elder daughter, the accused would beat her more. The accused was habituated to *ganja* and after consuming the same, he would beat the deceased and the deceased was troubled by the fact that no food was left at home as the accused spent money on *ganja*. PW-2 corroborates the testimony of her husband, PW- 1 while recounting the incident that happened at their house and had further stated that when her husband (PW-1) and their neighbor tried to intervene, the accused fought with them also and left for Delhi, leaving their deceased daughter behind. The deceased Moni Gupta left for her matrimonial home on the insistence of her parents and the accused demanded a sum of ₹50,000 from her parents to purchase a rickshaw. She further states that the accused broke three mobile phones given by PW-1 and her to the deceased, on becoming aware of the fact that the deceased would talk to her parents through those mobile phones. After another year, the second daughter was born to the deceased, however accused continued with his ways. For a period of two months, the deceased remained in her parent's home and the accused came thereafter to her house feeling remorseful. However, PW-2 deposed that there was absolutely no change in the behavior of the accused and further one of the deceased's neighbor informed her that the accused had mercilessly beaten up her daughter on 25.03.2015 at about 12 noon. PW-2 further deposed that the brother in law of the deceased

informed her that the deceased had consumed a chemical and was being taken to the hospital. She, along with her husband reached Delhi thereafter and got to know that her daughter had expired.

8. Sunil Gupta (PW-4/A), brother of deceased, has corroborated the version of his parents in *toto*. He has further shed light on the aspect that his deceased sister did not tell anything but said she was perturbed over small/petty issues that cropped between her and her husband and in so far as in his knowledge and his parents, the main reason for their fights was the accused's consumption of *ganja*. The demand made by accused of ₹50,000 and ₹10,000 respectively from the parents of the deceased have also been stated by PW-4A, though no such demand was made in his presence. He corroborates his father's version that such demand was not acceded to by his father. He only met his sister once or twice owing to the nature of his work after marriage but was in touch with her via telephone.

9. Dr. Jatin Bodwal (PW-10), Specialist, Department of Forensic Medicine was posted as senior resident doctor at BJRM Hospital on 26.03.2015 and he conducted postmortem (Ex.PW10/A) on the dead body of the deceased Moni Gupta and observed one external injury, contused lacerated wound 0.8cm×0.25cm×0.25cm present on the inner side of lower lip and on internal examination, found that the deceased's stomach contained 20ml of fluid. Further he has observed that walls of the deceased's stomach were congested and the organs were appearing leathery and thickened. The external injury was fresh and could be possible by striking any stationary or moving object. The

remaining organs were congested. The final opinion with respect to the cause of death were kept pending till the receipt of the FSL report of viscera analysis (Ex.PW22/D). On perusal of both the reports, PW-10 observed that in his opinion, cause of the death was phenol poisoning and the possibility of homicide could not be ruled out (due to the external injury). In his cross examination, the doctor has explained that though medical science does not have a method to find out whether the liquid was consumed voluntarily or forced upon, however the autopsy surgeon depending upon his years of experience can tell the manner of consumption of substance. Also, he stated that if a person is forced to take a substance, external injuries can happen as is present in the current case but it is not always necessary.

10. PW-9, Karamavir, landlord of PW-1 has certified the factum of marriage and the time of marriage. Marriage of the accused was conducted with the deceased in his house on 18.07.2010, proving that death occurred within seven years of marriage. PW-8 (Shishpal) & PW-13 (Anil Gupta) also attended the marriage ceremony of the accused and deceased.

11. Suresh Gupta (PW-21), maternal uncle of the deceased Moni Gupta facilitated communication as a mediator between the accused and deceased and got their marriage solemnized in the year 2010. He further states that their relationship turned sour after six months to such an extent that on one occasion, when he visited their house, he found their bodies smeared with oil however it is not clear who poured

kerosene oil on whom. On inquiry about the oil, the deceased stated that she would burn herself.

12. The accused in his defence under Section 313 of the CrPC has stated that he did not demand any money from the family of the deceased and in fact helped them financially at the time of marriage. He did not prefer to examine any witness in his defence.

Submissions

13. Mr H.S. Sharma, learned counsel appearing for the appellant has assailed the impugned judgment on several fronts. First, he submits that the conviction is based solely on the testimony of police and interested witnesses and no independent witness testified in Court. He submits that the evidence of such witnesses is not sufficient for establishing commission of any offence on the part of the appellant. Second, he contended that the appellant could not be held guilty of the offences under Section 498-A of the IPC, as there is no material to establish that the appellant had demanded dowry at any time. He further submitted that the trial court had erred in ignoring the statement of the appellant recorded under Section 313 of the CrPC wherein he had unequivocally stated that he had never made any dowry demand but had financially supported the family of the deceased after their marriage. Third, he submitted that no injury had been found on the body of the deceased which would establish that the accused had not beaten the deceased. Lastly, it is stated that the trial court had ignored the testimony of PW-21 (Suresh Gupta), wherein he

had deposed that the deceased was not in a right state of mind. On one of the occasions, he had found that the accused and the deceased were smeared with kerosene oil and the deceased had threatened that she would burn herself.

Discussions and Reasons

14. It is clear from the facts as obtaining in the present case that no demand of dowry made by either accused or his family members. PW-21, who is the maternal uncle of the deceased clearly stated in his evidence that both the parties had divided the expenditure of marriage. This testimony remained unrebutted. This fact clearly militates against any allegation that dowry was demanded by the accused or his family members. None of the witnesses have stated that any dowry had been demanded by the accused or his family members at the time of the marriage. PW-1 (father of the deceased) had, in his testimony, mentioned that a sum of ₹50,000/- was demanded by the accused for purchasing a Rickshaw. PW-2 (mother of the deceased) also had stated that a demand of ₹10,000/- had been made after marriage. However, both the witnesses accepted that the said demand had not been made at the time of the marriage. It also appears from the testimony that the said demand of ₹50,000/- was stated to have been made after accused and deceased were married for almost five years. The accused, on the other hand, had claimed that he had financially assisted the family of the deceased after solemnization of the marriage. Admittedly, no dowry had been paid and a sum of ₹50,000/-

or ₹10,000/-, stated to have been demanded by the accused much after marriage, was also not paid.

15. The principal piece of evidence on the basis of which the petitioner has been convicted is a note stated to have been written by the deceased in a notebook. The same has been treated as a suicide note. The said note also does not mention regarding any demand of dowry. In view of the aforesaid facts, the learned Trial Court concluded that the prosecution had failed to establish that the accused or his family members had made any demand for dowry. In view of the above, the accused also been acquitted of the offence under Section 304-B IPC.

16. The accused, however, has been held guilty of the offence under Section 498-A of IPC.

17. There is sufficient evidence on record to indicate that the accused used to beat the deceased. PW-1 had deposed that his daughter (the deceased) had informed him that the appellant had used to beat her on petty issues. He had further deposed that on an occasion, the appellant had come to his house and had beaten his daughter with a broom. He stated that after the birth of the second child of the deceased and the appellant, the deceased had come to his house (the deceased's maternal home) and remained there for about two months.

18. The mother of the deceased (PW2) had also testified that the appellant used to beat her daughter. She further stated that one of the

neighbors of the deceased daughter had told her that the accused had beaten her brutally on 25.03.2015 at about 12:00 noon. She also testified – consistent with the testimony of PW-1 – that on one occasion, the appellant had beaten her daughter with the broom in her presence.

19. The brother of the deceased (PW4/A) had also deposed that the appellant used to beat the deceased. In his cross-examination, he stated that his deceased sister had visited his house about two or three times within a period of six months after her marriage but she did not inform him about anything. However, she did say that appellant used to beat her over small/petty issues.

20. PW1, PW2 and PW4/A also stated that the disputes between the deceased and the appellant were regarding his consumption of *ganja*.

21. The maternal uncle of the deceased (*Mausa*) had testified that he had arranged for the solemnization of the marriage of the deceased and the appellant and he had played as the mediator (the go between the two families) for arranging the same. He deposed that the marriage between the appellant and the deceased was peaceful for the first three years. He further deposed that on one occasion, he had found that both the deceased and the appellant were smeared with kerosene oil. In his cross-examination, he stated that on his inquiry, both the appellant and the deceased had blamed each-other for pouring the oil. He had also stated that the deceased had told him that both the appellant and she would get burnt on that date. He had also stated that

the deceased had told him that she would burn herself. In his cross-examination, he has stated that the deceased was hot tempered by nature.

22. The specialist from DDU Hospital (PW-10) had testified that there was no external injury apart from an injury mark on the inner side of her lower lip. He specifically stated that there was no fracture in bones, abrasion, bruises on the body of the deceased.

23. The testimony of PW-21 is material. He had testified that the deceased was hot-tempered by nature. He had also testified that on one occasion, he found both the appellant and the deceased doused with kerosene oil. Although it is not clear as to who was responsible for pouring of kerosene, but it is clear that the deceased had threatened to burn herself. The appellant had admitted that he had used to consume *ganja* sometimes. The testimony of PW1, PW2 and PW4/A also indicates that this habit of the appellant had led to quarrels between the deceased and the appellant. Clearly, the deceased was disturbed and the matrimonial relationship between the deceased and the appellant was not good to say the least. However, the principal question to be addressed is whether the appellant had subjected the deceased to cruelty as contemplated under Section 498-A(a) of the IPC, that is, a conduct of such nature as is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. Both, PW1 and PW2, had deposed that on one occasion, the appellant had beaten the deceased with the broomstick at their house.

24. The principal piece of evidence which has been relied upon by the Trial Court to convict the appellant is a note (referred to as a suicide note – Ex.PW 11/B). A plain reading of the said note indicates that the deceased was not happy in her marriage with the appellant. However, it is important to note that she had also expressed that she feared for her and her daughters' life. It is clear from the same that the appellant was not happy on the deceased giving birth to a daughter and had given grief to the deceased after the birth of his first daughter. The deceased had also written that her condition again became bad after the birth of the second girl child and she had to go to her parent's house because she had feared for her life and that of her children. The statement of PW2 recorded on 26.03.2015 (Ex.PW2/A) also indicates that the incidence of physical assault (*maar-pitaai*) increased after the birth of the female child.

25. In view of the above testimony, there is no doubt that the appellant had been ill-treating the deceased. Admittedly, he was given to consuming *ganja* and that had led the quarrels between the appellant and the deceased. It was also evident that the appellant used to beat the deceased.

26. In view of the above, this Court finds no infirmity with the decision of the Trial Court in finding the appellant guilty of cruelty under Section 498A(a) of the IPC.

27. The contention that the appellant could not be convicted under Section 498A(a) of the IPC as the Trial Court had not accepted the

allegation of demand of dowry, is unsustainable. Clause (a) of Section 498A of the IPC refers to offensive conduct of a nature so as to drive a woman to commit suicide. It is not necessary that such offensive conduct be in connection with the demand of dowry. The note written by the deceased clearly indicates that the conduct of the appellant had led her to fear for her life and that of her girl child. She had eventually taken her own life.

28. It is relevant to note that the appellant did not lead any evidence to the contrary. He did not examine any witnesses in defense which could disprove the allegations or raise any doubt on the testimony of PW1, PW2 and PW4/A.

29. The contention that the appellant could not be held guilty under Section 306 of the IPC, is also unmerited. It is necessary to refer to Section 113A of the Evidence Act, 1872 which reads as under:-

“113A. Presumption as to abetment of suicide by a married woman. – When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation. – For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).”

30. There is a statutory presumption that if an accused is found guilty of the offence of cruelty under Section 498A of the IPC and the wife of the appellant has committed suicide within seven years of her marriage, it would be presumed that the appellant was guilty of abetting commission of suicide. This presumption is a rebuttable presumption and it was open for the appellant to lead evidence to rebut the same. However, the appellant has failed to do so. The appellant led no evidence to dispel the said presumption.

31. In view of the above, the appeal is unmerited and is, accordingly, dismissed. The pending application is also disposed of.

OCTOBER 21, 2019
pkv

VIBHU BAKHRU, J