

(2017) 04 DEL CK 0118

In the Delhi High Court

Case No : 69 of 2000

AJAY PAL & ORS

APPELLANT

Vs

STATE

RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 173](#), [Section 313](#) - Report of police officer on completion of Investigation - Power to examine the accused
[Indian Penal Code, 1860](#)

Citation : (2017) 04 DEL CK 0118

Hon'ble Judges : P.S.Teji

Bench : SINGLE BENCH

Advocate : Aditya Vikram, Harsh Prabhakar, Harjeet Singh?Sachdeva, Sundershan Joon

Judgement

1. Aggrieved by the judgment of conviction dated 12.01.2000 convicting the appellants, namely, Ajay Pal, Yashoda and Deepa finding them guilty under Sections 498-A/304B IPC and order on sentence dated 14.01.2000 vide which the appellants were sentenced to undergo seven years rigorous imprisonment for the offence under Section 304B IPC and also to undergo three years rigorous imprisonment with fine of Rs.1,500/- each for the offence under Section 498A IPC, in default of payment of fine they were ordered to further undergo simple imprisonment for two months, the present appeal has been preferred.

2. The factual matrix emerging from the record is that the deceased Vineeta was married with accused Ajay Pal on 16.06.1995 and after marriage she began staying in her matrimonial home. On 25.06.1996 a wireless message was received that a lady had been killed at D-Block, Rama Virhar, 15/3 Main Karala Road by a gunshot injury on the basis of which DD no. 19-A was recorded and investigation handed over to ASI Dharam Singh, who along with Constable Raj Pal reached the said spot. At the spot, dead body was found with a gunshot injury and a double barrel gun was found lying on a white bed sheet with blood

stains on it and spread across the cot. SDM Shri K.K. Dahiya was informed about incident who ordered to get the dead body preserved in the Mortuary. Crime team and fingers print expert were summoned on the spot. The father, uncle and brother of deceased came to the police station and were produced before the SDM who recorded the statement of the father of the deceased. The dead body of the deceased was also identified by the father of the deceased. Thereafter, on the statement of the complainant (father of deceased) FIR was recorded and SDM conducted subsequent inquest proceedings.

3. In his statement, the complainant, namely, Naresh Pal, father of the deceased stated that his daughter Vineeta was married to Ajay Pal on 16.06.1995 and for the purpose of marriage, inlaws of Vineeta (deceased) had demanded a motorcycle and Rs. 20,000/- cash, of which cash of Rs. 20,000/- was given by Naresh Pal but not the motorcycle. After 2-3 months of marriage, the complainant went to meet his daughter, who informed him that her in-laws were harassing her with demand of dowry, specifically asking for a motorcycle. She further informed him that her mother-in-law Yashoda, sisters-in-law Deepa and Pooja, and her husband would often beat her for her inability to bring in sufficient dowry. On 26.06.1996, the complainant was informed that his daughter had died due to a gunshot injury.

4. On the basis of statement of the complainant Naresh Pal, FIR of the instant case was registered. After completion of investigation, challan against accused Ajay Pal, Yashoda and Deepa was filed in the court of Metropolitan Magistrate, Delhi. Since, co-accused Pooja was stated to be a juvenile, it was submitted in the report u/s 173 Cr.P.C that supplementary challan shall be filed against her in the Juvenile Court. All the accused persons/appellants were arrested and after completion of investigation, charge sheet was filed in the Court.

5. Charge under Sections 498A/304B IPC was framed against all the appellants to which they pleaded not guilty. The prosecution had examined as many as eleven witnesses namely PW1 Shri K.K.Dahiya, PW2 ASI Rajinder Singh, PW3 Naresh Pal, PW4 Shri Dalip Kumar, PW5 Ramesh Pal Singh, PW6 Constable Geeta, PW7 Constable Bansi Dhar, PW8 Constable Nek Ram, PW9 ASI Dharam Singh, PW10 HC Suresh Kumar and PW11 Dr.L.T. Ramani.

6. The statements of the accused persons were recorded under Section 313 of the Cr.P.C. Accused persons examined four witnesses in their defence.

7. The appellants were held guilty by the learned Additional Sessions Judge vide judgment of conviction dated 12.01.2000 and passed the order on sentence on 14.01.2000.

8. The grounds challenging the judgment of conviction is that the appellants have been falsely implicated at the instance of the complainant and his family members who were agitated over the untimely suicide of their daughter. The complainant has failed to successfully prove that his daughter was harassed for demand of dowry or there was any cruelty on part of the appellants towards the

deceased with regard to demand of dowry. That in the absence of demand of dowry, the presumption under Section 113A Evidence Act would fail and the prosecution had no grounds of conviction against the accused person. That the Ld. Court has failed to appreciate that in order to make out an offence under Section 304-B IPC, the cruelty or harassment as alleged should be shown to have been immediately before the death which could have resulted in the immediate death/suicide.

9. Per contra, arguments advanced by learned Additional Public Prosecutor for the State are that the appellants have been rightly held guilty under Sections 498A/304B IPC by the trial court. The father as well as other relatives of the deceased has duly supported the case of prosecution that the deceased was subjected to cruelty and harassment on account of demand of dowry by the appellants. There is sufficient evidence against the appellants to hold them guilty for the offences of harassment on account of demand of dowry and of dowry death.

10. Arguments advanced by the counsel for the appellants as well as learned APP for the State were heard.

11. In his testimony, PW3 Naresh Pal, the father of the deceased stated that his daughter Vineeta (deceased) was married with the accused Ajay Pal on 16.06.1995, and at the time of marriage Ajay Pal had demanded a motor cycle but the same could not be given by PW3. The mother-in-law of deceased, accused Yashoda had demanded Rs.20,000/- and the same was given to her at the time of marriage. After 2-3 months of marriage, deceased Vineeta informed her father (PW3) that she was being harassed and beaten by her in-laws and husband on account of bringing insufficient dowry. Further, when this witness came to Delhi for taking his daughter along with him, all the accused persons pressed for fulfilling the demand of motor cycle. On 26.06.1996, this witness was informed by the police that his daughter had died due to a gunshot.

12. During his cross-examination, PW3 has demolished the case of the prosecution. He admitted that a sum of Rs.20,000/- was given in cash at the time of engagement ceremony and it was given by him out of his own will. He further stated that sum of Rs.20,000/- was handed over to the father of Ajay Pal. He further stated that at the time of marriage, Ajay Pal was not doing any service and since he was not doing any work/job, PW3 wanted him to do some work/business. PW3 told him that whatever financial help he could give, he would render that help to accused. He further stated that relation of Vineeta with Deepa and Gudiya was cordial. He admitted that mother-in-law of his daughter Vineeta used to have complete faith and love on her. He further admitted that he himself offered motor cycle to Ajay Pal for his business purpose.

13. PW4 Shri Dalip Kumar, brother of the deceased, stated in his testimony that he was sent by his father to the house of his sister and he stayed there with her for 3-4 months. He further stated that during his stay at his sister's matrimonial

home she was beaten by all the accused persons in his presence 3-4 times on different occasions for her inability to fulfil the demand of a motor cycle. He further stated that the accused person had threatened his sister that they would not allow her to live in peace as long as she did not bring a motor cycle from her parental home. This witness stated in his testimony that upon his return, he informed his father about all the occurrences at his sister's matrimonial house following which his father was trying to arrange for money to purchase a motor cycle but during the meantime he received information that his daughter had died.

14. PW5 Ramesh Pal Singh, uncle of the deceased, stated in his testimony that his niece was tortured by her in-laws on regular occasions and the same was known to him upon informing by the deceased herself. The deceased had also informed this witness that the accused persons used to beat her and abuse her for not fulfilling their demand of bringing a motor cycle. On 26.06.1996, this witness was informed by a police constable that his niece had died due a gunshot injury.

15. PW3, PW4 and PW5 are the father, brother and uncle of the deceased, respectively. Their testimonies dealt with above do not give out any specific incidents whereby the deceased was harassed by the appellants for or on account of demand of dowry. From the evidence of the prosecution witnesses, and in particular PW3, PW4 and PW5, it is observed that they have made general allegations of harassment by the appellants towards the deceased and have not brought in evidence any specific acts of cruelty or harassment by the appellants on the deceased. The allegations levelled against the appellants are not credible in nature as they miserably fall short of the basic details such as the day, date, time or any definite or particular incident of any harassment towards demand of dowry with respect to the deceased and thus fail to attract the scope of Section 498A IPC.

16. Even otherwise, PW3-father of the deceased has not supported the case of the prosecution during his cross-examination. He had demolished the case of prosecution by saying that the sum of Rs.20,000/- was given in cash at the time of engagement ceremony and it was given by him out of his own will and that too to the father of the accused Ajay Pal. He further stated that he himself offered to help accused Ajay Pal for his work. He stated that relations between his deceased daughter Vineeta and accused persons Deepa and Gudiya were cordial. He admitted that mother-in-law of his daughter Vineeta used to have complete faith and love on her. He also admitted that he himself offered motor cycle to Ajay Pal for his business purpose.

17. From the above testimony of father of the deceased, it is apparent that he of his own will gave cash of Rs.20,000/- and it was not demanded by the accused persons. He also admitted that he offered motor cycle to the accused Ajay Pal for his business purpose, thus demolishing the case of prosecution that any demand of Rs.20,000/- was made by the accused persons or that the deceased was

harassed for the demand of motor cycle.

18. The Hon"ble Apex Court in Preeti Gupta v. State of Jharkhand AIR 2010 SC 3363 took note of the fact that some unscrupulous wives put all family members of the husband to harassment by way of giving report alleging offence under Section 498-A IPC. The Court pointed out the role of the courts as follows: "At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. If allegations are scrutinized with pragmatic approach contemplated by the Supreme Court, it is evident that general and omnibus allegations are made against all the petitioners. Such indiscriminate activity on the part of the second respondent, cannot be supported by this Court. Registration of case on report of the second respondent by the police against the petitioners herein is nothing short of abuse of process of criminal law".

19. This court in the matter of Smt.Neera Singh v. The State (Govt. of NCT of Delhi) and Ors. I (2007) DMC 542 has observed that "in the absence of any specific allegations attributing any specific overt acts against any of the appellants pertaining to the alleged demand for dowry and subjection of the complainant to harassment and ill-treatment, continuance of proceedings against them based on the general and omnibus allegations of sweeping nature, is nothing but abuse of process of law"

20. In the case of Vipin Jaiswal v State of A.P AIR 2013 SC 1567 it was observed that: "In our view, onus was on the prosecution to prove beyond reasonable doubt the ingredient of Section 498A, IPC and the essential ingredient of offence under Section 498A is that the accused, as the husband of the deceased, has subjected her to cruelty as defined in the Explanation to Section 498A, IPC. Similarly, for the Court to draw the presumption under Section 113B of the Evidence Act that the appellant had caused dowry death as defined in Section 304B, IPC, the prosecution has to prove besides the demand of dowry, harassment or cruelty caused by the accused to the deceased soon before her death. Since the prosecution has not been able to prove beyond reasonable doubt this ingredient of harassment or cruelty, neither of the offences under Sections 498A and 304B, IPC has been made out by the prosecution."

21. As observed above, the prosecution has not been able to prove its case against the appellants beyond reasonable doubt to the effect that deceased was harassed or meted with cruelty for or in connection with demand of dowry. Thus, the prosecution has failed to prove its case under Section 498A IPC against the appellants and the judgment of conviction deserves to be set aside.

22. Apart from charging the appellants under Section 498A IPC, they were also charged for the offence punishable under Section 304-B IPC.

23. Apart from other ingredients of causing dowry death, one of its essential ingredients is harassment or cruelty meted out to the deceased for or on account

of demand of dowry. As discussed above, the prosecution has failed to prove the allegations of harassment or cruelty meted out to the deceased by the appellants for or in connection with demand of dowry. By failing to prove this essential ingredient of dowry death as provided under Section 304-B IPC, the prosecution has also failed to make out its case against the appellants for causing the dowry death of the deceased. Thus, the appellants are also entitled for acquittal for the offence punishable under Section 304-B IPC.

24. In view of the totality of evidence discussed above and the facts and circumstances mentioned above, the judgment of conviction and order on sentence passed against the appellants under Section 498A/304-B/34 IPC are set aside and the appellants are acquitted for the said offences.

25. The appellants are on bail. Their bail bonds and surety bonds stand discharged.

26. The appeal is accordingly allowed and disposed of.