

(2014) 08 DEL CK 0176
In the Delhi High Court
Case No : Criminal Appeal 532/2010

Giriraj Prashad Meena

APPELLANT

Vs

State NCT of Delhi

RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

Evidence Act, 1872 — Section 113A, 113B
Penal Code, 1860 (IPC) — Section 304B, 306, 498A

Citation : (2014) 08 DEL CK 0176

Hon'ble Judges : Pradeep Nandrajog, J; Mukta Gupta, J

Bench : Division Bench

Advocate : Ashok Drall, Advocate for the Appellant; Aashaa Tiwari, APP, Vijay Pal, Insp. and Ajay Kumar, SI, Advocate for the Respondent

Judgement

Mukta Gupta, J.—Giriraj Prasad Meena aggrieved by the acquittal of Ram Dayal Meena, his son-in-law, for offences under Section 498A/ 304B IPC prefers the present appeal against impugned judgment dated January 06, 2010.

2. Learned counsel for the appellant contends that there is no dispute to the ingredients of offence under Section 304B that the deceased was married to respondent No. 2 and died an unnatural death within 7 years of the marriage. The prosecution through the evidence of the father, mother, brother and sisters-in-law of the deceased has proved beyond reasonable doubt the continuous course of harassment meted out to the deceased in relation to the demand of dowry and her consequential death. Thus, the learned Trial Court committed a serious illegality in acquitting the respondent No. 2 of the offences charged with. Reliance is placed on Hira Lal and Others Vs. State (Govt. of NCT) Delhi, and Gurnaib Singh Vs. State of Punjab, to say that even if the offence under Section 304B IPC is held to be not proved beyond reasonable doubt, the offence under Section 306 IPC stands proved and hence the respondent No. 2 be convicted for the offences under Section 306 and 498A IPC and sentenced accordingly.

3. Since the paper books were ready and the counsels were ready for addressing

arguments we have proceeded to hear the appeal finally.

4. The process of law in FIR No. 558/2005 under Section 498A/ 304B IPC registered at PS Dabri commenced on July 26, 2005 when a PCR call was received at Police post Palam Colony vide DD No. 13 at about 11.48 AM that in the house of one Suresh Mishra a women had hanged herself. On reaching the spot on the first floor from Chokhat of the ventilator, a woman aged 23/24 years was found hanging. On inquiry her name was revealed as Vidya Meena, wife of Ram Dayal respondent No. 2 herein. It was revealed that she was married 1 1/2 years prior to the occurrence to respondent No. 2 who was employed as LDC in CBI and at the time of incident her husband was not there, as he had gone to the office in the morning. No suicide note was recovered. The dead body was sent to post-mortem.

5. PW-12 Dr. Anil Aggarwal who conducted the post-mortem along with other doctors exhibited the report as Ex. PW-12/A and opined that the cause of death was asphyxia due to hanging which was anti-mortem in nature. Dr. Anil Aggarwal also noted ligature mark deeply grooved present all over the neck, obliquely placed above the thyroid cartilage. Thus, it is the case of prosecution that the deceased died a suicidal death and not homicidal.

6. On July 30, 2005 the father of the deceased Giriraj Prasad made statement to the SDM which was recorded in question answer form as Ex. PW-1/A and reproduced as under:

"Q. What is your name?

A. My name is Giri Raj Meena.

Q. How many children you have?

A. I have two sons and one daughter i.e. 1st Arvind Meena 25 (son), 2nd Vidya Meena (daughter) age 23 and 3rd Vijender Meena (20 years)

Q. Where are you living at present.

A. I am living in Bombay at the above address.

Q. When was you daughter married?

A. My daughter was married to Ram Dayal Meena on 4.5.2004 at my native place in Rajasthan.

Q. Whether the marriage was arranged?

A. Yes.

Q. Whether any dowry demanded?

A. I have given dowry of Rs. 5 lakhs including cash while they demanded for Rs. 8 lakhs.

Q. Whether any witness is there that the in-laws of my daughter demanded above dowry?

A. The money was demanded from my son Shri Arvind Meena when he goes to meet the parents of the boy before marriage.

Q. How you managed the money for marriage?

A. I have taken loan from ECC Co-op Bank, Buyailla, Bombay and Canara Bank, Ambermath, Bombay & Rs. 30,000/- scooter loan.

Q. Whether your daughter was living with her husband peacefully or any dispute was there after marriage?

A. She was living peacefully with her husband and occasionally since beating incident. She was living under pressure for doing job.

Q. Whether any telephonic talk was held with your daughter before suicide?

A. Yes on 25.7.05 at about 9 PM no tension at that time and on 26.7.05 at 8.30 AM.

Q. Whether you doubt suicide of your daughter?

A. No and she was of strong character. She never remained in tension. In my opinion she has been murdered by his husband.

Q. Whether any person is involved in this incidence?

A. No."

7. The father of the deceased appeared as PW-1 in the trial and deposed that his daughter Vidya Meena was married to Ram Dayal on May 04, 2004 at their native place in Rajasthan. He gave Rs. 5 lakhs at the time of marriage of his daughter to the accused persons as dowry. Thereafter, the accused persons demanded Rs. 8 lakhs from him as dowry. For that his son Arvind Meena was called urgently at Ganga Pur City where Kailash elder brother of Ram Dayal Meena resides. Batti Lal, Kailash, Sanwaliya Ram and Ram Dayal all demanded Rs. 8 lakhs as dowry. His son expressed his inability to meet this huge demand as they were not financially sound and told the in-laws that they would give dowry articles as per their own capacity. On May 04, 2004 the marriage was performed. After 3-4 days of the marriage his son Arvind visited the accused persons at the matrimonial home of the deceased and all the accused persons raised demand of Rs. 3 lakhs from his son and stated that articles given to them in the marriage were of "D" category. In October, 2004 Ram Dayal Meena gave beating to his daughter at Jodhpur. In December 2004 his daughter came to Bombay to see him and disclosed that all accused persons used to demand dowry and cash from her and also used to give beatings and harass her. In May 2005 his daughter visited their native place at Rajasthan and disclosed to her sisters-in-law Badam and Furanto Meena that she was being given beatings by Ram Dayal on account of dowry demands. On July 25, 2005 he had a

conversation with his daughter on phone at Delhi. She was perplexed at that time and was in sad mood. However, she could not talk to him freely and answered to the queries only in "Yes or No". On July 26, 2005 he made a call to the deceased at about 8.30 AM. Since there was heavy rain in Mumbai on that day, he could not talk to the deceased. However, his wife had a conversation with the deceased on phone and Ram Dayal was giving beatings to the deceased at that time. So his daughter could not talk to them and Ram Dayal Meena snatched the mobile phone from her. At about 12 noon they received a phone call from Delhi Police informing about the death of their daughter.

8. In cross-examination Giriraj Prasad was confronted by his earlier statement made to the SDM and the defence was able to show that there were material improvements on all aspects. As per the statement on the basis of which FIR was registered demand of dowry was before marriage and subsequent to the marriage the deceased was living peacefully with her husband and occasionally beating was given as she was living under pressure for doing job. Besides there being material improvements in the testimony of this witness a perusal of the testimonies of PW-6 Arvind Meena the brother of the deceased, PW-10 Foranti Devi and PW-11 Badami Devi the sisters-in-law of the deceased shows that the deceased had never communicated to her father because he was suffering from heart ailments and thus this witness had no direct conversation with regard to harassment on account of dowry from the deceased.

9. PW-6 Arvind Meena the brother of the deceased in his testimony has also reiterated the version of Giriraj Prasad except that in February 2005 he had gone to Ram Dayal Meena Jodhpur and during his stay with his sister, she disclosed that Ram Dayal was harassing her to bring remaining dowry or else to take a job somewhere else. He also stated that in May 2005 his sister came to the native place and she narrated the incident to sisters-in-law.

10. PW-10 and PW-11 Foranti Devi and Badami Dev Sisters-in-law of the deceased stated that 3 or 4 months prior to the incident Vidya had come to attend a marriage at their village and she stated that her husband Ram Dayal were demanding Rs. 3 lakhs more as dowry but she could not disclose these facts to her father as he was heart patient.

11. From the testimony of these witnesses it is clear that the deceased never spoke to her father and after the marriage when she talked to her brother Arvind Meena she stated that accused was harassing for the remaining dowry or to take up a job. It is thus apparent that in view of the financial constraints Ram Dayal wanted the deceased to take up employment and for an additional earning which could not be termed as harassment much less harassment for demand of dowry.

12. The final blow to the case of the prosecution was given by the testimony of PW-15 Jagwanti and PW-16 Hari Mohan. PW-15 Jagwanti lived in the house adjoining that of Ram Dayal and deceased. She deposed that on July 26, 2005 Ram Dayal Meena left for his office in the morning. At about 11.00 AM she was

cooking food and when Pappu @ Hari Mohan came to his house and asked her what she was doing. He further told her that Vidya had strangled herself and was found hanging with an iron jangla. She went there and made a call to the Police as well as Ram Dayal. In cross-examination this witness admitted that the deceased used to talk to a boy namely Raj Kumar who was residing in Bombay and deceased told her that she intended to get engaged to Raj Kumar prior to engagement with Ram Dayal. Jagwanti further deposed that on that day Vidya was under depression and had told her that Raj Kumar had threatened her that he will make a complaint to Ram Dayal regarding the affair between deceased and Raj Kumar. She further stated that she never noticed a quarrel between the deceased and Ram Dayal.

13. Similarly, Hari Ram who was the first to notice that the deceased had committed suicide by hanging with the help of chunni stated that deceased had discussed with her on several occasions that she was in love with Raj Kumar before her marriage and wanted to marry with him. But the deceased had requested not to disclose this fact to Ram Dayal. On the day of incident at 9.00 AM he found the deceased perplexed and she told him that Raj Kumar had given threats to disclose facts to Ram Dayal. He also admitted that a day prior to the incident the deceased was got admitted by Ram Dayal to B.Ed. course in M.D.S. University and before that she had taken coaching classes at S.N. Dass Coaching Institute situated at Pusa Road and the deceased was learning driving for which she had taken a learner driving license.

14. In view of this testimony of the prosecution witnesses Jagwanti and Hari Mohan the learned Trial Court acquitted Ram Dayal and we find no perversity in the same. Moreover, besides the two prosecution witnesses telling the real cause for the deceased committing suicide, from the testimony of all the witnesses it is clear that Ram Dayal wanted the deceased to do a job for which he got her coaching from S.N. Dass Institute, admission in B.Ed. and also ensured that she learns driving. This conduct of Ram Dayal wanting the deceased to do a job cannot be termed as harassment either for demand of dowry or a mental or physical cruelty driving a woman to commit the suicide.

15. Regarding the second limb of argument of learned counsel for the appellant that even if there is no evidence that soon before death deceased was subjected to cruelty for demand of dowry, since the deceased was meted with a continues cruel treatment and she committed suicide Ram Dayal be convicted for offence under Section 306 IPC by raising a presumption under Section 113A of the Evidence Act. It is well settled that even for raising presumptions under Section 113A or 113B of the Evidence Act the prosecution has to stand on its own legs and prove the case against the accused for offence under Section 306 or 304B IPC as the case may be. Only after the initial burden is discharged by the prosecution the onus shifts on the accused to rebut the presumption. The prosecution has neither proved continuous course of harassment for demand of dowry nor soon before the death, an essential ingredient for offence under

Section 304B IPC nor has it been able to prove abetment of suicide by an act of Ram Dayal which has a proximate and live link resulting in the deceased committing suicide. Consequently, we find no merit in the appeal.

16. The appeal is dismissed.

17. T.C.R. be returned.