

(2015) 09 DEL CK 0166

In the Delhi High Court

Case No : Criminal Appeal 628 and 568 of 2013

Guddu and Others

APPELLANT

Vs

State NCT of Delhi

RESPONDENT

Date of Decision : 08-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 113-B

Penal Code, 1860 (IPC) — Section 304-B, 498-A

Citation : (2015) 09 DEL CK 0166

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Ajay Kumar Chopra, for the Appellant; Kusum Dhalla, APP and Krishan Kumar, Inspector, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Indermeet Kaur, J—These are two appeals. The appellants before this Court are Guddu (the husband of the victim) and Sudha (the sister-in-law of the victim). Appellant Guddu has been convicted under Section 304-B of the IPC as also Section 498-A of the IPC. He has been sentenced to undergo RI for a period of 10 years and to pay a compensation of Rs. 30,000/- and in default of payment of compensation, to undergo SI for 6 months for his conviction under Section 304-B of the IPC. For his conviction under Section 498-A of the IPC, he has been sentenced to undergo RI for a period of 3 years and to pay a fine of Rs. 10,000/- and in default of payment of fine to undergo SI 9 months. Appellant Sudha has been convicted under Section 498-A of the IPC. She has been sentenced to undergo RI for a period of 3 years and to pay a fine of Rs. 10,000/- and in default of payment of fine to undergo SI 9 months. The sentences were to run concurrently for both the appellants.

2. This is a case of an unfortunate victim who had died in her matrimonial home. She was Pratibha Devi (hereinafter referred to as the deceased). The deceased

had been married to the appellant Guddu on 07.12.2009 as per Hindu rites. She had succumbed to her death on 13.02.2010. This was on the first floor of her matrimonial home located at Q-49, Krishan Vihar, Delhi. The time of the incident was 01:30 pm in the afternoon. The victim had died by hanging. Her cause of death was asphyxia.

3. DD No. 27-B (Ex. PW-11/A) was recorded at 01:50 PM at the local police station PS Sultan Puri giving information to the effect that one girl had been murdered in the aforementioned residence and her dead body was lying there. The PCR had separately been informed (Ex. PW-13/A). The information recorded by the PCR was also to the effect that a married lady Pratibha aged about 26 years and married 2-3 months ago was found lying dead in her room. This information has been given by her sister-in-law Roopa. This DD was handed over to the Investigating Officer SI Jaipal (PW-22) who along with constable Narain Das (PW-18) reached the spot. A dead body of a lady was lying on the floor covered with a red chunni. Her name was revealed as Pratibha. There were ligature marks on the neck of the deceased. The SDM was informed.

4. The SDM Dinesh Jha (PW-20) reached the spot and recorded the statement of the parents of the victim i.e. her father and her mother. The mother of the victim Sianta Devi was examined as PW-3. Her father Amirat Ram was examined as PW-4. The mobile crime team which had been summoned to the spot had also taken photographs of the scene of the crime which has been proved through the testimony of SI Chand Singh (PW-17) and a report to the said effect (Ex. PW-17/A) was prepared. The site plan (Ex. PW-19/A) was prepared by draftsman SI Manohar Lal (PW-19) showing that the spot was on the first floor of Q-49, Krishan Vihar, Sultan Puri which was the matrimonial home of the victim and her husband Guddu.

5. The prosecution in support of its case has examined 25 witnesses. In the statement of the accused persons recorded under Section 313 of the Cr.P.C., they have stated that this is a false case and they have been falsely implicated. No evidence was led in defence.

6. On the basis of the aforementioned evidence, both oral and documentary, the accused persons were convicted and sentenced as aforementioned.

7. On behalf of the appellants, arguments have been addressed in detail. Qua appellant Sudha it is stated that she was the sister-in-law of the victim and admittedly living in her own separate residence at H-225, Bawana, Delhi; she had been married 20 years ago and apart from one incident where as per PW-3, a phone call had allegedly been made by her to the mother of the victim, there is no allegation against her. Further, submission being that there is no record of this so-called phone call. In fact the whole case of the prosecution is based on this phone call. Attention has been drawn to the testimony of PW-4 whereas in his cross-examination, he has admitted that there was no phone installed in their house; how and when this phone call was received by PW-3 has not been

explained by the prosecution; in the absence of this phone call, dowry demand as sought to be established by the prosecution is not made out; no case of cruelty is also made out against the appellant Sudha. Her conviction is wholly ill-founded. The conviction of appellant Guddu is also ill-founded as to establish an offence under Section 304-B of the IPC, it was incumbent upon the prosecution to have proved that there was a demand in connection with dowry which is wholly missing in this case. Learned counsel for the appellant to support his submissions has placed reliance upon II (2013) DMC 756 (Del.) Krishna and Anr. v. State of Delhi, II Indrajit Sureshprasad Bind and Others Vs. State of Gujarat, (2013) 4 AD 605 : (2013) 116 CLT 577 : (2013) 2 DMC 1 : (2013) 2 JCC 1356 : (2013) 10 JT 459 : (2013) 3 RCR(Criminal) 225 : (2013) 4 SCALE 569 : (2013) 14 SCC 678 and S. Anil Kumar @ Anil Kumar Ganna Vs. State of Karnataka, (2013) 7 AD 641 : (2013) 3 Crimes 8 : (2013) 2 DMC 574 : (2013) 9 SCALE 125 : (2013) 7 SCC 219 .

8. Arguments have been refuted. It is pointed out that on no count, does the impugned judgment call for any interference. The burden under Section 304-B of the IPC has been shifted upon the accused and it is for the accused to have proved how the death of the victim occurred within less than 6 months of the marriage at the matrimonial home. Presumption under Section 113-B of the Indian Evidence Act has been rightly invoked by the trial Judge. The impugned judgment calls for no interference.

9. Arguments have been heard. Record has been perused.

10. Testimony of the mother and father of the victim is most relevant to answer these submissions and counter submissions. The mother of the victim Sianta Devi was examined as PW-3. She deposed that her daughter (handicapped) was married to accused Guddu (also handicapped) on 07.12.2009 accordingly to Hindu rites. They had given dowry articles to her daughter at the time of marriage which included Rs. 50,000/-, one tola gold, 5-12 tota silver jewellery, some utensils and some articles for Tilak. They had arranged this money by selling their agricultural land. One day before the fateful day i.e. at about 08:00 PM, a telephone call was received by her; this telephone call was made by Sudha and she demanded one palang, one colour T.V. and one sewing machine; PW-3 asked to let her talk to her daughter; Sudha told her that unless PW-3 gives these articles, she would not be allowed to speak to her daughter. The next day, they learnt that their daughter had died. Further PW-3 deposed that since these aforementioned articles i.e. palang, colour T.V and sewing machine had not been given, the appellants killed her daughter. In her cross-examination, she admitted that this demand was made for the first time on telephone by Sudha and Guddu. Her daughter was maltreated. After the marriage of her daughter, she had met her only once. She had spoken to her daughter on telephone 3-4 times. On the first phone call which was 15 days after the marriage, she stated that she was alright. She did not say anything against the accused. Her daughter again called PW-3 after about 20 days and told her that Guddu used to beat her but she did

not tell her the reason for such beatings. On the occasion of Poornima, PW-3 again called her daughter and she again told her that accused persons used to beat her but she did not tell her the reason for such beatings. She admitted that prior to the telephone call made one day before the death of her daughter, no demand was made from her. Her another sister Sulekha Devi (PW-6) was also living in Delhi and she told her about the maltreatment being meted out to her daughter by the appellants. She denied the suggestion that the accused have been falsely implicated.

11. The father of the victim Amirat Ram was examined as PW-4. He has deposed that he got his daughter married to Guddu accordingly to Hindu rites and they had given dowry in the marriage which included Rs. 50,000/- in cash. Accused persons used to harass his daughter for bringing less dowry. They were demanding one TV, Sewing machine and one palang. One day before the day of the death of his daughter, a telephone call was received by his wife. Sudha and Guddu talked to his wife and later on his wife told him that both of them have demanded dowry. They thereafter learnt that their daughter had died. They reached Delhi where their statements were recorded.

12. In his cross-examination, he admitted that after the solemnization of marriage, he did not meet his daughter. He had also not spoken to her. His wife used to speak to his daughter. They does not have any telephone. His wife used to call on the telephone of their neighbor whose number he does not remember but it was a landline. His wife had spoken to his daughter 3-4 times before her death. In his presence, his wife never talked to his daughter; nothing was demanded by the accused after solemnization of the marriage till her death. He admitted that his daughter was handicapped. He denied the suggestion that he is deposing falsely.

13. Another family member of the victim who was examined by the prosecution was Sulekha Devi. She was the "mausi" of the victim and had been examined as PW-6. She had deposed that the victim was living in Delhi where PW-6 was also living. One month before her death, PW-6 had spoken to the victim wherein the victim had told her that Guddu used to beat her but she did not disclose the reason for the beating; she stated that there were minor disputes. She denied the suggestion that Guddu and Sudha had given beatings to the victim on account of dowry. In a further part of her cross-examination, she reiterated that the dispute between the victim and her husband largely related to day to day marital tiffs.

14. Learned counsel for the appellant has highlighted these versions of PW-3, PW-4 & PW-6 to support a submission that on no count a case of dowry death is made out as admittedly even (as per PW-3 who was the only person who had a direct conversation with the victim after her marriage) apart from the single telephone call which has been received one day before the death of her daughter, there was no demand of dowry by the accused persons from the victim's family.

15. This submission of the learned counsel for the appellants is correct. The testimony of PW-3, PW-4 & PW-6 clearly shows that apart from the telephone call which was received one day prior to the death of the victim, no demand of dowry was made prior thereto. Submission of the learned APP for the State on this count is also noted. There is no doubt that the death of victim had occurred within less than two months of the marriage; the marriage having solemnized on 07.12.2009 and the victim having succumbed to her death on 13.02.2010; there was also little opportunity for the victim to have had interaction/meeting with her family. The testimony of PW-3 being that she had met her daughter only once after her marriage but had spoken to her 3-4 times on telephone. In the first conversation, she had not stated anything against the accused but again after 15 days, she informed her that Guddu used to beat her but she did not disclose the reasons for such beatings. She admitted that it was not her case that Guddu used to beat her daughter for any dowry demand. Her version discloses that one day before the death of the victim a telephone call was made by Sudha to the victim's family demanding a palang, T.V. and sewing machine. In this context, the testimony of PW-4 becomes relevant. PW-4 has admitted that there was no telephone installed in their house. His wife used to speak on the landline number of the neighbor which he does not remember. As per PW-3, the telephone call was received by her at 08:00 pm. Her categorical statement that this call was received by her at her house. PW-3 did not say that this call was received by her at her neighbour's house. A specific query was put to both PW-3 & PW-4 on this count but they were unable to disclose either in whose house this phone was installed or what was the phone number. In fact in one part of his cross-examination, PW-25 (Inspector Samarjeet Singh) has stated that this call was made from an STD booth.

16. The other public witnesses who were the neighbors of appellant Guddu were Ramesh Kumar and Satbir (PW-1 & PW-2). Both of them have not supported the version of the prosecution and their evidence have not been relied upon by the prosecution to advance their case.

17. The post-mortem of the victim was conducted by Dr. Manoj (PW-9). Her cause of death was opined to be asphyxia pursuant to the ligature mark on her neck. Apart from the ligature mark, there was an abrasion of 5 X 2 cm on the front chest which is below the right nipple and one constellation above knee joint; these injuries as rightly pointed out by the learned counsel for the appellants, being minor in nature, does not help the prosecution to advance an argument that the victim was beaten prior to her death.

18. In the course of investigation, site plan Ex. PW-19/A was prepared which suggest that the matrimonial home of the victim was on the first floor. The matter was reported through Roopa, her sister-in-law. She had made a call to the PCR which is evident from Ex. PW-13/A. Although her statement was recorded by the investigating agency but the Investigating Officer did not chose to make her as a witness.

19. The case of the appellants is that appellant Sudha was living in her matrimonial home at Bawana and their mother was also living her since last 10 days. In one part of his cross-examination, PW-25 (the SHO) has admitted that after inquiry it was learnt that Shanti Devi (mother-in-law of the victim) and Sudha (sister-in-law, the appellant before this Court) were not present at the spot of incident. In fact no witness, including the neighbors of the family of the appellant, had come into the witness box to support the stand that either Sudha or mother-in-law of the victim were present at the spot. The Investigating Officer (PW-22) also admits in his cross-examination that after inquiry, he learnt that Sudha and her mother were not present in the matrimonial home of the victim at that time.

20. Testimony of PW-23 and PW-8 is also relevant. PW-23 was Dr. Gajender Chauhan. He was running a clinic by the name Chauhan Clinic at Sultan Puri where PW-8 (Umesh Kumar) was working as compounder. They have both deposed that 15-20 persons with a lady had come to their clinic asking for medical help. There was lot of helter-skelter going on. PW-23 had not examined the victim. Learned counsel for the appellants points out that this testimony of PW-23 and PW-8 also establishes that after the victim had died, 15-20 persons from the neighbourhood including the appellant Guddu had come to the Chauhan Clinic and since he was busy, they were asked to wait and they thought it fit to bring back the lady to the matrimonial home; this throws light on the conduct of the appellant Guddu which is to the effect that he was savior and not the offender.

21. The testimony of the Investigating Officer is relevant. In his cross-examination, PW-22 has admitted that on the spot he inquired about the cause of death of the victim from the appellant Guddu but since he was weeping bitterly, he could not record the statement of the accused. He admitted that Shanti Devi and Sudha were not present at that time. The accused was finally arrested on 18.02.2011.

22. The sum total of evidence collected by the prosecution, persuades this Court that the necessary ingredients for a conviction under Section 304-B of the IPC have not been established.

23. The Apex Court in *Sunil Bajaj Vs. State of M.P.*, AIR 2001 SC 3020 : (2001) CriLJ 4700 : (2001) 4 Crimes 97 : (2001) 2 DMC 744 : (2001) 8 JT 465 : (2001) 7 SCALE 129 : (2001) 9 SCC 417 : (2001) AIRSCW 4116 : (2001) 7 Supreme 456 , after noticing the provisions of section 304-B IPC had opined that in order to establish an offence under Section 304-B IPC, following ingredients must be established before any death can be termed as dowry death:

"(1) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances.

(2) Such death must have occurred within 7 years of her marriage.

(3) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband.

(4) Such cruelty or harassment must be for or in connection with demand of dowry."

24. It is the last ingredient which has not been fulfilled in this case. There is no doubt that the victim had died an unnatural death within less than seven years of her marriage but the question is whether there was any harassment or cruelty meted out to the victim in connection with any dowry demand which was to such an extent compelling her to take her own life. The only incident as depicted in the version of PW-3 is a single telephone call which she had received from Sudha demanding a palang, T.V. and a sewing machine; in the statement of PW-3, it has first been stated by her that Sudha had made the phone call but thereafter it was improved and stated that both accused Guddu and Sudha demanded money from her. She categorically stated that this call was received by her at 08:00 pm in her house. It has come on record that PW-3 did not have any landline phone. It has been elicited in the cross-examination of PW-4 that PW-3 & PW-4 did not own a landline. Where the phone call was received and at which number could not be given either by PW-3 or PW-4. This becomes relevant as this was the whole foundation of the case of the prosecution on the basis of which the conviction of appellant Guddu under Section 304-B of the IPC was founded. The cross-examination of PW-25 is also relevant. He had stated that this phone call was received by PW-3 from a STD booth. These different versions cast a great doubt whether any such phone call was in fact received by the family of the victim or not. In the absence of this phone call, the necessary ingredients of Section 304-B of the IPC which entails a dowry demand would not be made out as the version of PW-3 & PW-4 is otherwise cogent and clear which is to the effect that apart from this one single occasion, there was no dowry demand made by the appellants upon the family of the victim.

25. The last ingredient being missing, the appellant Guddu is acquitted of the charge under Section 304-B of the IPC. However, his conviction under Section 498-A of the IPC does not call for any interference as it has come on record that in all the telephonic conversations that PW-3 had with her daughter, her daughter told PW-3 that Guddu used to beat her but the reason for such beatings had not been disclosed by the victim but nevertheless this does not take away the fact that appellant Guddu used to beat the victim. This version of PW-3 is fully corroborated by the testimony of PW-6 who has also deposed that she was told by the victim that Guddu used to beat her. PW-4 has also corroborated this version. The conviction of the appellant under Section 498-A is confirmed.

26. Appellant Guddu had already undergone incarceration of more than three years and his sentence under Section 498-A of the IPC was RI three years. He having completed the sentence, he be released forthwith, if not required in any other case.

27. Appellant Sudha had been convicted under Section 498-A of the IPC. The only allegation against her is that a telephone call was made by her wherein dowry demand had been made. The evidence on record establishes that there was no phone call of such a nature. Her conviction under Section 498-A of the IPC is set aside. Her appeal is allowed.

28. Appeals disposed of.