
(2014) 07 DEL CK 0349
In the Delhi High Court
Case No : Crl. A. 608/2014

Mahender Singh Chhabra

APPELLANT

Vs

Jaspal Singh Narula

RESPONDENT

Date of Decision : 21-07-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34, 498A

Citation : (2014) 6 AD 359 : (2014) 3 JCC 2025

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

Bench : Division Bench

Advocate : R.S. Juneja, Advocate for the Appellant; Aashaa Tiwari, APP and Inspector Arun Chauhani, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The deceased, late Smt. Manjit Kaur was married to accused No. 1- Jaspal Singh Narula in the year 1982. Accused No. 2-Amrik Singh and accused No. 3-Varryam Kaur are the parents of Jaspal Singh Narula. Manjit Kaur was found dead in her matrimonial house on October 07, 1994. She had a solitary injury in the right eye. The post mortem report Ex. PW-3/A of the deceased conducted by Dr. B.N. Acharya PW-3 records that the cranial bone was intact. As a rod entered the right eye, it fractured the orbital plate of right frontal bone and pierced to the right frontal lobe of the left parietal area. This caused subdural haemorrhage and subarachnoid haemorrhage clot over the brain surface. The cause of death was coma resulting from the brain injury.

2. The daughter of the deceased Harpreet D.W.-1, then aged about 12 years, was present in the house. Her cousin Jitender D.W.-2, then aged around 21 years, was also present in the house.

3. They told the Investigating Officer that no accused was present in the house when Manjit Kaur was injured. As per them Manjit Kaur was in the stairs and was shifting malba from the stairs. Jitender claims to be in the company of Manjit.

They were cleaning the malba lying on the newly constructed staircase when she heard a cry. She saw Manjit with an injury in her eye. As per Harpreet, the shout of Jitender that her mother was injured made her rush towards her mother. As per both of them neighbours gathered and took Manjit to the hospital.

4. The parents of Manjit alleged that Manjit was harassed for dowry and that she had been murdered by the accused.

5. FIR for offence punishable under Sections 498A/302 IPC was registered. After concluding investigation, the police filed a cancellation report which was not accepted by the learned Metropolitan Magistrate. On August 04, 2013, the learned Metropolitan Magistrate directed that a further investigation shall be conducted by an officer not below the rank of ACP. The result was the same.

6. Five times cancellation reports were filed. The parents of the deceased approached this Court praying for an investigation by the Central Bureau of Investigation, which request was declined. Vide order dated December 15, 2004 the learned Additional Chief Metropolitan Magistrate while condoning the delay in taking cognizance of the offence punishable u/s 498A IPC summoned the three accused. The father of the deceased was not satisfied. He preferred a petition before this Court which was disposed of directing the learned Additional Chief Metropolitan Magistrate to look into all the facts.

7. Virtually compelled, learned Metropolitan Magistrate vide order dated April 10, 2008 took cognizance of the offence punishable u/s 302 IPC and summoned all the accused. Charge was framed against the accused under Sections 498A/302 IPC read with Section 34 IPC. The accused pleaded not guilty.

8. At the trial the prosecution examined nine witnesses. None was an eye witness.

9. Material for the purposes of the appeal would be to note the fact that Dr. B.N. Acharya PW-3 who conducted post mortem of the deceased proved his report Ex. PW-3/A, being the post mortem report, and Ex. PW-3/B, the opinion given by him subsequently concerning the injury and a saria picked up from the place where the deceased was injured and Dr. Rajender Singh PW-6, Director, CFSL, CBI, proved his report Ex. PW-6/A which he authored after he examined the scene of occurrence and reconstructed the scene of the crime. As per the report the iron rod (saria) was sufficiently long, thin and strong enough to pierce the right eye if the same hit the eye on being pulled from inside the debris lying on the top of the staircase.

10. Needless to state, Harpreet Kaur D.W.-1 and her cousin Jitender Kaur- D.W.-2 deposed facts which they told the Investigating Officer during investigation and as noted by us herein above.

11. In view of the defence evidence, the reports of the doctor who conducted the post mortem of the deceased and the CFSL expert who reconstructed the sequence of events as told by the daughter of the deceased and the cousin, vide

impugned judgment dated March 31, 2014 learned trial Judge has acquitted the accused of the charge of murder.

12. With respect to the alleged demand of dowry, the learned trial Judge has noted Ex. PW-1/F and Ex. PW-1/G proved by PW-1, the father of the deceased, recorded in the hand of the witness, that he had paid Rs. 20,000/-, Rs. 10,000/- and Rs. 70,000/- to accused No. 1.

13. The learned trial Judge has opined that these were self serving documents and since they did not bear the signatures of accused No. 1; from said document it could not be inferred that accused No. 1 took money from his father-in-law.

14. With reference to a legal notice Ex. PW-1/C sent by the lawyer Mr. B.D. Sharma to the father of the deceased, in which, acting on the instructions of Manjit Kaur alleging that there was joint ancestral property in the hand of the father of Manjit Kaur a share was demanded, the learned trial Judge has opined that whereas it may be true that the notice was sent through the lawyer at the instance of accused No. 1, but therefrom it could not be inferred that there was a demand for dowry.

15. There being only one witness Mahender Singh PW-1 to prove the demand for dowry, the learned trial Judge has acquitted the accused of the charge(s) framed against them.

16. The learned trial Judge in para 33 of the decision impugned has recorded as under:

"33. There are certain missing links which cast a shadow of doubt on the impartiality and fairness of investigation conducted by the police. The police failed to contact the person who gave information "Daljeet ki aurat ko maar dia hai body lying there" which was received vide DD No. 26A. The PCR record was not collected by the police. The photographs of the dead body and the place of occurrence were not taken. Blood/sample were not lifted from the spot. The blood was not lifted from the saria. The location of the deceased in the staircase from where she slipped is not shown. The place where body has fallen is also not shown in the site plan. The sketch of the saria was not prepared. The clothes of the deceased were not seized. The car in which the deceased was taken to the hospital was not seized and nor any samples were taken from the car to find out the traces of blood. The statement of Dr. Chawla was not recorded to prove that the deceased was brought to Surya Nursing Home. The investigation with regard to the aforesaid is deficient, due to which important evidence has not come before the court."

17. The father of the deceased has filed the appeal challenging the accused being acquitted.

18. Learned counsel for the appellant vehemently argued that as noted by the learned trial Judge an informant had told the PCR that a lady had been murdered and her body was lying at the spot. The place was the matrimonial house. The

information was recorded vide DD No. 26A. The Investigating Officer did not make an attempt to contact the person who gave the information.

19. If the Investigating Officer did not make attempts to contact the person who gave the information over the telephone that a lady had been murdered it may invite a censure on the conduct of the Investigating Officer but certainly not an adverse inference against the accused.

20. As recorded in para 33 of the impugned decision, another lapse noted by the learned trial Judge was the photographs of the dead body and the place of occurrence not being taken. Learned counsel for the appellant would urge that this would also show a taint in the investigation. Counsel urged that who else would be the beneficiary of the taint other than the accused. Therefrom, learned counsel would seek to urge that the investigating officer should be held to be in hand and glove with the accused. Therefrom learned counsel seeks to draw the deduction that the accused were guilty since they influenced the investigation to hide their guilt.

21. Now, photographs of the place of occurrence had been taken and we find them in the trial Court record. They have not been exhibited, but are on page Nos. 301-326 of the trial Court record.

22. As regards no photographs of the dead body of the deceased being taken at the spot, suffice it to note that the Investigating Officer could not have taken the said photographs for the reason as deposed to by D.W.-1 and D.W.-2, neighbours who rushed to their house on hearing their cries took the deceased to the hospital.

23. It is true that neither the blood sample was lifted from the spot nor blood was lifted from the saria, but that would be irrelevant for the fact that even the accused admit that the deceased suffered an injury in the matrimonial home. It was a saria which caused the injury and blood fell down. That the clothes of the deceased were not seized; the car in which the deceased was taken to the hospital was not seized are not lapse on the part of investigation for the reason it is the common case of all the parties that the neighbours took the deceased to the hospital. Nobody disputes that a saria picked up from the place of occurrence which was stained in blood was the object which had caused the injury. The only question was, in what manner the object caused the injury.

24. The manner in which the object caused the injury has been deposed by D.W.-2. There was malba on the first floor which was being segregated by the deceased and D.W.-2. Suddenly D.W.-2 heard the cry of her aunt and saw her fall down the stairs. She saw a blood stained saria. PW-6 opined that if somebody was pulling the saria under the debris it was possible that as the saria was tugged out with a jerk it could have caused the injury which was found on the person of the deceased.

25. There is no evidence that the accused were present in the house when the

unfortunate incident took place. On the contrary, we have the testimonies of D.W.-1 and D.W.-2 that neither the husband nor the in-laws of the deceased were present in the house. This rules out the homicidal death of the deceased at the hands of the accused.

26. The cause of death of the deceased, with reference to the evidence on record has been correctly opined to be accidental by the learned trial Judge.

27. As regards the offence punishable u/s 498A IPC, in view of the testimony of PW-1 and the documentary evidence proved by him, the learned trial Court has correctly opined that no evidence of dowry harassment has emerged. We concur with the reasoning of the learned trial judge as noted by us in paras 13 to 15 above.

28. The pain by a father of loss of a daughter can be felt by us. But our sympathy for the grieving father cannot be the cause to overturn the verdict of not guilty returned by the learned trial Judge in a well considered judgment.

29. The appeal filed by the father of the deceased is dismissed. Trial Court record be returned.