
(2014) 02 DEL CK 0069
In the Delhi High Court
Case No : Criminal Appeal 1096 of 2010

Maya

APPELLANT

Vs

State (NCT) of Delhi

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 113B

Penal Code, 1860 (IPC) — Section 302 304 304B 304-B 307

Citation : (2014) 141 DRJ 135

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Ajay Verma and Mr. Shiv Kr. Dwivedi, for the Appellant; Feroz Khan Ghazi, APP, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—On 19.12.2007, the deceased-Shilpi, daughter-in-law of the appellant, who was having severe burn injuries on her body, was brought to RML Hospital by her husband Madan Kumar. On receipt of information in this regard, ASI Khursid of Police Station Pahar Ganj reached the RML Hospital and on learning that Shilpi was married only married one and a half year, requested the Executive Magistrate to reach the hospital. He then went to the house number 9964, Multani Danda, Pahar Ganj, Delhi, where Shilpi had sustained burn injuries and after inspection of the spot and getting it photographed, came back to the hospital. The Special Executive Magistrate, who reached the hospital on receipt of intimation from ASI Khurshid, recorded the statement of Shilpi. In her statement, she alleged that after 5-6 months of her marriage, her mother-in-law Maya Devi started beating her so as to coerce her to bring more dowry and sometimes, on being instigated by her mother-in-law, her husband Madan Kumar also used to beat her. She further alleged that for last 2-3 days, her mother-in-law had been quarreling for dowry and on that day at about 12.30 pm, she started quarreling with her and then took out kerosene oil from a bottle, poured

on her and set her on fire. She, crying in pain, came down from stairs and ran towards the street where some people poured water on her and she was brought by her husband in auto rickshaw. The Investigating Officer also seized partly burnt bucket as well as its lid, a bottle of plastic containing some kerosene oil and one partly burnt match stick from the spot. The dupatta of Shilpi was found stuck on the lid of the bucket in burnt condition.

2. Shilpi expired on 25.12.2007, whereupon the case was converted from u/s 307/498A/34 of IPC to 302/498A/34 thereof. After completing investigation, the mother-in-law and the husband of Shilpi were charge-sheeted.

3. Since the appellant as well as her son pleaded not guilty to the charges framed against them, the prosecution examined as many as 26 witnesses in support of its case. Two witnesses were examined in defence.

4. Vide the impugned judgment dated 22.10.2009 and order on sentence dated 26.10.2009, the appellant Maya Devi was convicted u/s 304B of IPC and was sentenced to undergo imprisonment for ten years, whereas her son Madan Kumar, who was convicted only u/s 498A of IPC was sentenced to undergo imprisonment for three years and fine of Rs. 5,000/-. Being aggrieved from her conviction awarded to her, the appellant Maya Devi is before this Court by way of this appeal.

5. PW9-Vipin Talwar is the Executive Magistrate who recorded the statement of the deceased Shilpi on 19.12.2007. In his deposition in the Court, he stated that on the aforesaid date he reached the hospital at about 6.45 pm and recorded her statement Ex. PW11/A, which the deceased thumb marked at point X and X1. According to him, before recording statement of Shilpi, it was opined by the doctor attending upon her, that she was fit for making statement. He also stated in his cross examination that no one else was present when he recorded the statement of Shilpi.

6. PW1 Rajinder, is father of the deceased Shilpi. In his statement, he stated that Shilpi was married about one and a half years before her death, and her in-laws used to harass her for dowry. He further stated that whenever Shilpi visited him, she used to complain about her in-laws and tell him that her husband used to beat her at the instigation of his mother. He also stated that when he met his daughter in the hospital on the fateful day, she told him that her mother-in-law had poured kerosene on her and set her on fire.

7. PW2 Ritu is the sister of the deceased Shilpi. According to her, for about 4-5 months after marriage Shilpi was kept nicely, but thereafter she was harassed by her mother-in-law as well as by her husband for want of dowry and she used to complaint against them whenever she visited the house of her parents. She further stated that about one and a half months before the incident of burning, Shilpi had an injury in her thumb and had told her that she had been beaten up by her mother-in-law, whereas her husband had given a danda blow on her thumb. She claimed that Shilpi had told them that she was beaten on account of

demand of dowry. She also claimed that a few days before the incident Shilpi had spoken to her on telephone and informed that the accused were demanding more dowry and were beating her.

8. PW3 Beena is the mother of the deceased Shilpi. She stated that 4-5 days after marriage, both the accused i.e. mother-in-law and husband of Shilpi started harassing her for want of dowry and giving beatings to her. She claimed that Shilpi used to tell them about her injuries and harassment, whenever she visited their house. She further stated that about 2 months before this incident, Shilpi had injuries on her thumb and had told her that the said injury was received on account of her husband giving a blow to her and beating her at the instigation of his mother. She further stated that about 10-15 days before the incident, she went to the house of Shilpi, on receiving telephonic information about the beatings given to her by her mother-in-law and she advised the appellant Maya Devi to keep Shilpi as her daughter, but she insisted on treating her the way she was treating her. She also claimed that when she spoke to Shilpi in the hospital, she told her that her mother-in-law had set her on fire after pouring kerosene oil on her body from the backside.

9. PW5 Lata is another sister of the deceased Shilpi. She stated that on 11.12.2007, Shilpi informed her on telephone about the accused harassing her on account of dowry and thereupon she accompanied her mother to their house and tried to reason out with the accused persons. At that time, Maya Devi insisted that she would continue to harass her if her demands were not fulfilled.

10. PW7 Smt. Kaushal is the aunt of the deceased Shilpi, who had arranged her marriage to Madan Kumar. She stated that Shilpi used to complain her that Maya Devi wanted a gas stove. She also claimed that in the hospital, Shilpi had told her that her mother-in-law had poured kerosene oil on her and had set her on fire from the backside. PW13-

11. Dr. Amit Saxena stated that on 19.12.2007, he had examined Shilpi in the hospital and found her fit for statement. He also stated that while declaring her fit for making statement, he found her to be oriented and conscious to record time, place and person.

PW14-Dr. Abhishek Yadav conducted postmortem on the dead body of the deceased Shilpi and found superficial to deep ante mortem flame burns involving chest and abdomen, half of back at flanks, both upper limb, face and head along with neck, front of lower limb till the level of knee and back of thighs. In his opinion, the cause of death of Shilpi was septicemia shock produced by the complication of ante mortem, superficial to deep and inflected flame burns involving about 70% of total body surface area.

12. In her statement u/s 313 Cr.P.C., the appellant Maya Devi denied the allegations against her and claimed to be innocent.

13. DW1 Jaspal Singh stated that on 19.12.2007, he came to the street on

hearing voice of persons from public and saw Shilpi coming down stairs in burnt condition. The persons from the public tried to extinguish the fire by pouring water on her and thereafter her husband took her to hospital. He also claimed that mother-in-law of Shilpi had come after she had been removed to hospital. DW2 Prabhu Dayal stated that on the aforesaid date, he came out on hearing noise and saw Shilpi coming down stairs in burning condition. They then poured water on her body and informed the police control room. PCR van reached there and took her to hospital. The persons from the locality including the appellant Maya Devi went with them to the police station.

14. The statement of deceased Shilpi, recorded by the Executive Magistrate is admissible in evidence as dying declaration, the same having been recorded soon before her death. The settled legal proposition with respect to a dying declaration is that though it is not necessary to obtain a certificate or endorsement from a doctor about fitness of the maker to make a statement nor is it necessary that a doctor should be present at the time the dying declaration is recorded, the Court needs to ensure that the deceased was not tutored or prompted before she made the statement and that the statement made by her was not a product of his/her imagination. The Court further needs to satisfy itself, from the evidence produced before it and other facts and circumstances of the case that the deceased, at the time she made the statement was in a fit state of mind and was making a voluntary statement. There is no rule of law which requires any corroboration of the dying declaration and it is legally permissible and open to the Court to base the conviction solely upon such a dying declaration. However, in the present case, the doctor attending the deceased had certified in writing that she was fit to make a statement.

15. Though the dying declaration recorded by a Magistrate by itself is not a proof of its truthfulness, it is indeed entitled to a great weight and normally needs to be accepted, where it is found acceptable after passing the test of scrutiny by the Court. The ultimate test in every case would be as to whether the dying declaration can be said to be trustful and voluntarily made. In the case before this Court, the dying declaration recorded by the Executive Magistrate, which has stood the test of screening by the Court, could certainly be relied upon for convicting the appellant.

16. In *Manoj and others versus State of Haryana* [Criminal Appeal No. 1853 of 2012], decided on 9.7.2013, the Hon''ble Supreme Court, dealing with the appeal against conviction u/s 498A and 304B of IPC, based upon the dying declaration, inter alia, observed as under:

13.The law is well settled that if the declaration is made voluntarily and truthfully by a person who is physically in a condition to make such statement, then there is no impediment in relying on such a declaration. Similar view was taken by the Hon''ble Supreme Court in *Kanaksingh Raisingh Rav Vs. State of Gujarat*, wherein the Court held:

5.The question then is, can a conviction be based primarily on the dying declaration of the deceased in this case? In this regard we do not think it is necessary for us to discuss the cases cited by the learned counsel which are noted hereinabove because, in our opinion, the law is well settled i.e. if the declaration is made voluntarily and truthfully by a person who is physically in a condition to make such statement, then there is no impediment in relying on such a declaration.....

17. A perusal of the MLC of Shilpi Ex. PW13/A coupled with the deposition PW13 Dr. Amit Saxena would show that she was fit for making statement at about 6.20 pm on 19.12.2007. The endorsement made in this regard on the MLC has been duly proved by Dr. Amit Saxena in his deposition in the Court. Shilpi remained alive for about six days after her statement was recorded, she having died only on 25.12.2007. Therefore, I see no reason to disbelieve the deposition of Dr. Amit Saxena with respect to fitness of Shilpi to make statement Ex. PW11/A, to the Executive Magistrate. The aforesaid statement, inter alia, shows that the appellant Maya Devi used to instigate her son to beat the deceased so as to coerce her to bring dowry, besides herself giving beatings to her in that connection. The dying declaration made by the deceased Shilpi with respect to her physical torture finds ample corroboration from the deposition of her father, mother, sisters and aunt, to all of whom she complained about the treatment meted out to her, and her husband beating her on being instigated by the appellant. The deceased Shilpi used to complain to them in this regard and in fact she complained to her mother and sisters, just a few days before she sustained burn injuries and was taken to hospital. The testimony of the parents, sisters and aunt of the deceased Shilpi cannot be rejected merely because they happen to be related to her. A married woman, who is subjected to cruelty by her husband and/or mother-in-law, is likely to share her miseries with her family members and relatives and not with the outsiders. Therefore, while in distress, on account of being subjected to cruelty and torture, it was only natural for her to ventilate her grievances before her family members. No taint is attached to the testimony of a witness only on account of his/her relationship with the deceased and relationship is not a factor which would affect the credibility of a witness, if during his/her deposition in the court is found to be other cogent and reliable, though the court is expected to be cautious and careful while analyzing the evidence of such witnesses. Ordinarily, a close relative of the deceased would be the last person to screen the real culprits and implicate an innocent person. It is true that sometimes when the emotions run high, a tendency sometimes creeps in to drag an innocent person, but before discarding the testimony of a witness, it would be necessary to show existence of facts which would impel the witnesses to make a false implication.

18. It is not in dispute that the deceased Shilpi got married about one and a half years before her marriage. A perusal of her MLC coupled with her postmortem report leaves no doubt that she died an unnatural death, having sustained severe burn injuries. Since there is ample evidence to prove that the deceased Shilpi

was subjected to cruelty in connection with demand of dowry, the court needs to draw a statutory presumption u/s 113B of the Evidence Act that a person who had subjected her to cruelty had caused the dowry death. It has come in the evidence that the appellant had subjected the deceased Shilpi to cruelty as late as 2/3 days before her death. Therefore, it cannot be disputed that she was subjected to cruelty by the appellant, soon before she died. Since the evidence produced by the prosecution including the dying declaration of the deceased Shilpi proves, beyond reasonable doubt, that the appellant Maya Devi, mother-in-law of the deceased had subjected her to cruelty soon before her death. The statutory presumption would be that she had caused her death. Neither any evidence has been led nor has the appellant shown existence of circumstances which would rebut the aforesaid statutory presumption.

19. As held by the Supreme Court in Smt Shanti and Another Vs. State of Haryana, before a person can be convicted for the offence u/s 304-B of the Indian Penal Code, the prosecution must prove the following:

- (i) The death of a woman must have been caused by burn or bodily injury or otherwise than under normal circumstances;
- (ii) Such death must have occurred within seven years of her marriage;
- (iii) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;
- (iv) Such cruelty or harassment must be for or in connection with demand for dowry;
- (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

All the aforesaid ingredients stand duly proved in this case since the deceased Shilpi died within seven years of her marriage, her marriage occurred on account of burn injuries, she was subjected to cruelty by her mother-in-law, soon before her death and such cruelty was in connection with the demand of dowry.

20. When confronted with the overwhelming evidence produced by the prosecution established charge u/s 304B of IPC, the learned counsel for the appellant, on instructions from the appellant, who is present in the Court, submits that in the face of the said evidence, he cannot find fault with the conviction of the appellant u/s 304B of IPC and would only seek reduction of the sentence on personal grounds of the appellant, including that she is a woman, aged more than 55 years and is suffering from several ailments. For the reasons stated hereinabove, conviction of the appellant u/s 304 of IPC is maintained. However, considering all the facts and circumstances, the substantive sentence awarded to the appellant u/s 304B of IPC is reduced from ten years to seven years.

The appeal stands disposed of accordingly.

One copy of this order be sent to the concerned Jail Superintendent for information and necessary action.

The LCR be sent back forthwith, along with a copy of this order.