
(2012) 04 DEL CK 0048

In the Delhi High Court

Case No : Criminal Appeal 838 of 2011 and Criminal M.A. 7820 of 2011

Phool Kesri

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 26-04-2012

Acts Referred:

Evidence Act, 1872 — Section 113B

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

Citation : (2012) 04 DEL CK 0048

Hon'ble Judges : S.P. Garg, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Joginder Sukhija, for the Appellant; Richa Kapoor, App. SI Kailash Chand, PS Mehrauli, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice S. Ravindra Bhat

1. In this Appeal, the complainant questions a judgment and order of the learned Additional Sessions Judge dated 24.2.2011 in SC No. 355/2009. The prosecution case in brief is that the accused Uttam Kumar was in love with Sujata i.e. the deceased. They both got married against the wishes of their parents. The parents relented subsequently to perform a proper marriage ceremony. According to the prosecution allegations, the appellant used to harass the deceased on account of dowry demands and even physically beat her. On 4.4.2009, within four and a half month of their marriage, the deceased was found hanging in the matrimonial house. The information in this regard was received by the concerned Police Station i.e. PS Mehrauli. The concerned police officers reached the spot and found the body of the deceased hanging in the drawing room by the ceiling fan. The deceased had used a chunni. It is alleged that the police called the Crime Team, which searched for clues and incriminating materials, which were duly collected. The body was taken down and sent to the mortuary. The deceased's parents were informed. The concerned SDM recorded their statements in which

they alleged that they were compelled to marry off their daughter to the accused. According to their statements recorded in the course of the investigation, the deceased used to complain about tension between her and the accused with regard to the gifts, which according to the accused were inadequate from her side. The parents also alleged that on the day of the incident, they had received a call from the deceased that she would be returning to her parental home. However, in the evening, they received a call from the police mentioning that she had committed suicide by hanging. The deceased's parents further alleged that the accused had been married earlier and had a son but he had not disclosed it to the deceased at the time of their marriage.

2. On the basis of the allegations made by the deceased's relatives, the police registered First Information Report (FIR) alleging commission of offences punishable under Sections 498A/304B IPC. The investigations were concluded after which a charge-sheet was filed. The accused was arrested during the course of investigation, and upon being charged denied guilt and claimed trial. The prosecution relied upon the testimonies of 13 witnesses; besides, it also relied upon several documents, including the postmortem report, the forensic report and other materials, which were collected during the investigation. On an overall consideration of all these, the Trial Court concluded that the prosecution had not been able to establish the offences the accused was charged with. He was accordingly acquitted.

3. Learned counsel for the Appellant (who is the mother of the deceased and who had deposed in the Trial Court as PW-5) argued that the findings with regard to omission to prove dowry demand in the impugned judgment are contrary to the records and, therefore, it was argued that there was sufficient material to show that soon before her death the victim Sujata was subjected to harassment and to the cruelty in connection with the dowry demands. In this connection, the learned counsel for the appellant argued that the statements of PW-6 as well as PW-5, the Appellant have to be considered along with the deposition of PW-3. A conjoint reading of all these clearly bring out the aspect of dowry demands. PW-3, in the cross examination specified that the demands for dowry and gifts had been made sometime in January, 2009. PW-5, the appellant, on the other hand, clearly stated that Sujata used to ask for gifts as she was also tortured in connection to these demands. Besides, PW-5 clearly deposed that her daughter (the deceased) and the accused used to ask for money in order to settle abroad. She had even mentioned that the sum claimed or demanded by the accused was about Rs. 4-5 Lakhs. Furthermore, argued counsel, PW-6 in the deposition stated that she had looked after all arrangements pertaining to the reception during the marriage and more importantly that she had sent dowry articles such as sofa etc. to victim's house. This significantly, according to the appellant's counsel was not subjected to the cross examination. Cumulatively seen therefore the prosecution had demonstrated and proved that the demand of dowry in the form of articles, money and the facilitation to the accused and the deceased to settle abroad were being made.

4. It was argued that the Trial Court's findings that Sujata probably could not face the harsh reality due to the existence of accused's son from a prior marriage, had compelled her to commit suicide is a mere surmise. It was further argued that the impugned judgment concluded erroneously that the deceased knew before her marriage to the accused that he was a widower and had a child from the first marriage. These were extraneous to the record. On the other hand, PW-2 had produced relevant record of the marriage of the deceased with the accused. A look at this document clearly showed that the accused i.e., the husband had solemnly affirmed that he was unmarried. This prima facie in the absence of any evidence to the contrary proved that Sujata was never made aware about the accused having been married earlier. Therefore the conclusion of the trial court that Sujata could not face the harsh existence of the previous marriage and the reality that there was an offspring out of it had no basis on the record.

5. It was urged that the material on the record in the form of the accused's admission that he was married earlier and that he had son in fact prima facie or even more than that proved that he had tortured and treated the deceased with mental cruelty. Withholding of such material facts and particulars, in fact lead the deceased to take a desperate step. These coupled with the demands of dowry, which were incessant and the harassment meted out both physically and mentally to the deceased compelled her to commit suicide. Therefore, argued, the learned counsel for the appellant, the trial court's conclusion that there was no direct or indirect evidence regarding ill-treatment or harassment or injury caused by the accused to the deceased was contrary to the record; the findings therefore were completely unsustainable.

6. It was next argued that the trial court completely effaced the objective of the legislature in mandating, through Section 113B of the Evidence Act, the presumption of guilt on account of unnatural death within 7 years of marriage, where circumstances or the essential factual foundation had been laid in that regard. The learned counsel elaborated by submitting that both the aspects i.e. demands for dowry and cruelty soon after the marriage stood established. It was emphasized that the marriage in this case took place barely 5 months prior to the date of the death of the deceased. Although the deceased and the accused had been seeing each other and decided to get marry without the consent of their parents, nevertheless the latter thereafter reconciled to the alliance and even celebrated the marriage. Soon thereafter, there were demands for dowry on multiple accounts i.e. in the form of gifts as well as cash with an ultimate view of enabling the accused to settle abroad. These incessant demands for dowry had to be also seen in the background of the fact that the accused had married earlier -a fact which he carefully concealed from the deceased. Furthermore the deceased used to be habitually treated with cruelty both physical and mental. On the basis of these materials, the trial court ought to have drawn the presumption, which it was bound to take into account, enacted by virtue of Section 113B of the Evidence Act. In not doing so and in proceeding to hold that

there was no evidence to establish dowry harassment or cruelty, the impugned judgment committed a grave error of law.

7. It can be seen from the above discussion that the deceased Sujata had married the accused Uttam Kumar on 22.11.2008. The marriage was initially opposed by the deceased's parents, i.e. PW-3 and PW-5; it was solemnized in a temple. Later, the parents were reconciled and - according to PW-5 - hosted a reception. The couple lived together, and on 04.04.2009, Sujata's body was found hanging. Her parents alleged that the unnatural death took place due to dowry harassment and Uttam Kumar was criminally responsible for it.

8. PW-3, Sujata's father, deposed about the events preceding her marriage, i.e. the parental opposition, and later acceptance. He also said that Sujata used to study in Ramjas College, and that the accused was a teacher in a computer training institute which she used to attend. He alleged that the accused used to beat Sujata - after marriage, in connection with dowry demands, and used to quarrel with her. He alleged that he paid money to the couple to buy a sofa, and that Sujata and Uttam used to demand Rs. 4-5 lakhs to enable them to settle abroad. He was confronted with his previous statement on these aspects (demand for money having paid for a sofa set, the accused quarreling and beating the deceased), where these allegations had not been made.

9. The appellant, PW-5 also corroborated PW-3 about the events that led to her daughter's marriage. She confirmed to having given the statement to the SDM (Ex.PW-5/A). For that she had alleged tension between the deceased and Uttam Kumar, the latter's demand for dowry, cruelty meted out to Sujata by the accused etc. She also mentioned that the deceased had called her up in the morning of 04.04.2009 saying that she wanted to go to the parental home, on account of tension.

10. It has emerged, from the evidence of both PWs-3 and 5 that the accused had been married earlier. According to both, he had a son by the previous marriage, which he had concealed from the deceased at the time of their marriage.

11. PW-6, the neighbour of PWs-3 and 5, mentioned about the reception held after the marriage of the deceased with the accused. He stated that the accused reached the reception party late. Similarly, the accused reached the witnesses' house late for a lunch hosted by him, to celebrate their marriage. PW-9, the accused's brother, deposed to awareness, on the part of PW-3 about the accused's previous marriage, since his father had disclosed it.

12. The Crime Team report (Ex.PW-4/A) establishes that the body and the scene of occurrence were inspected at around 4-4:30 PM of 4.4.2009. The FIR in this case was registered on 5.4.2009, at 06:10 PM (Ex.PW-10/A). The statement of PW-5 (Ex.PW-1/A) was recorded at that time. The evidence of the SDM (PW-7) establishes that he was informed about the death soon after the occurrence, in the evening of 4.4.2009 itself. In these circumstances, the prosecution owed a duty to explain why when the deceased's parents and relatives were available,

the FIR was lodged after one day's delay. No explanation is forthcoming.

13. Even if the Court were to overlook the delayed reporting of the FIR, the overall conspectus of evidences reveals that the couple got married since they fell in love, which each other. Though the deceased's parents initially opposed the idea, they later relented. As far as the deceased's knowledge regarding the accused's previous marriage, the testimony of PW-9 is contrary to that of her parents; he deposed that they were made aware of this fact.

14. As regards the allegations of dowry demands and attendant cruelty by the husband, this Court notices that PW-3 was silent about these, in his statement recorded by the SDM. He sought to make improvements and was confronted in the cross examination. On the other hand, those allegations were made in the deposition of PW-5. There is, therefore, conflicting evidence about both dowry demand and cruelty. Though PW-5 mentioned that the daughter had called her before the death, in the morning, the prosecution made no effort to trace the call and prove it in the Court.

15. This Court observes that even the allegations of cruelty on account of dowry harassment are general and vague. Though Sections 304B, IPC and 113-B, Evidence Act mandate a lower standard of proof -due to enactment of a presumption, yet the prosecution is under an obligation to prove the foundational facts pertaining to behaviour which amounts to cruelty, and dowry harassment. The mere circumstance that one fact, i.e. unnatural death within 7 years of marriage is established does not absolve the prosecution's burden of proving the other two ingredients. This Court is conscious that in appellate jurisdiction, though all evidence has to be re-appreciated, the findings of the Trial Court can be set aside if discloses substantial or compelling reasons as to appreciation of evidence or law. The High Court cannot substitute its view merely because the Trial Court adopted one of the plausible views. On an application of these principles, this Court is of the opinion that the Trial Court's reasoning is sound and justified. It does not call for interference. This appeal is, consequently, dismissed. The application also stand dismissed.