

(2011) 08 DEL CK 0422
In the Delhi High Court
Case No : Criminal A 280 of 2011

Preet Singh

APPELLANT

Vs

State Of NCT Of Delhi and Others

RESPONDENT

Date of Decision : 29-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 372
Penal Code, 1860 (IPC) — Section 304B, 34, 498A

Citation : (2011) 7 AD 582

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

Bench : Division Bench

Advocate : Arhdeep Singh, for the Appellant; M.N. Dudeja, APP, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The informant/complainant has preferred an appeal u/s 372, Code of Criminal Procedure against the judgment and order of the Learned Sessions Judge, dated 30.09.2010 in SC No. 102/2008 acquitting the respondents of the charge framed against them, for having committed offences punishable under Sections 498-A/304-B/34 IPC.

2. The prosecution case is that on 07.04.2008 DD No. 17A was recorded at about 02:35 PM on receipt of information that Manju (the deceased) was admitted in Ayushman Hospital, Dwarka with a history of electrocution; Manju was in a serious condition. On receipt of DD No. 17A, SI Rajnish (PW-16) reached the hospital but the patient was declared unfit to record a statement. The DD (complaint) was kept pending as no eye-witnesses were found at the deceased's house or the hospital. On 09.04.2008 Manju died and DD No. 50B was recorded to this effect and Executive Magistrate Najafgarh (PW-1) was informed. On 10.04.2008 the Executive Magistrate recorded the statement of the father of the deceased Preet Singh, PW- 2 (who is also the Appellant). He stated that his daughter was married to Devender (the Respondent/accused) on 13.02.2005 and

she had no problems for 2-3 months after her marriage but thereupon her husband, parents-in-law, jeth and jethani started demanding a car and since he could not fulfill their demands his daughter (the deceased) was given beatings on several occasions. Preet Singh further stated that he had brought his daughter back to her maternal home on many occasions due to the beatings she used to receive. On one occasion, she stayed in her maternal home for six months but after Preet Singh promised her father-in-law that he would arrange for the money the father-in-law took the deceased to her matrimonial home; this incident took place two months prior to the death of Manju. Preet Singh alleged that his daughter was killed due to non-payment of money. On the basis of Preet Singh's statement the SDM got the case registered and a FIR bearing No. 37/2008 was registered with PS J.P. Kalan under Sections 498-A/304-B/34 IPC. Charge was framed against the accused persons (the husband, parents-in-law, jeth and jethani) under Sections 498-A/304-B/34 IPC or in the alternative under Sections 304-B/34 IPC. The accused pleaded not guilty and claimed trial.

3. The prosecution examined 22 witnesses and relied upon several exhibits. The Trial Court, after considering the same and after recording the statement of the Respondents u/s 313 Cr.PC concluded that the prosecution was unable to bring home the guilt of the Respondents beyond reasonable doubt and, therefore, acquitted them of all charges.

4. PW-2 Preet Singh, the deceased's father deposed that his daughter was married to accused Devender on 13.02.2005 and that initially there were no problems in their marriage; however after 2-3 months when his daughter came to her maternal home she informed him (Preet Singh) and his wife that the accused persons are demanding a car and are also giving her beatings for this reason. He further deposed that after 5-10 days, Devender came to take his daughter back to her matrimonial home. He testified that after the deceased returned to her matrimonial home, he (Preet Singh) got a call from her after about 10 days stating that the accused persons had started giving her even more beatings than before as she had informed her father-in-law about his (Preet Singh's) Incapacity to buy a car. He stated that the behavior of the accused persons remained the same for about a years and the deceased used to complaint about the beatings whenever she would come to her maternal home; they even used to taunt her by calling her a banjh. He further deposed that about 11/2 year after his daughter's marriage, he sold off two buffaloes and gave `50,000 to accused Ram Kumar; it was sometime in the year 2007. The accused persons treated his daughter well for about 3-4 months and then again started beating her and demanded a car; thereupon he brought his daughter to her maternal home where she stayed for 3 months and then went back to her matrimonial home. He further deposed that a month after his daughter returned to her matrimonial home, the accused persons again started beating and taunting her due to which she came back to her maternal home and stayed there for 6 months. He testified that since his daughter had been staying at his house for 6 months he went to the accused Ram Kumar and requested him to take his

daughter back to her matrimonial home, he promised him that he would arrange for the money; the accused Ram Kumar took Manju back to her matrimonial home. He further testified that after two months he received a phone call from accused Ram Kumar informing him that his daughter was electrocuted and was admitted in Gobania Hospital and was unconscious; he along with his younger brother Pradeep and nephew Lakhpat, went to the hospital where they were informed that his daughter was taken to Ayushman Hospital. He stated that none of the accused persons were present in the hospital when he reached there and his daughter was lying unconscious and was having scratch marks on her arms and had a head injury. He further deposed that when he was in the room with his daughter, the accused persons came there with the police and he (Preet Singh) was sent out of the room; he called on 100 number and told the police that they should help him meet his daughter and that the 5 accused persons had killed his daughter. He stated that the PCR officials came to the hospital but left after meeting the accused persons; they did not talk to him (Preet Singh). He testified that Pradeep, Lakhpat and other family members were aware of the the accused persons behavior. He stated that his daughter died on 09.04.2008 and the SDM recorded his and his wife's statement Ex.PW-1D. PW-2 was declared partly hostile as he did not depose regarding accused Kamlesh's arrest and regarding the phone call made by him to his daughter one day prior to the incident.

5. PW-2 in his cross-examination admitted that in his statement recorded by the police he had stated that on 06.04.2008 he had telephoned his daughter and she had told him, "Papa mujhey bacha lo main nahi mil paungi aap koi" she further told him that accused Jasbir and accused Savita had dragged her by pulling her hair and accused Jasbir had kicked her private parts and said she was a banjh. He further admitted that he told his daughter that nobody would kill her and that he would come and talk to her father-in-law in a day or two; after that somebody snatched the phone from her and thereafter he was not able to talk to her. He admitted that he could not go to meet his daughter on 06.04.2008 as it was late in the night. He further admitted to having narrated these facts to his brother and wife. He admitted that his statement was recorded by the SDM on 10.04.2008 and the police had recorded a supplementary statement on 28.08.2008 in which he informed about the telephonic conversation he had with his daughter on 06.04.2008.

6. PW-3, the mother of the deceased corroborated the testimony of PW-2. However, she did not depose regarding the telephone call made by PW-2 to the deceased on 06.04.2008 wherein the deceased had told PW-2 "Papa muzhey bacha lo main nahi mil paungi aap koi". The prosecution did not declare her to be a hostile witness. PW-8 Lakhpat, cousin of the deceased also deposed on the same lines of PW-2 and PW-3. He corroborated their testimony regarding the demand of car, beatings the deceased used to receive and the selling of PW-2's buffaloes for the payment of Rs. 50,000 to the accused persons. However he too like PW-3 did not depose regarding the phone call made by PW-2 to the deceased on 06.04.2008. PW-11, Pradeep Singh, (PW-2's brother) also corroborated the

testimony of PW-2, PW-3 and PW-8. He too however did not depose regarding the 06.04.2008 phone call, made by PW-2 to the deceased.

7. Accused Devender in his statement u/s 313 Cr.P.C stated that the deceased was preparing food and went to switch on the electric motor for water, with wet hands and as her hands were wet she received an electric shock due to which she fell on a cemented platform and suffered injuries. He further stated that she was taken to the hospital immediately and that she had never been tortured by the accused persons. The accused Ram Kumar, Kamlesh and Savita also deposed to that effect. Accused Jasbir stated that he was not present at home at the time of the incident as he had gone to Gurgaon to see his ailing brother-in-law.

8. The Learned counsel for the Appellant as well as the APP, submitted that the Trial Court had erred in acquitting the accused persons as there was adequate material to implicate them for the commission of the offences they were charged with. It was urged that all the ingredients u/s 498-A and Section 304-B were clearly made out. A cumulative reading of the depositions of PW-2, 3, 8 and 11 prove beyond a shadow of doubt that the deceased was being harassed by the accused due to non-fulfillment of the demand for car. It was clear from these depositions that the deceased was given beatings on various occasions and was taunted and called a banjh by the accused persons. It was further urged that she died an unnatural death within 7 years of her marriage in the accused's premises.

9. It was further submitted that the defence story that the deceased received the head injury due to electrocution cannot be believed. There was no mention of the injuries being by electrocution till the deceased was taken to Ayushman Hospital. In fact the history of electrocution is mentioned for the very first time in the MLC of the deceased Ex.PW-22/A. Before being taken to Ayushman Hospital, the deceased was taken to three other hospitals i.e. Surya Kiran Hospital, Gobaina Nirog Dham and Ortho Plus Hospital; at all three hospitals no history of electrocution was given (Ex.PW-12/A, Ex.PW-12/C and Ex.PW-17/A) in fact at Surya Kiran Hospital a history of fever was recorded. Furthermore, the autopsy surgeon in his subsequent opinion Ex.PW-4/B dated 16.05.2008 regarding post mortem report no. 52/2008 dated 10.04.2008 Ex.PW-14/A opined that "as per postmortem findings, there was no electric burn marks or any signs of electrocution on the body of the deceased was present." It was further submitted that the SDM while recording the death report Ex.PW-1/C remarked that, "Nail scratch marks were apparently visible on her left arm above elbow". It was urged that these scratch marks are indicative of a scuffle which led to the deceased's death.

10. It was submitted by the Learned counsel for the Appellant and the APP that the payment of `50,000/- to the accused persons is proved by reason of PW-2 and PW-8's deposition. PW-2 has deposed that due to the demand of car made by the accused persons, he (PW-2) had to sell off his two buffaloes; PW-2 gave Rs. 50,000/- to the accused persons. PW-8 deposed that PW-2 sold off his two

buffaloes and paid Rs. 50,000/- to the accused persons towards the demand of dowry. PW-9 Bhagwan Singh deposed that he had purchased two buffaloes from PW-2 for Rs. 46,000/-. It was urged that if the testimonies of PW-2, 8 and 9 are read together it would be proved that there was a dowry demand and that a payment of Rs. 50,000/- was made to the accused persons in pursuance of the aforesaid demand.

11. The Learned counsel for the Respondents urged that the Trial Court's judgment was well reasoned and does not call for interference. It was submitted that PW-4 Dr. Parvinder Singh, PW-21 Dr. Piyush Jain and PW-22 Dr. Shailendra Jain have deposed that the injuries found on the deceased could have been caused if as a result of the electric shock a person is thrown at some distance and if he or she fell on some hard surface. It was pointed out that the post mortem report Ex.PW-14/A states that there was wet flour present on the right hand. Therefore, submitted the counsel, that the deceased died due to a fall she had as a result of an electric shock she suffered while turning the electric motor for water on, with wet hands.

12. It was further submitted that the fact that there were no electric burn marks on her body were of no consequence. Modi's Medical Jurisprudence, Chapter IX on Injuries from Burns, Scalds, Lightning and Electricity Burns and Scalds (relevant portion) states that,

Tingling, painful shock, mild or severe muscular contraction, which may throw the person to the ground on his face or his back, causing severe injury to the head and even dislocations of joints. Burns are usually found at the points of entrance and exit of electrical current, as at these points the skin offers resistance and the electric energy is changed into varying degree of intense heat. Coagulation of muscle proteins may be caused by heat and sudden liberation of steam, this may also produce little cavities in the epidermis. Sparkling is associated with charring of tissues. Skin may be split or show small graying sharply demarcated round or oval areas and loss of epidermis at some place or blisters. Pallor of the face suffused eyes, dilated pupils, cold, clammy skin, Stertorous breathing, and insensibility. Signs of cerebral irritation may sometimes be present. In severe cases insensibility occurs immediately, followed by a few gasps and death. With a large area of contact like damp skin due to perspiration death may occur without any burning of the skin.

Therefore, submitted the counsel, that it is not necessary to have burn marks in case of electrocution.

13. The Trial Court felt that the material contradictions in the testimonies of the important prosecution witness, i.e. the deceased's father, PW-2; her mother, PW-3, Lakhpatt Singh, PW-8 and PW-11, as between the previous versions given u/s 161 Cr. PC by them during the investigation, and the depositions in court, as well as inter se contradictions were too serious, and constituted a fatal infirmity to the entire prosecution story. The version of the prosecution that demands

were made persistently by the accused, after marriage of Manju with the accused husband, their acts of cruelty and harassment, which included beatings given to her, and the demand for a car, sale of buffalos by PW-2 to pay `50,000/- to the accused, were all disbelieved. The material contradictions which the Trial Court took note of were:

(1) PW-2's deposition that two months prior to the deceased's death, she had complained of physical harassment was an improvement on the statement recorded by the SDM immediately after the death of Manju.

(2) PW-2 did not mention about a telephone call by him to his daughter, from his mobile phone, in the previous statement recorded by him, during investigation. PW-3 did not corroborate this version, despite PW-2's deposition that he had informed his wife and brother about this.

(3) PW-2 deposed in the trial that Manju's husband and inlaws had beaten and kicked her. This again, was omitted in the statement before the SDM. PW-3 did not depose about this, though her husband deposed having told her about it.

(4) PW-2 was confronted during cross examination, in all material particulars between what he said during the investigation regarding information about acts of cruelty, how he became aware" of it, etc.

(5) The witnesses were silent about the demand for car in the versions recorded during investigations.

(6) PW-2 deposed having approached Manju's parents in law and asked them to spare her, with folded hands. He had omitted mentioning this during investigation.

(7) PW-2 contradicted PW-16. The latter had mentioned that PW-2 told him about Manju's harassment. Yet, PW-2 was silent about this, in his deposition.

14. The above contradictions and discrepancies, in statement of witnesses for the prosecution, in our opinion, are substantial and serious. While there is no denying the fact that when an unnatural death occurs within seven years of marriage, of a woman, that fact alone is sufficient in law for the presumption to "kick in". The essential allegations - which are to be distinct, and proved beyond doubt, about dowry demands and harassment in connection with such demands "soon before" the death (a relative term, as far as the time period is concerned) are to be established independently. Here, the contradictions - both internal and external - of various witnesses undermine the prosecution story about the dowry demands, and the kind of cruelty meted out to the deceased Manju, in connection with it. We also notice that the prosecution was unable to establish that a telephonic conversation took place between PW-2 and Manju just a day before her death - the particulars in this regard were easily determinable. The prosecution's inability to prove this allegation also invited an adverse comment from the Trial Court, in the impugned judgment.

15. So far as the Appellants' submission with regard to the nature of death goes, all the doctors who deposed during the trial, i.e.

PW-4 Dr. Parvinder Singh, PW-21 Dr. Piyush Jain and PW-22 Dr. Shailendra Jain stated that the injuries found on the deceased could have been caused if as a result of the electric shock a person is thrown at some distance and if he or she fell on some hard surface. The post mortem report Ex.PW-14/A states that there was wet flour present on the right hand of the deceased. The mere circumstance that there were no burn marks, cannot ipso facto lead to the court discarding the medical testimony in this regard. Concededly, there was no eyewitness to the incident, who deposed during the trial. Had there been any direct evidence in this regard, which conflicted or contradicted the medical evidence, the court would have paused, and been constrained to explain it, if not give credence to it, and discard the doctors' testimony. However, there is no such ocular evidence. In these circumstances, the Appellant's submission as to the true cause of the death being something, other than the result of electrocution cannot be accepted; it is speculative, and an unsubstantiated argument.

16. We are mindful that though in exercising Appellate review in cases where the Trial Court has acquitted an accused, the High Court: has full power to re-appreciate, and if necessary return contrarian independent findings, that power has to be used sparingly and with circumspection. This aspect was highlighted pithily in *Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra*, as follows:

In law there are no fetters on the plenary power of the appellate court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration.

Having gone through the Trial Court records, which were summoned during the proceedings, and given our anxious consideration to the arguments made by Counsel, we are not inclined to differ with the findings contained in the impugned judgment, which is founded on cogent and sound reasoning. We therefore, are of the view that the appeal lacks in merit; it is therefore, dismissed.