

(2015) 04 DEL CK 0341
In the Delhi High Court
Case No : Criminal L.P. No. 667 of 2014

Puran Chand

APPELLANT

Vs

Pawan Kumar and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 378, 397, 401, 482
Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2015) 2 JCC 1271

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : S.N. Bhardwaj, for the Appellant; Bharat Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—On the last date, after hearing learned counsel for the parties, this Court had observed that the leave petition under Sec. 378 Cr.P.C. was not maintainable and at that stage, counsel for the petitioner had urged that the same be treated as Criminal Revision Petition under Section 397 Cr.P.C. read with Section 401 Cr.P.C. The matter was adjourned to enable the learned counsel for the petitioner to, prima facie, show to this Court that whether there was any justification for this Court to interfere with the impugned judgment in the exercise of revisionary jurisdiction. In the light of the above, let this petition be converted into and be registered and numbered as a Criminal Revision Petition by the registry. I have heard learned counsels. At the outset, I may take note of the decision of the Supreme Court in Venkatesan Vs. Rani and Anr. 2013 (4) JCC 2550 wherein the Supreme Court has observed that the revisional jurisdiction of the High Court, while examining an order of acquittal, is extremely narrow and has to be exercised only in cases where the trial court has committed a manifest error of law or procedure, or has over-looked and ignored relevant and material evidence thereby causing miscarriage of justice. Re-appreciation of evidence is

an exercise that the High Court must refrain from, while examining the order of acquittal in the exercise of its revisionary jurisdiction under the Code.

2. In the light of the aforesaid guidelines, this Court asked learned counsel for the petitioner to make his submissions.

3. Learned counsel for the petitioner has, however, sought to make detailed submissions, as if this Court is hearing an appeal. The submission of learned counsel for the petitioner is that the evidence of material witnesses, namely, PW 3-Puran Chand, father; PW 4 Premwati, the mother and PW 5 Savitri, the sister of the deceased Nirmala @ Meenu, who was married to the accused Pawan Kumar, and was the sister-in-law (Devraani) of accused No. 2-Sunita, has been rejected as "hearsay" evidence, insofar as PW 3, PW 4 and PW 5 claimed that they had been informed by the deceased of the demand of dowry i.e. Rs. 1 lakh and a scooter/motor cycle by the accused, and of the torture/beatings and harassment by the accused. Learned counsel submits that the said evidence could not be dismissed as "hearsay" in the light of Section 32 of the Indian Evidence Act. Learned counsel submits that PW 3, PW 4 and PW 5 had deposed before the court that they had been informed, from time to time, of the demands made by the accused, firstly, after about 10 days of marriage, and thereafter on few occasions. He submits that the deceased was driven to the point of committing suicide by the said acts/omissions of the accused and the said conduct was the cause of the death of the accused. Thus, a disclosure of the acts of harassment/torture made in pursuance of a demand for dowry, or otherwise, by the deceased would be admissible evidence.

4. The learned Additional Sessions Judge while passing the impugned judgment has in-depth considered and appreciated the evidence brought on record, and also relied upon several decisions of the High Court and Supreme Court. Learned Additional Sessions Judge has observed that neither PW 3, nor PW 4, nor PW 5 were witnesses to any demand for dowry or to torture or ill-treatment of the deceased. PW 3 in his cross-examination admitted that neither accused Pawan Kumar, nor any other accused made any demand of scooter or Rs. 1 lakh directly from him. He also admitted in his cross-examination that he never visited the deceased's in-law's house after her marriage, and no instance of harassment or beating by both the accused persons took place in his presence. PW 4 also admitted in her cross-examination that the accused never demanded any motor cycle or Rs. 1 lakh from them. PW 5 also did not claim to have witnessed any alleged harassment of the deceased. She stated that she never visited the deceased's in-law's house. She met her deceased sister and the accused Pawan only in the market. Regarding harassment, PW 5 only stated that the deceased was harassed for petty matters. She did not state that the deceased was harassed on account of dowry.

5. The submission of learned counsel for the petitioner premised on Section 32 of the Indian Evidence Act has no merit. Section 32 insofar as it is relevant reads as follows:

"32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:

1. When it relates to cause of death. When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."

6. It is not even claimed by the said prosecution witnesses, namely, PW 3, PW 4 and PW 5 that the statement made by the deceased to them pertained to the cause of her death or as to any of the circumstances of the transaction which resulted in her death. The statements alleged made by the deceased to the said prosecution witnesses, pertained to the alleged demand of dowry and harassment. The learned Additional Sessions Judge has placed reliance on judgment of the Gujarat High Court in Subhashbhai Chandubhai Patel Vs. State of Gujarat, (2007) CriLJ 320 wherein the Court had held as follows:

"26.In the instant case, there was no demand for dowry nor abetment of suicide nor cruelty to the deceased is established. All the witnesses have deposed on the strength of information which the deceased occasionally had given to them. Such a statement is not admissible in the evidence to prove the offence punishable under Section 498A of the IPC as such evidence is to be treated as hearsay evidence."

28.all the statements made by the deceased to her family members regarding the alleged harassment and cruelty meted towards her would fall within the purview of hearsay evidence. It is an admitted fact that none of the witnesses examined by the prosecution have said that they have with their eyes seen the accused assaulting the deceased or treating her with cruelty. Such a statement is not admissible in evidence for the offence punishable under Section 498A of IPC and has to be termed a being only a hearsay evidence."

7. It is also to be noted that the allegations levelled by PWs 3 to 5 with regard to the alleged behavior of the accused persons/in-laws not being good towards the deceased were general in nature. No specific instance of harassment or cruelty was alleged against the accused. The learned Additional Sessions Judge has also proceeded to take notice of the improvements sought to be made by the said prosecution witnesses over their statements earlier made in the inquest proceedings before the SDM as well as those recorded under Section 161 Cr.P.C. while deposing before the Court. Learned Additional Sessions Judge has observed

that neither PW 3 nor PW 4 made any mention of dowry demands by the deceased's husband-accused Pawan Kumar or by any other member of the deceased's in-laws' family nor did they state anything about deceased's harassment/torture on that account. They simply complained about the accused persons behavior not being good towards the deceased. No allegation of beating was made against Sunita. The only allegation against Sunita was that she used to bother the deceased for work and at her instigation, accused Pawan used to beat the deceased. In their statement recorded under Section 161 Cr.P.C. by the police, after about a month of the demise of the deceased, PW 3 and PW 4 did not make any mention of dowry demand or of the harassment of the deceased on that account. PW 3 only reiterated that the behavior of the deceased's in-laws was not good towards her and that the accused Sunita used to bother the deceased about work, and used to instigate the accused Pawan to beat the deceased, and that accused Pawan used to threaten to kill the deceased. PW 4 in his statement under Section 161 Cr.P.C. simply reiterated her earlier statement. There was no mention of any dowry demand or torture on that account. However, in his deposition before the Court, PW 3 for the first time introduced the demand of Rs. 1 lakh in cash and a scooter and of alleged torture and beatings given to the accused on that account. No family member was named either by PW 3 in his statement before SDM or even in his statement recorded under Section 161 Cr.P.C., however, in his deposition before the Court, PW 3 stated that when he could not meet the alleged demands, the deceased was tortured and harassed by-Amit (brother), Durgi (sister), Om Prakash (Jeth) and Nathu Ram (father of the accused Pawan). The statement of PW 4 was recorded by the police on 02.03.2004 i.e. after a lapse of six months from the death of the deceased. She introduced the factum of demand of Rs. 1 lakh in cash and motorcycle and harassment of the deceased on that account, which was followed up by similar improvements in her deposition before the Court. The learned Additional Sessions Judge also took note of the fact that although the statements of PW 3 and PW 4 were recorded by the SDM on 29.03.2003, statement of PW 5 - who is the sister of the deceased, was not recorded by the SDM. After a lapse of more than six months, the statement of PW 5 was recorded under Section 161 Cr.P.C. on 03.03.2004. In the said statement, PW 5 merely stated that her deceased sister met her after marriage and told her that her Jethani Sunita-accused No. 2 and her husband Pawan beat her and demanded dowry of Rs. 1 lakh and motor cycle. On the aforesaid basis, the learned Additional Sessions Judge has concluded that the introduction of the demand of Rs. 1 lakh and motor cycle, and of harassment and torture on that account, appears to be an afterthought. In this regard, the learned Additional Sessions Judge has taken note of the judgment of this Court in Ravinder Kaur Vs. Kanwaljit Kaur and Ors. 1991 (1) JCC Delhi 175 and that of the Supreme Court in Jaipal and others Vs. State of Uttar Pradesh 2003 (1) JCC 261 : 2003 SCC (Cri.) 1737.

8. Learned Additional Sessions Judge further observed that although the statement of PW 4 was recorded by the SDM, her statement was recorded under

Section 161 Cr.P.C. after a month, and thereafter another statement was recorded after six months, wherein a new fact of dowry was introduced. There was no explanation forthcoming, for recording her statement for the third time. The delay in recording of statement of PW 5 under Section 161 Cr.P.C. after a lapse of six months has also not been explained. Pertinently, PW 5 in her cross-examination stated that she did not make any statement before the police after the death of her sister, and that she had appeared in the court to make her statement for the first time. She categorically denied that police had recorded any statements of hers when asked specifically. Thus, the trial court has raised a doubt about the veracity of the statements of PWs 4 and 5 recorded on 02.03.2004 and 03.03.2004, as the same appeared to have been recorded to fill up the gaps to meet the requirements of prosecutions case, and in order to make out a case under Section 498A IPC. The trial court has also taken note of the improvements sought to be made by PW 5 in her testimony before the court over, her statement recorded under Section 161 Cr.P.C. In her testimony before the Court, PW 5 stated that she met the accused Pawan Kumar in the market and told him not to harass the deceased. However, on being confronted with her statement under Section 161 Cr.P.C. PW 5 stated that no statement of hers was; recorded by the police. Thus, the testimony of PW 5 has been held to be unreliable.

9. A perusal of the impugned judgment shows that the trial court has, in depth marshaled the evidence and analyzed the same threadbare. A large number of contradictions in the case of the prosecution have been highlighted in the impugned judgment. For Section 498A IPC to come into play. The cruelty must be persistent, grave and unbearable and must have been inflicted with an intention to force the woman to end her life, or to fulfill the illegal demand of dowry of the husband, or her in-laws. The matrimonial cruelty, or the usual wear and tear of matrimonial life does not amount to cruelty as contemplated under Section 498A IPC. In this regard, reliance has been placed on the judgment of the Supreme Court in *Randhir Singh and Another Vs. State of Punjab*, AIR 2004 SC 5097 : (2004) 8 SCALE 689 : (2004) AIRSCW 5832 : (2004) 7 Supreme 420 .

10. In the instant case, the facts which emerged were that the accused Sunita asked the deceased to cut vegetables when she was ready to leave for the birthday party at her sister's place. This apparently enraged and disturbed the deceased. The same could not amount to cruelty and was a perfect example of normal wear and tear of married life. The trial court has also examined the charge under Section 306 IPC, and found no merit in the case of the prosecution.

11. Learned counsel for the petitioner has sought to place reliance on the judgment of Supreme Court in *Ramesh Kumar Vs. State of Chhattisgarh*, (2001) 9 AD 133 : AIR 2001 SC 3837 : (2001) CriLJ 4724 : (2001) 2 DMC 636 : (2001) 8 JT 599 : (2001) 7 SCALE 298 : (2001) 9 SCC 618 : (2001) AIRSCW 4282 : (2001) 7 Supreme 737 . He submits that the Supreme Court held that Section 498A IPC and 306 IPC are independent, and constituted different offences.

Subjecting a woman to cruelty may amount to an offence under Section 498A IPC and, may also, if a course of conduct amounting to cruelty is established, leaving no other option for a woman except to commit suicide, amount to abetment to commit suicide. Merely because an accused has been held liable to be punished under Section 498A IPC, it does not follow that on the same evidence, he must necessarily be held guilty and having abetted the commission of suicide by the woman concerned. In the said case, the court while upholding the conviction of the appellant under Section 498A IPC, set aside the conviction and sentence under Section 306 IPC. He has also placed reliance on *Praveen Pradhan Vs. State of Uttranchal and Another*, (2012) 10 JT 481 : (2012) 10 JT 478 : (2012) 9 SCALE 745 : (2012) 9 SCC 734 : (2012) AIRSCW 5372 . This was a case wherein the High Court dismissed the application preferred by the appellant under Section 482 Cr.P.C. for the purpose of quashing the criminal proceedings i.e. the charge-sheet and the order of cognizance passed by the Chief Judicial Magistrate. In the facts of the said case, the Supreme Court came to the conclusion that it was not a fit case which required any interference.

12. The decisions relied upon, as aforesaid, have no application in the facts of this case. *Ramesh Kumar (supra)* wherein the Supreme Court held that a conviction under Section 498A IPC does not necessarily lead to a conviction under Section 306 IPC, is not applicable since in the present case, the accused have been acquitted on both counts. The decision in *Praveen Pradhan (supra)* as noticed above only dealt with the issue whether the charge-sheet and the cognizance order deserved to be quashed in the facts of that case.

13. As discussed hereinabove, even on merits, the petitioner has not been able to point out any perversity in the impugned judgment which could be said to have led to miscarriage of justice. No manifest error of law or procedure has been pointed out by the petitioner either in the impugned judgment, or in the proceedings undertaken before the trial court. The petitioner has not been able to show that relevant evidence has been ignored, leading to miscarriage of justice. The evidence of PW-3, PW-4 and PW-5 qua the demand of dowry, or of harassment/torture in pursuance thereof, has rightly been rejected as hearsay. For all the aforesaid reasons, I find no merit in this petition and dismiss the same.