
(2013) 11 DEL CK 0099
In the Delhi High Court
Case No : Criminal A. 553 of 2011

Ravi Prakash @ Ravi

APPELLANT

Vs

The State (Govt. of NCT, Delhi)

RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 106, 113, 113B
Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2013) 10 AD 277 : (2013) 4 JCC 2855

Hon'ble Judges : S.P. Garg, J

Bench : Single Bench

Advocate : Puja Shrivastava, for the Appellant; M.N. Dudeja, APP, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Garg, J.—Ravi Prakash @ Ravi (The appellant) challenges the correctness and legality of a judgment dated 26.02.2011 of learned Addl. Sessions Judge in Sessions Case No. 58/09 arising out of FIR No. 4/09 PS Anand Parbat whereby he was held guilty for committing "dowry death" punishable under Sections 498A /304-B IPC. By an order dated 28.02.2011, he was awarded RI for ten years u/s 304-B IPC and RI for three years with fine Rs. 10,000/- u/s 498-A IPC. The substantive sentences were to operate concurrently. The prosecution case as emerged out from the record is as under: Meenu @ Meena was married to Ravi Prakash @ Ravi on 14.04.2008. After the marriage initially they lived together for about eight days in village Itawa Bhadhath (Rajasthan) and thereafter, at F-94, Punjabi Basti, Baljeet Nagar, Anand Parbat, Delhi. On 28.01.2009, she suffered a suicidal death in the matrimonial home. Daily Diary (DD) No. 30 A (Ex. PW-14/A) was recorded at PS Anand Parbat at 08.28 P.M. on getting information of the occurrence. The investigation was assigned to SI Hukam Singh who with Const. Rakesh went to the spot. Meenu @ Meena was found hanging by the hook of a ceiling fan in a room on the first floor. SI Hukam Singh conveyed the information

to PW-1 Pramod Kumar (Sub Divisional Magistrate) who went to the spot. Crime team took photographs of the crime scene. Intimation was sent to the deceased's parents. On 29.01.2009, Mukesh Kumar Bhargava, deceased's elder brother recorded statement (Ex. PW-1/A) before the SDM and First Information Report was lodged. During the course of investigation, postmortem examination of the body was conducted and statements of the witnesses conversant with the facts were recorded. Ravi Prakash @ Ravi (husband), Om Prakash Sharma (father-in-law), Deepak Sharma @ Vicky (brother-in-law) and Vijay Laxmi @ Pooja (sister-in-law) arrayed as accused were arrested. Efforts were made to find out the whereabouts of Sahi Devi, deceased's mother-in-law but in vain. She was declared Proclaimed Offender on 21.07.2009. After completion of investigation, a charge-sheet was submitted in the Court. The prosecution examined seventeen witnesses to establish the charges. In their 313 statements, the accused persons facing trial denied their involvement in the crime and pleaded false implication. They claimed that Meenu @ Meena used to insist Ravi Prakash @ Ravi to give money to her brother, Mukesh Bhargava who was in dire need of it. She used to remain tense on that count and committed suicide. DW-1 (Damodar Kumar Sharma) and DW-2 (Ramakant Jha) were examined in defence. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held Ravi Prakash @ Ravi guilty of the offences mentioned previously. It is relevant to note that other accused facing trial were acquitted of the charges and the State did not opt to challenge their acquittal.

2. Learned counsel for the appellant strenuously urged that the impugned judgment cannot be sustained as it is based upon conjectures and surmises. The Trial Court did not appreciate the evidence in its true and proper perspective and ignored vital discrepancies and improvements in the testimonies of the prosecution witnesses without sound reasons. The prosecution was unable to establish that the appellant was persecuting Meenu @ Meena with the demand of dowry. The allegations emerged only after Meenu @ Meena's death to extract money. Prior to the occurrence, neither the deceased nor her parents had ever complained about appellant's conduct and behaviour. Meenu lived happily in the matrimonial home and was never forced to bring any dowry article from her parents. No independent public witness was associated during investigation. The call-details were not proved. In any case essential ingredients of Section 304-B IPC were lacking to prove cruelty on account of non-fulfilment of dowry demands "soon" before the death. No physical injuries were ever caused to the deceased. It is admitted case of the parties that there was no demand of dowry prior to the solemnization of the marriage. Learned Addl. Public Prosecutor while supporting the findings urged that Meenu @ Meena was forced to commit suicide as she was harassed and tortured on account of non-fulfilment of dowry demands including motorcycle. Even on the day of incident in a telephonic conversation with her parents and brother, Meenu @ Meena had apprised them that she was being beaten like a dog and was harassed for dowry demands.

3. Factum of marriage between the parties on 14.04.2008 is not under challenge. It is undeniable that after the marriage both the appellant and Meenu @ Meena lived together for about eight days in village Itawa Bhadhath (Rajasthan) and thereafter, at house No. F-94, Punjabi Basti, Baljeet Nagar, Anand Parbat, Delhi as a joint family. It is also on record that on 28.01.2009 within nine and a half months of marriage Meenu @ Meena committed suicide in the matrimonial home by hanging. Parents of the deceased resided far away in village Malikpur, Distt. Jaipur (Rajasthan). PW-13 (Sampat Kumar Bhargava), R/o. Village Bhadhath (Rajasthan) from the appellant's native place was mediator in the marriage. No other relative of the deceased lived in the vicinity of the matrimonial home. It is unclear at what time and in whose presence the incident occurred. Since the death had taken place other than under normal circumstances in the matrimonial home within nine and a half months of the marriage, it was the boundened duty of the appellant, her husband, to divulge the circumstances forcing Meenu @ Meena to put an end to her life u/s 106 Evidence Act. However, the appellant did not elaborate at what time Meenu @ Meena committed suicide and what were the surrounding circumstances that day which prompted her to take the extreme step suddenly. The appellant did not examine any neighbour in defence to throw light whether the relations with the deceased were cordial and she had no complaint whatsoever against his conduct and behaviour. He did not explain the delay in giving intimation to the police about the incident. In 313 statement, a specific plea was taken that Meenu @ Meena used to remain tense due to demand of money by her brother-Mukesh Kumar Bhargava. However, the appellant was unable to prove this allegation and the defence was rightly rejected by the Trial Court for cogent reasons. The appellant did not elaborate as to when any specific demand of money was raised by deceased's brother or the said demand was ever met. In the cross-examination, Mukesh Kumar Bhargava categorically denied any such demand for the treatment of his wife. PW-5 (Vimla) and PW-12 (Babu Lal Bhargava), deceased's parents were categorical to deny any demand of money by their son-Mukesh Kumar Bhargava from the appellant or Meenu @ Meena. They informed that he (Mukesh Kumar Bhargava) had sufficient income and used to contribute Rs. 3,000/- or Rs. 4,000/- every month to them. In the absence of cogent evidence, it cannot be inferred that Meenu @ Meena used to remain depressed or stressed on account of demands by her brother. It appears that the appellant has taken false excuse to wriggle out of the proceedings and has not presented true reasons for her death. In *S. Govindaraju Vs. State of Karnataka*, , Supreme Court observed:

23. It is obligatory on the part of the accused while being examined u/s 313 Code of Criminal Procedure, to furnish some explanation with respect to the incriminating circumstances associated with him, and the Court must take note of such explanation even in a case of circumstantial evidence in order to decide whether or not the chain of circumstances is complete. When the attention of the accused is drawn to circumstances that inculcate him in relation to the commission of the crime, and he fails to offer an appropriate explanation, or

gives a false answer with respect to the same, the said act may be counted as providing a missing link for completing the chain of circumstances.

24. This Court in Rohtash Kumar Vs. State of Haryana, held as under:

Undoubtedly, the prosecution has to prove its case beyond reasonable doubt. However, in certain circumstances, the accused has to furnish some explanation to the incriminating circumstances, which has come in evidence, put to him. A false explanation may be counted as providing a missing link for completing a chain of circumstances.

(Emphasis added)

25. The prosecution successfully proved its case and, therefore, provisions of Section 113 of the Evidence Act 1872 come into play. The Appellant/accused did not make any attempt, whatsoever, to rebut the said presumption contained therein. More so, Shanthi, deceased, died in the house of the Appellant. He did not disclose as where he had been at the time of incident. In such a fact-situation, the provisions of Section 106 of Evidence Act may also be made applicable as the Appellant/accused had special knowledge regarding such facts, though he failed to furnish any explanation thus, the court could draw an adverse inference against him.

4. PWs-4, 5 & 12 have given consistent version that after about one or two months Meenu @ Meena was harassed and sent to her parents' house where she had to stay for a month. When Om Prakash Sharma and his father went to bring her back to the matrimonial home, assurance was given by them to deceased's parents not to harass her in future. In the cross-examination, these assertions of the prosecution witnesses remained unchallenged. In the statement (Ex. PW-1/A), Mukesh Kumar Bhargava, deceased's brother gave graphic details as to how and in what manner, his sister was subjected to cruelty on account of dowry demands. He also stated that during conversation on phone on 28.01.2009, Meenu @ Meena informed them that she was being beaten like a dog by her in-laws. Had the relations with the deceased been cordial prior to the occurrence, there was no reason for her family members to implicate the appellant. After the post-mortem examination, the body was taken for cremation to the village by her parents and last rites were performed there. The appellant has not given explanation as to why he did not offer to perform the last rites in Delhi. In the Court statement PW-4, Mukesh Kumar Bhargava proved the version given to the SDM at the first instance without major variation or improvements. PW-5 (Vimla) and PW-12 (Babu Lal Bhargava), deceased's parents from Rajasthan corroborated PW-4's testimony on all material facts. All of them gave consistent statement that the appellant used to demand motorcycle and due to non-fulfilment of the demand, the deceased was subjected to harassment or cruelty. In the cross-examination, no suggestion was put to the witnesses to challenge their specific assertions. No ulterior motive was assigned for false implication. The defence was unable to shatter their testimony and elicit any material

contradictions to disbelieve their version. They did not nurture any grievance or inimical feelings towards them and had not lodged any complaint during Meenu's stay in the matrimonial home.

5. Medical evidence is in consonance with ocular testimonies of PWs. In the post-mortem examination report (Ex. PW-15/A) proved by PW-15 (Dr. B.N. Mishra), injury i.e. ligature mark was found on the deceased's neck. Another injury on the right ear in size of 2x2 cm was also found. The appellant did not explain as to how the victim sustained the injury on her right ear. Apparently, on the date of death also, the deceased was subjected to physical torture. The beating given to the deceased and harassment to which she was subjected had direct bearing on her committing suicide. PW-13 (Sampat Kumar Bhargava), mediator in the marriage deposed that in the month of Sawan in a telephonic call, Meenu @ Meena informed that her family had given all the articles in the marriage except motorcycle and her husband Ravi Prakash @ Ravi was demanding the motorcycle as "dowry". She further informed him that her in-laws were not happy due to non-giving of sufficient dowry in the marriage. In the cross-examination, he was fair to admit that at the time of marriage there was no dowry demand from the side of accused persons.

6. DW-1 (Damodar Kumar Sharma) & DW-2 (Ramakant Jha) were examined to prove payment of Rs. 2.5 lacs on 12.09.2009 in a settlement to the deceased's father. The alleged compromise has no foundation and was pleaded for the first time only in defence evidence. PW-Babu Lal Bhargava was not confronted with any such compromise during his Court statement. Ganeshi Lal, appellant's maternal uncle who had arranged the alleged meeting was not examined. The appellant has failed to explain as to why they had agreed to pay Rs. 2.5 lacs to the deceased's father when they were not instrumental in her death. The defence version inspires no confidence and needs outright rejection. Once it is established by the prosecution that the deceased was subjected to cruelty or harassment by the appellant for or in connection with the demand for dowry including motorcycle, it was permissible to take recourse to the legal presumption u/s 113B of the Evidence Act. The rule of evidence is prescribed in law to obviate the prosecution of the difficulty to further prove that the offence was perpetrated by the husband. The appellant could not rebut the presumption. Minor contradictions and discrepancies highlighted in the testimonies of the prosecution witnesses are not fatal as they do not affect the core of the issue and are of inconsequential nature. All the relevant contentions of the appellant have been dealt with minutely in the impugned judgment with cogent reasons. The findings of the Trial Court based upon fair and proper appraisal of the evidence need no interference and are confirmed. The appeal is unmerited and is dismissed. Trial Court record be sent back forthwith. Copy of the order be sent to Superintendent jail.