
(2013) 08 DEL CK 0193
In the Delhi High Court
Case No : Criminal Appeal 728 of 2013

Rohini @ Dolly

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 372
Penal Code, 1860 (IPC) — Section 307, 34, 406, 498A

Citation : (2013) 08 DEL CK 0193

Hon'ble Judges : Kailash Gambhir, J; Indermeet Kaur, J

Bench : Division Bench

Advocate : A.K. Chowdhary and Party in Person, for the Appellant; Sunil Sharma, Additional Public Prosecutor for the State and F. Bazar, Inspector Rohtash, Police Station, Delhi, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellant has preferred the present appeal u/s 372 Cr.P.C. to challenge the judgment dated 30.4.2013 passed by the learned Additional Sessions Judge in Sessions case No. 196/2006 thereby acquitting the accused persons of the charged offence under Sections 498A/406/307/34 IPC. Arguing the present appeal Mr. A.K. Chowdhary, counsel for the appellant submits that the learned Trial Court has discarded the clinching evidence of PW-2 Smt. Rohini (appellant/complainant), PW-1 Shri Sohan Lal Sharma (father of PW-2) and PW-10 Smt. Krishna Devi (mother of PW2) merely on the ground that they made material improvements and embellishments in their depositions before the Trial Court in comparison with their statements recorded u/s 161 Cr.P.C. Contention raised by counsel for the appellant is that the learned Trial Court has failed to categorically point out the alleged material improvements made by these witnesses in the impugned judgment. Counsel further argued that the learned Trial Court has also wrongly observed that the said witnesses did not disclose the specific dates on which the alleged demands of money and physical harassment was meted out to the appellant by the accused persons. Counsel also argued that the learned Trial

Court has wrongly discarded the clinching evidence of PW-4, Shri Baldhari Yadav and PW-6, Shri Ram Niwas, who had fully corroborated the version of PW-2 on material points, despite the fact that they turned hostile later. Contention raised by counsel for the appellant is that PW-4, Shri Baldhari Yadav is an independent witness and was sitting in his pan shop when he saw the appellant, wet in kerosene oil, rushing out from her matrimonial home crying "bachao bachao". Counsel also submits that on the same lines PW-6, Ram Niwas, had also personally seen the appellant wet in kerosene oil and making such cries. Counsel also argued that the appellant was taken to Dr. Hedgewar Arogya Sansthan after a gap of 2 1/2 hours and in the MLC the attending doctor had observed smell of kerosene from the clothes of the appellant. Counsel also argued that merely because in the MLC of Dr. Hedgewar Arogya Sansthan, the appellant was not found to have sustained any external injuries that would not mean that the accused persons have not poured kerosene oil on her body. Counsel also argued that there was no reason for the learned Trial Court to have disbelieved the medical opinion given by the attending doctor of Garg Hospital which was proved on record as Exhibit PW-5/A. Counsel also submitted that the testimony of PW-5, Dr. S.S. Bhagat of Garg Hospital could not have been doubted merely because the appellant was earlier being treated in the same hospital.

2. Based on these submissions counsel for the appellant urged that there was no reason for the learned Trial Court to have disbelieved the testimonies of the complainant, her parents supported by other independent witnesses i.e. PW- 4 and PW-6, which is further corroborated by the medical evidence, therefore, the order passed by the learned Trial Court is illegal and perverse on the very face of it.

3. We have heard learned counsel for the appellant at considerable length and have also perused the records.

4. It is a settled legal position that in an appeal against the order of acquittal, the High Court will interfere only where the order passed by the learned Trial Court is vitiated by manifest illegality or perversity or the conclusion arrived at by the Trial Court could not have been possibly arrived at by any Court acting reasonably and judiciously. The Appellate Court should also bear in mind that with the acquittal of the accused persons by the learned Trial Court, the presumption of innocence of the accused persons has been given the legitimacy. It is also a settled legal position that where there is possibility of arriving at two different conclusions on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal arrived at by the Lower Court merely because the other possible view is a preferred view.

5. In the facts of the present case, the appellant herein was married to the respondent No. 4 on 23.1.1999 and as per the allegations levelled by the appellant after about 1 1/2 months of her marriage, all the accused persons started harassing and torturing her on account of illegal demands. The alleged incident in question took place on 8.4.2004, when brother-in-law of the appellant

Rajeev Mishra visited the parental house of the appellant and told her that he will get her matter compromised and according to his request, the appellant had accompanied Rajeev Mishra on his motor cycle to the matrimonial house. As per the appellant, on reaching the matrimonial home, immediately her mother-in-law, sister-in-law, brother-in-law, aunt, uncle and her husband started beating her, and her mother-in-law threw kerosene oil on her body and even attempted to put her on fire. The appellant instantly came out running from her matrimonial home on the street in the same condition.

6. After the said incident the matter was reported to the police vide DD No. 34 A dated 8.4.2004 and the police had recorded the statement of the complainant on the basis of which rukka was prepared and sent for registration of FIR at the Police Station. The appellant was also taken to the said Dr. Hedgewar Arogya Sansthan and as per the MLC, the appellant had not received any external injuries on her body. The appellant was not satisfied with the said MLC report of Dr. Hedgewar Arogya Sansthan, therefore, got herself examined again from Garg Hospital on the morning of 9th April, 2004 at 11.00 a.m.

7. It is an admitted case of the appellant that she did not receive any external injuries on her body. Even during the course of the arguments of the present appeal, submission made by counsel for the appellant was that some injuries had resulted on the body of the appellant due to the reaction caused by kerosene oil, which remained on her body for about more than 2 1/2 hours.

8. Counsel for the appellant has mainly placed reliance on the testimony of PW-5 Dr. S.S. Bhagat and the medical card/slip issued by Garg hospital proved on record as Exhibit PW5/A. This contention of counsel for the appellant has been convincingly dealt with by the learned Trial Court and we do not find any justifiable reason to upset the finding of the learned Trial Court on this aspect. Learned Trial Court has rightly given more weightage to the MLC issued by Dr. Hedgewar Arogya Sansthan and the testimony of PW-3 Dr. Sharad Vyas. Undoubtedly, the appellant was first taken to the said hospital which is a Government hospital and as per the MLC report issued by the said hospital, no external injuries were found on the body of the appellant. In any event of the matter, it is not the case of the appellant that she had received some external injuries on her body rather the only contention raised by the appellant is that some injuries had resulted on the body of the appellant due to the reaction caused by the kerosene oil. The important aspect, therefore, was not of the appellant sustaining the alleged injuries due to the pouring of kerosene oil on her skin but the pouring of kerosene itself on her body by the accused persons. Curiously enough the appellant after discharge from the Dr. Hedgewar Arogya Sansthan got herself admitted in Garg Hospital on the following day and we find merit in the observation of the learned Trial Court that in such circumstances the possibility of falsely implicating the accused persons by the appellant and her family members cannot be ruled out.

9. So far the offence u/s 498A/406/34 IPC is concerned the learned Trial Court

found that the witnesses adduced by the prosecution could not give the specific dates of the alleged dowry demands and the witnesses had made material improvements and embellishments in their deposition before the Trial Court in comparison with their statements recorded u/s 161 Cr.P.C. We do not find any infirmity in the said reasoning given by the learned Trial Court. Even with regard to the offence punishable u/s 406/34 IPC, the learned Trial Court found that the allegations levelled by the appellant were general and vague.

10. After having carefully scrutinized and analysed the evidence on record, the learned Trial Court also found many contradictions and inconsistencies in the depositions of PW-1, PW-2 and PW-10 with regard to the material facts and that the learned Trial Court has threadbare discussed the testimonies of the witnesses adduced on record charge-wise and, therefore, we do not find any merit in the submission of counsel for the appellant that the learned Trial Court has passed the order of acquittal without proper discussion. Upon careful consideration of the reasoning given by the learned Trial Court, we do not find that the learned Trial Court has committed any perversity or illegality in passing the impugned judgment. There is no merit in the present appeal and hence, the same is accordingly dismissed.