
(2011) 04 DEL CK 0175

In the Delhi High Court

Case No : Criminal Revision Petition No. 190 of 2011

Smt. Rajni (deceased) thr. her Brother Sh. Ashok Kumar

APPELLANT

Vs

Rajesh and Others

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 313
Penal Code, 1860 (IPC) — Section 34, 406, 498A

Citation : (2011) 04 DEL CK 0175

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : S.K. Gandhi, for the Appellant; O.P. Saxena, APP for State, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This is a criminal revision petition filed by the Petitioner against the order of acquittal of the Respondents dated 05.10.2009 passed by the learned MM, Rohini, Delhi.

2. Briefly stated the facts of the case are that the Respondent No. 1 had got married to one Rajni (since deceased) on 13.4.1992 according to the Hindu rites and customs. On 31.12.93 and 10.3.94, the deceased Rajni had made a complaint to CAW Cell, Ashok Vihar, Delhi that the Respondents were demanding dowry and subjected her to cruelty. On the basis of the said complaint, an FIR No. 93/94 u/s 498A/406/34 IPC was registered on 23.3.1993 by P.S. Adarsh Nagar, Delhi.

3. During the course of the investigation, the Respondent No. 1 had produced the dowry articles before the IO who had seized the said articles and thereafter released them on super Dari to the deceased. After investigation, the charge sheet was filed for the aforesaid two offences.

4. The learned Magistrate seems to have discharged the Respondents for an

offence u/s 406 IPC on 22.6.2009 (wrongly recorded as 22.6.2011), a charge u/s 498A/34 IPC was framed against the Respondents and they were put to trial. Unfortunately, by the time, prosecution was to adduce evidence, both the complainant as well as her father had expired. The prosecution could not adduce any evidence against the Respondents. On 5.10.2009, Sh. Ashok Kumar, brother of the deceased wanted to place on record a letter dated 20.9.2003 purported to have been written by the deceased to prove that she had been subjected to cruelty with a view to demand dowry. This request of Sh. Ashok Kumar, the present Petitioner was rejected on the ground that the only request made by the Petitioner was for taking the said letter on record and he had not volunteered himself to appear as a witness to prove the same. In addition to this, the learned Magistrate had perused the contents of the letter and come to the conclusion that in the letter, no specific incident of cruelty was mentioned nor any specific role was attributed to any of the Respondents and therefore, considering the totality of the circumstances, the learned Magistrate did not deem it fit to record the statements of the accused persons u/s 313 Code of Criminal Procedure and acquitted all the accused persons u/s 498A/34 IPC.

5. The Petitioner feeling aggrieved by the said order dated 5.10.2009 choose to file an appeal before the Court of Sessions. The said appeal was dismissed vide order dated 24.9.2010. The learned Sessions Judge went into details of the case. It had also taken note of the fact that the prosecution did not move any application to examine Sh. Ashok Kumar u/s 311 Code of Criminal Procedure nor had the said person himself volunteered to be a witness, as was noted by the learned Magistrate. In the light of these facts, the learned Sessions Judge had put his seal of approval on the judgment of the learned Magistrate.

6. The Petitioner still feeling aggrieved by the said judgment and order has chosen to file the present revision petition against the impugned order of the learned Sessions Judge dated 24.9.2010.

7. I have heard the learned Counsel for the Petitioner and have perused the record.

8. The contention of the learned Counsel for the Petitioner is that PW-2 Sh. Surender Singh in his testimony has stated as under:

The fact of giving Rs. 27,200/- by the complainant to the accused persons is correct as per the statement of the complainant. It is also correct that complainant was harassed and tortured for bringing more dowry by the accused persons.

9. On the basis of these averments, it has been pointed out by the learned Counsel that the Respondents ought to have been convicted for an offence u/s 498A IPC and since this has not been done, the learned Magistrate, as well as the learned Sessions Judge have fallen into a grave error in acquitting the accused persons.

10. I have carefully considered the submissions made by the learned Counsel for the Petitioner. I do not find any merit in the contention of the learned Counsel for the Petitioner that the aforesaid statement of SI Surender Singh has proved the guilt of the Respondent of subjecting the deceased Rajni to cruelty with a view to demand dowry. This testimony on the part of the PW-2 seems to be more in the nature of hearsay evidence as he had no personal knowledge about the same. On the contrary, it is curious that as Rajni and her father had unfortunately expired, the brother did not choose to appear as a witness to the allegations levelled by his sister. The prosecution had also not made any effort to summon or examine Sh. Ashok Kumar as a Court witness. In the absence of any cogent credible evidence, I feel that there was absolutely no ground available to the learned Magistrate or even for that matter to the learned Sessions Judge to hold the Respondent guilty.

11. For the reasons mentioned above, I do not find that there is any impropriety, illegality or incorrectness either in the judgment of the learned Magistrate dated 05.10.2009 or in the judgment dated 24.9.2010 passed by the learned Sessions Judge. Accordingly, the revision petition is dismissed.