

(2017) 11 DEL CK 0786

In the Delhi High Court

Case No : Criminal Leave Petition No. 544 Of 2017

State Govt Of Nct Of Delhi

APPELLANT

Vs

Ram Gopal

RESPONDENT

Date of Decision : 01-11-2017

Acts Referred:

Code Of Civil Procedure, 1908 — Order 22 Rule 9
Limitation Act, 1963 — Section 5
Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 304B, 498A
Evidence Act, 1872 — Section 113B

Citation : (2017) 11 DEL CK 0786

Hon'ble Judges : Vipin Sanghi, J;P.S.Teji, J

Bench : Division Bench

Advocate : Aashaa Tewari

Final Decision : Dismissed

Judgement

P.S. Teji, J

Crl.L.P. 544/2017 & Crl.M.A 15394/2017 (Condonation of delay)

1. The State has filed the application under Section 5 of the Limitation Act read with Section 482 of Cr.P.C. for seeking condonation of delay of 140 days in preferring the accompanying leave petition to challenge the impugned judgment dated 25.01.2017 passed by learned Special Judge(NDPS)/Additional Session Judge, North-West District, Rohini Courts, Delhi in S.C. No.52004/2016 in case FIR No.847/2014, registered under Section 498A/304B of IPC at Police Station Begum Pur, Delhi.

2. In the application for condonation of delay, it has been submitted that the appellant could not prefer the appeal within the stipulated period as the file of the case was sent to various authorities and after passing through various channels, the file was sent to Department of Law and Justice and Legal Affairs. On 06.02.2017, a report on acquittal was prepared by the Additional Public

Prosecutor which was forwarded to the Chief Prosecutor and on 08.02.2017, the Chief Prosecutor found the case fit for appeal and referred the matter to the Director of Prosecution. On 09.02.2017, the Director of Prosecution gave the opinion and vide letter dated 27.07.2017, the Department of Law, Justice and Legislative Affairs communicated the decision to file appeal. Thereafter, copy of the impugned judgment was attached and the appeal was prepared. In support of the contentions made, judgments in case of Collector Land Acquisition v. Katiji 1987 (2) SCC 107 and State of Nagaland v. Lipok AO and others 2005 (3) SCC 752 have been relied upon.

3. In Balwant Singh (Dead) vs Jagdish Singh & Ors AIR 2010 SC 3043 Hon'ble Supreme Court has observed that :

"In the case of Union of India v. Tata Yodogawa Ltd., [1988 (38) Excise Law Times 739 (SC)], this Court while granting some latitude to the Government in relation to condonation of delay, still held that there must be some way or attempt to explain the cause for such delay and as there was no whisper to explain what legal problems occurred in filing the Special Leave Petition, the application for condonation of delay was dismissed. Similarly, in the case of Collector of Central Excise, Madras v. A.M.D. Bilal & Co., [1999 (108) Excise Law Times 331 (SC)], the Supreme Court declined to condone the delay of 502 days in filing the appeal because there was no satisfactory or reasonable explanation rendered for condonation of delay. The provisions of Order 22 Rule 9, CPC has been the subject matter of judicial scrutiny for considerable time now. Sometimes the Courts have taken a view that delay should be condoned with a liberal attitude, while on certain occasions the Courts have taken a stricter view and wherever the explanation was not satisfactory, have dismissed the application for condonation of delay."

4. From the above facts, it appears that the delay occurred whence the file was referred to the Department of Law, Justice and Legislative Affairs. We may have been inclined to further examine the justification for the delay, but we find on examination of the case on merits that, even otherwise, the leave petition does not merit issuance of notice. In the entire application for condonation of delay, the State has failed to give reasonable explanation which caused delay in filing the appeal. There is no whisper in the application to explain what legal problems occurred in filing the application seeking leave to file the appeal. We are of the view that the petitioner has not satisfactorily explained the delay. On this short ground, the present application and the leave petition are liable to be dismissed. In any event, we have also examined the impugned judgment. We are of the view that, even on merits, the State has been unable to make out a case for grant of leave in the present leave petition seeking leave to appeal against the judgment dated 25.01.2017 passed by the Court below.

5. Leave to appeal has been sought by the State feeling dissatisfied by the judgment of acquittal dated 25.01.2017 delivered by the Court below. It has been submitted that the trial court erred in observing that there was no veracity

in the prosecution's case in respect of the offences by the accused of cruelty and harassment of Ms.Bindu, his wife, for dowry and for causing her dowry death or abetment to suicide by hanging.

6. As per the FIR of the instant case, the allegations levelled are that the accused persons, Mr.Ram Gopal and Ms.Tara Devi, had subjected the deceased Ms.Bindu on different dates, and at various times, particularly, the time soon before her death on 11.08.2014, to cruelty and harassment in connection with demand for dowry, due to which the deceased died an unnatural death within seven years of her marriage.

7. After completion of investigation, charge sheet was filed in the Court. Charge under Section 304B/498A IPC was framed against the accused to which he pleaded not guilty. To prove its case, the prosecution examined 19 witnesses, namely, Mr.Sant Kumar, father of deceased (PW1), Ms.Munni Devi, mother of the deceased (PW2), Mr.Naresh, brother of deceased (PW3), Ms.Ahilya, sister-in-law of deceased (PW4), Ct.Sandeep Kumar (PW5), ASI Ajit Singh (PW6), Ct.Jagdish Kumar (PW7), ASI Kailash Chand (PW8), Ct.Pankaj (PW9), Mr.Amit Kumar (PW10), Dr.Mukesh Kumar (PW11), HC Sukram Pal (PW12), Dr.Kanak Lata Verma (PW13), Mr.Bhim Singh (PW14), Ms.Vidya (PW15), HC Prahlad Singh (PW16), SI Rajesh Kumar (PW17), Inspector Sudhir (PW18) and Inspector Rajesh Kumar (PW19).

8. The material public witnesses of the present case were PW1, father of the deceased, PW2, mother of the deceased, PW3-brother of the deceased, PW4-sister-in-law of the deceased, PW14-village neighbour of the father of the deceased, and PW15- a distant relative of the father of the deceased.

9. We have examined the relevant testimonies of the material witnesses. PW1- father of the deceased has stated in his testimony that he got his daughter, deceased Bindu married to the accused Ram Gopal, according to Hindu rites and ceremonies, and had given sufficient dowry in her marriage as per his own wishes. Accused Ram Gopal, allegedly demanded a gold bracelet at the time of the marriage, but the same could not be provided by the father of the deceased. He further stated that after a period of 2-3 months of the marriage, the mother-in-law of his daughter told him that she was dissatisfied with the household work of his daughter. After 5-6 months into the marriage, accused demanded a gold bracelet and one motorcycle from the deceased, to which this witness informed the deceased and the accused that he could not fulfil these demands owing to his financial condition. On 07.08.2014, this witness brought his daughter to his house from her matrimonial house on the occasion of Raksha Bandhan. On 10.08.2014, he left for village Malihara for Delhi and reached his house on 11.08.2014, when he found out that his daughter was not present and was informed that the accused had come on 10.08.2014 and taken Bindu along with him. On 11.08.2014, he was telephonically informed that his daughter had expired and her dead body was in BSA Hospital.

10. PW2-Munni Devi, mother of the deceased has stated in her testimony that her daughter Bindu, post marriage, started residing in her matrimonial house and was not kept properly. The mother-in-law of the deceased did not provide her with proper food and remained dissatisfied with her household work. She further stated that the accused had raised a demand of gold chain, wrist watch and one motorcycle and used to harass her daughter by saying that the said articles were not given at the time of the marriage.

11. PW3-the brother of the deceased and PW4-the sister-in-law of the deceased have also deposed on similar lines as that of PW1 and PW2.

12. A perusal of testimony of above mentioned relatives of deceased shows that though there is mention of demand of dowry by the accused from the deceased and PW1, but in their entire testimony there is no whisper of cruelty meted out to the deceased on account of demand of dowry.

13. In the case of *Devi Lal vs. State of Rajasthan* AIR 2008 SC 332, the Supreme Court has observed that the ingredients of provisions of section 304 B IPC are (1) that the death of the woman was caused by any burns or bodily injury or in some circumstances which were not normal; (2) such death occurs within 7 years from the date of her marriage ; (3) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband; (4) such cruelty or harassment should be for or in connection with the demand of dowry ; and (5) it is established that such cruelty and harassment was made soon before her death. It was further observed that before an accused is found guilty for commission of an offence, the Court must arrive at a finding that the ingredients thereof have been established. It was held that statement of a witness for the said purpose must be read in its entirety. It is not necessary for a witness to make a statement in consonance with the wording of the section of a statute. What is needed is to find out whether the evidences brought on record satisfy the ingredients thereof.

14. In the case of *Vipin Jaiswal Vs. State of A.P.* Rep. by Pub. Prosecutor, 2013 STPL 198 SC the Supreme Court held that the prosecution is required to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the accused. It was observed from the evidence of the prosecution witnesses and in particular PW1 and PW4, that they have made general allegations of harassment by the appellant towards the deceased, but had not brought in evidence any specific acts of cruelty or harassment by the appellant on the deceased. The onus was on the prosecution to prove beyond reasonable doubt the ingredient of Section 498A IPC. Relevant portions from the judgment reads as under :

"In any case, to hold an accused guilty of both the offences under Sections 304B and 498A, IPC, the prosecution is required to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the accused. From the evidence of the prosecution witnesses, and in particular PW1 and PW4, we

find that they have made general allegations of harassment by the appellant towards the deceased and have not brought in evidence any specific acts of cruelty or harassment by the appellant on the deceased.....

In our considered opinion, the evidence of DW1 (the appellant) and Ext.D19 cast a reasonable doubt on the prosecution story that the deceased was subjected to harassment or cruelty in connection with demand of dowry. In our view, onus was on the prosecution to prove beyond reasonable doubt the ingredient of Section 498A, IPC and the essential ingredient of offence under Section 498A is that the accused, as the husband of the deceased, has subjected her to cruelty as defined in the Explanation to Section 498A IPC. Similarly, for the Court to draw the presumption under Section 113B of the Evidence Act that the appellant had caused dowry death as defined in Section 304B, IPC, the prosecution has to prove besides the demand of dowry, harassment or cruelty caused by the accused to the deceased soon before her death. Since the prosecution has not been able to prove beyond reasonable doubt this ingredient of harassment or cruelty, neither of the offences under Sections 498A and 304B, IPC has been made out by the prosecution."

15. This Court in the case of Kanwar Pal vs Shakuntala And Ors 2015 IV AD (Delhi) 450 observed that :

"From no stretch of imagination, from the evidence led by the prosecution, the present case could be culminated into conviction of the respondents no.1 to 5 under Section 498A read with 34 IPC as well as 304B read with 34 IPC. The judgments relied upon by the petitioner are of no assistance in view of the discussion made above. This Court does not find any procedural irregularity, overlooking of material evidence, misreading of the same or miscarriage of justice. There is no jurisdictional error in the judgment passed by the trial court. Neither there is any failure to exercise the jurisdiction or exceeding of jurisdiction by the learned trial court while passing the judgment. Thus, keeping in view the judgments referred in case of Bhagwant Singh (supra); Hydru (supra); Ram Briksh Singh (supra); D.Stephens (supra) and Jagannath Choudhary (supra), the judgment passed by the learned trial court cannot be termed as not sustainable."

16. Further in the case of Ramesh Chander v. State of Delhi 2017 (1) JCC 145 it was observed that :

"As per the ratio of the law settled down by Hon'ble Apex Court in Vipin Jaiswal's case (supra), in the absence of specific allegations like date, time and incident that too by public witnesses, who were not found reliable and trustworthy, the prosecution had failed to establish beyond reasonable doubt that the deceased was meted with cruelty and harassment by the accused persons for or in connection with demand of dowry."

17. Necessary ingredients of dowry death as provided under Section 304B of IPC are :

(i) Deceased was the subject matter of cruelty on account of dowry and culminates into guilt of accused under Section 498A IPC;

(ii) The death should have taken place due to bodily injuries other than normal circumstances; and

(iii) Such death was the subject matter of cruelty soon before death.

18. As far as the death of the deceased Bindu is concerned, it is not in dispute that she died due to hanging which shows that the death of the deceased was not under normal circumstances, and was due to the bodily injuries which fulfil the first ingredient for the commission of offence under Section 304B IPC.

19. The second ingredient-that death of the deceased had taken place within seven years of her marriage, is clearly established from the evidence, as marriage had taken place on 06.05.2013 and her death took place on 11.08.2014 i.e. the very next year.

20. The next and the most critical ingredient required to be proved from the evidence was that the deceased was subjected to cruelty and harassment on account of demand of dowry by her husband or any relative of her husband, and that the same was done soon before death. The prosecution has produced PW1, PW2, PW3 and PW4 to prove these ingredients. The detailed discussion of their testimony has already been made. It is necessary to establish the offence of Section 498A IPC to prove the charges under Section 304B IPC. Discussion made above shows that the prosecution has failed to lead sufficient evidence to prove the guilt of the accused under Section 498A IPC. Consequently, the commission of offence under Section 304B IPC is also not proved.

21. The last ingredient is based upon the commission of offence under Section 498A IPC and while committing the offence under Section 498A IPC, if it connects with the death, then it would be an offence punishable under Section 304B IPC. The prosecution has failed miserably to establish beyond reasonable doubt that any cruelty or harassment was meted out to the deceased by the accused, let alone soon before her death. The testimony of above mentioned prosecution witnesses-to the effect that gold bracelet and motorcycle was demanded per se does not establish the cruelty and harassment towards the deceased. Evidently, the death of the deceased had taken place on 11.08.2014 i.e. within one year of marriage. The prosecution has failed to establish that after the marriage of the deceased, there were circumstances of harassment or cruelty that took place on account of demand of dowry which could connect with the death of the deceased. By no stretch of imagination, the evidence led by the prosecution in the present case could culminate into conviction of the accused under Section 304-B IPC.

22. Furthermore, in order to establish the offence under Section 304B IPC of dowry death, the presumption under Section 113B of the Evidence Act also cannot be raised against an accused until independently the offence under

Section 498A IPC is proved by leading evidence of specific allegation with regard to time and date of such demand and cruelty, and furthermore establishing the proximate live link between the effect of cruelty based on dowry demand (offence under section 498A IPC) and the death of the victim.

23. Consequently, the leave petition is, accordingly, dismissed.