

(2016) 01 DEL CK 0135

In the Delhi High Court

Case No : Criminal Leave Petition No. 419/2015

State (NCT of Delhi)

APPELLANT

Vs

Pawan Sharma and Others

RESPONDENT

Date of Decision : 19-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, Section 313, Section 378(i),
Section 482
Evidence Act, 1872 — Section 113B, Section 113-B, Section 114
Limitation Act, 1963 — Section 5
Penal Code, 1860 (IPC) — Section 304B,

Citation : (2016) 2 JCC 1318

Hon'ble Judges : G.S. Sistani and Sangita Dhingra Sehgal, JJ.

Bench : Division Bench

Advocate : Anita Abraham, APP and Komal Rathi, S/SI, for the Appellant;

Final Decision : Dismissed

Judgement

Sangita Dhingra Sehgal, J.—Crl. M.A. No. 7327/2015 (Delay)

1. This is an application under Section 5 of the Limitation Act read with Section 482 of the Code of Criminal Procedure seeking condonation of 41 days delay in filing the present leave petition.

2. Heard. Delay in filing the present leave to appeal is condoned.

3. Application stands disposed of.

Crl. L. P. 419/2015

4. By the present criminal leave petition filed under Section 378(i) of the Code of Criminal Procedure, the State/Appellant seeks leave to appeal against the order of acquittal dated 20.11.2014 passed by the learned Additional Sessions Judge - 04, South East, Saket District Court, New Delhi in Sessions case No. 61/2011.

5. The case of the prosecution in nutshell is that Pawan Sharma got married with

deceased Sonia@Chandrakanta on 22.05.2011. On 11.07.2011, Sonia @ Chandrakanta was found unconscious at her matrimonial home at G II-19, Madangir. Shri Bal Kishan (Fufa of deceased) along with his wife reached there and found that the deceased was lying and her mother-in-law was massaging her hands. She was brought to Batra Hospital at 07:48pm by her mother-in-law, father-in-law and relatives, where she was declared "brought dead" by the attending doctors. At about 08:44 pm, DD NO.48-A was recorded at Police Station Ambedkar Nagar, Sh.Rajeev Shukla, SDM, Hauz Khas also reached there, conducted inquest proceeding and recorded the statements of Smt. Beena (mother of deceased) Sh.Vinod (maternal uncle of deceased), Sh.Bal Kishan, (Fufa of deceased) and also of her husband Pawan Sharma. Statement of complainant Smt. Beena was recorded wherein she stated that after marriage when Sonia came back to her parental home, she was stressed and on questioning Sonia disclosed that though she(mother) promised to pay Rs. 10 Lacs for which marriage was fixed but full payment was not made. She further stated that her daughter told her that her husband (Pawan) was "ganwar" and not educated. Postmortem was conducted by Dr.Shashank Pooniya and he opined the cause of death as "Asphyxia due to ante mortem hanging". Respondents were arrested and charge of offences under Section 498-A read with Section 34 of the Indian Penal Code and 304-B read with Section 34 of the Indian Penal Code, were framed against the respondents to which they pleaded not guilty and claimed trial.

6. To bring home the guilt against the accused persons, prosecution examined sixteen witnesses in all. Statements of accused persons were recorded under Section 313 of the Code of Criminal Procedure, wherein they claimed to be innocent and denied all prosecution charges and took a plea that Sonia (deceased) was having an affair with a Muslim boy of the locality in which she resided prior to her marriage and she was not happy with her marriage with respondent No. 1 as it was against her will. No defence evidence was led by the accused persons.

7. Trial court after hearing the parties vide impugned judgment dated 20.11.2014 acquitted the respondents. Hence, this appeal.

8. Learned Counsel for the State argued that the impugned judgment passed by the learned trial court is not sustainable in the eyes of law as it is based on presumptions, conjectures and surmises and thus the same is liable to be set aside. It is argued that learned Trial Court failed to take into consideration the testimony of material witnesses being PW-9 Beena (mother), PW11 Ravinder (brother) and PW14 Vinod, maternal uncle of deceased and also PW12 Balkishan, mediator of marriage of respondent No. 1 with deceased. It is argued that the deceased died within seven years of her marriage in her matrimonial house. Death of the deceased occurred due to "Asphyxia due to antemortem hanging". It is argued that there is sufficient evidence on record and prosecution was also able to establish that the deceased was subjected to cruelty or harassment soon

before her death for or in connection with the said demand of dowry by the respondents. They were demanding Rs. 10 lakh for launching a computer institute for respondent No. 1. Hence, all the essential ingredients to constitute the offences under section 498A and 304B of the Indian Penal Code have been established by the prosecution beyond any reasonable doubt.

9. We have heard learned counsel for the State and perused the impugned judgment.

10. The prosecution version rests upon the testimonies of material witnesses being PW-9 Beena (mother), PW11 Ravinder (brother) and PW14 Vinod, maternal uncle of the deceased and also PW12 Balkishan, mediator of marriage of the respondent No. 1 with the deceased. Smt. Beena, mother of deceased examined as PW9 deposed :

"I am mother of Sonia (deceased). My daughter Sonia (deceased) was married with accused Pawan Sharma on 22.05.2011 at Palwal, Haryana as at that time we were residing at Palwal. It was an arranged marriage, which was celebrated with pomp and show. We had incurred expenditure of about 7-8 lacs in the marriage. She expired at her matrimonial home at Madangir, Ambedkar Nagar on 11.07.2011.

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My daughter Sonia came to my home for the first time after marriage on 27.05.2011 for Pagphera. She was tense and was weeping. She told me that she heard her in-laws talking to each other that they had settled the marriage in Rs. 10 lacs but they had not given anything. She told me that her mother in law slapped her.

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My daughter again came to our house on 29.05.2011. Even at that time, she was in disturbed state. She again told me that we had stated about giving Rs. 10 Lakh in the marriage but same has not been fulfilled."

During cross examination, she deposed that:

"I had told the SDM that my daughter told me that she heard her in-laws talking with each other that they had settled the marriage in Rs. 10 Lacs but they had not given anything. (Confronted with statement given to SDM Ex.PW6/A as well as statement recorded under Section 161 Ex.PW9/DA, where it is not so recorded.

xxxxxxxxI did not tell SDM in my statement Ex.PW6/A that my daughter told me that her mother- in-law slapped her."

PW11 Ravinder, brother of deceased, deposed:

"On asking by my mother, Sonia informed her that she had heard her mother-in-law, father-in-law as well as her jeth, jethani namely Babli and Dilip talking to each other that they were expecting Rs. 10 Lacs.

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Sonia appeared to be tensed to me as well as to my family members on 31.05.2011. On asking her about the problems, Sonia told my mother that Uganti Devi, her mother in law had raised a hand on her and Babli, her jethani had stated that Sonia will not be allowed to reside there and that she was tortured by Pawan and Dilip mentally. My mother had told me about this fact.

Q.: Whether your mother had told you that Sonia had told her as to in what manner and how Pawan and Dilip were torturing her mentally?

Ans.: My mother told me that "usse chilla ke baat karte the and she was not allowed to talk to us telephonically. Jaiseki my mother had a telephone call on the phone, they used to cut off the phone by speaking Hello-Hello."

Q. : Whether Sonia had disclosed the aforesaid facts at any time in your presence?

Ans. : No.

Q. : Whether Sonia had ever told to your mother or to you as to why and for what purpose, she was tortured mentally and physically by the accused persons?

Ans. : Sonia had inquired from me as to whether we had settled Rs. 10 Lacs in her marriage. I had told her that I was not aware about that. Sonia had told to my mother that accused persons used to torture her mentally and physically for dowry and their expectation were high in respect of dowry demand. "Family main baat ho rahithi, tab mujhe pata chala."

My sister Sonia had come to our house on 29.05.2011 and thereafter, she had gone to her matrimonial house on 10.07.2011."

PW12 Balkishan, deposed that:

"After marriage, when I had visited at Sewa Nagar residence at N-318, Sewa Nagar, and Sonia had come at her parent's home after pagphera, and as she had to appear in her examinations, I had seen that the girl was sad. On inquiry about her well being, Sonia told me that her father-in-law and mother-in-law and jethani were asking for dowry and had stated that she should bring Rs. 8-10 Lacs, which amount was required to start some business or to spend the same amount in getting employment for Pawan."

PW14 Vinod Kumar, deposed that :

"Sonia had told me that Uganti Devi (her mother-in- law), Babli (her Jethani), Pawan (her husband) and Dilip (her Jeth) made demand of Rs. 10 Lacs. She further told me that said accused persons had warned her if she would not bring Rs. 10 Lacs, they would not allow her to enter their house. Sonia had also told me that accused Pawan was previously married once and this fact was revealed to her when accused Dilip had said to her that earlier we had thrown out the first wife of accused Pawan and no one could do anything wrong to them (koi hamara

kuchh nahi bigaad sakta, teri maan to widow hai.) "

Dr. Shashank Pooniya, Junior Resident, AIIMS Hospital conducted the post-mortem on the body of deceased. Prosecution examined him as PW1 and he deposed that:

"On examination rigour mortis was present all over the body. Post-mortem lividity present over back and dependent parts except over pressure areas. No sign of decomposition were present. Eyes were partially open. Mouth was closed.

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Cause of death in this case was asphyxia due to ante mortem hanging however viscera was preserved to rule out any intoxication."

11. To attract the provisions of Section 304B of the Indian Penal Code, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty or harassment "for, or in connection with the demand for dowry". Though the language used is "soon before her death", no definite period has been enacted and the expression "soon before her death" has not been defined in the enactment. Accordingly, the determination of the period, which can come within the term "soon before her death" is to be determined by the court, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

12. In Raman Kumar Vs. State of Punjab : , (2009) 16 SCC 35, Hon"ble Supreme Court observed :

12. Section 304B IPC deals with dowry death which reads as follows:

304-B. Dowry death.-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry,

such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

13. The provision has application when death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relatives of her husband for, or in connection with any demand for dowry. In order to attract

application of Section 304B IPC, the essential ingredients are as follows:

- (i) The death of a woman should be caused burns or bodily injury or otherwise than under a normal circumstance.
- (ii) Such a death should have occurred within seven years of her marriage.
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry.
- (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

14. xxxxxxxxxxxx

15. xxxxxxxxxxxxAs per the definition of "dowry death" in Section 304B IPC and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand for dowry". Presumption under Section 113B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

- (1) The question before the court must be whether the accused has committed the dowry death of a woman, (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304B IPC.) "
- (2) The woman was subjected to cruelty or harassment by her husband or his relatives.
- (3) Such cruelty or harassment was for, or in connection with any demand of dowry.
- (4) Such cruelty or harassment was soon before her death.

16. A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led in by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to

what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present, with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods soon after the theft, is either the thief who has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

13. In *Amar Singh v. State of Rajasthan* : , (2010) 9 SCC 64, Hon"ble Supreme Court observed:

"29...What is punishable Under Section 498-A or Section 304-B Indian Penal Code is the act of cruelty or harassment by the husband or the relative of the husband on the woman. It will be also clear from Section 113-B of the Evidence Act that only when it is shown that soon before her death a woman has been subjected by any person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death within the meaning of Section 304-B Indian Penal Code. The act of subjecting a woman to cruelty or harassment for, or in connection with, any demand for dowry by the accused, therefore, must be established by the prosecution for the court to presume that the accused has caused the dowry death."

14. The Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced during trial for the purpose of analysing, whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

15. In the instant case, there is no dispute that the marriage of Sonia (since deceased) was solemnized with respondent No. 1 Pawan on 22.05.2011. Sonia died on 11.07.2011 otherwise than in normal circumstances and the cause of death was "asphyxia due to ante mortem hanging" at her matrimonial home.

According to PW1 Beena, she solemnized the marriage of her daughter Sonia with respondent No-1 on 22.05.2011 with great pomp and show and when her daughter came home for Pagghera on 27.05.2011, she was unhappy and disclosed that she had heard her in-laws talking to each other that though the marriage was fixed for Rs. 10 lakhs her parents had not given anything. This statement was an improvement, as this fact did not find mention in the statement made by her to the SDM. PW11 Ravinder deposed that he came to know about the expectation of the in-laws of deceased Sonia was high in respect of dowry when her family members were conversing with each other. PW12 Balkishan also stated that on 29.05.2011, when he went to the parental house of the deceased at Sewa Nagar, New Delhi, she told him that her in-laws were demanding Rs. 8-10 lakhs as dowry, so that her husband Pawan could start some business. His version is totally contradictory to that of PW9 Beena who categorically deposed that the deceased was in Palwal till 04.06.2011. PW14 Vinod Kumar deposed that the deceased has disclosed to him that the respondent No. 1 had married for the second time and had thrown out the first wife. He further deposed that she was warned to bring Rs. 10 lakhs otherwise she would not be allowed to enter the matrimonial house. In contradiction to the above statement, when this witness was cross-examined, he was confronted with his statement made to the SDM but this fact was not recorded therein.

None of the witnesses deposed that the deceased had been subjected to cruelty or harassment or dowry had been demanded from her or in connection with the demand of dowry "soon before her death". Analysis of testimonies of PW9 Beena, PW11 Ravinder, PW12 Balkishan and PW14 Vinod Kumar, who are interested witnesses, show that the alleged demand of dowry are in general and not specific. It is pertinent to mention here that after marriage on 22.05.2011, she went back to her paternal home on 27.05.2011 and remained there till 10.07.2011 when respondent No. 1 and respondent No. 3, brought her to the matrimonial home. Thus, the deceased remained at her matrimonial home for about 4-5 days only which fact is confirmed by the testimony of PW11 Ravinder, brother of deceased, who deposed that "My sister Sonia had come to our house on 29.05.2011 and thereafter, she had gone to her matrimonial house on 10.07.2011." The complainant got the information about the death of her daughter on 11.07.2011. Neither any specific incident has been ascribed by the witnesses to suggest the cruelty and harassment extended by the respondents upon the deceased during her short stay at her matrimonial house nor the deceased specified any such incident except that she heard her in-laws talking among themselves that Rs. 10 lakhs had not been given by family of the deceased even though marriage had been fixed for Rs. 10 lakh. There are material inconsistencies in the testimonies of the witnesses and the same are not

enough to bring the respondents within the ambit of the offences for which they have been charged.

16. Keeping in view the aforesaid settled law and discussion, we are of the view that in the instant case, the essential ingredients of Sections 304-B and 498-A of the Indian Penal Code are not established beyond all reasonable doubts against the respondents. Accordingly, present leave petition stands dismissed.