
(2012) 03 DEL CK 0243

In the Delhi High Court

Case No : Criminal L.P. 598 of 2011 and Criminal M.A. 19759 of 2011

State of NCT of Delhi

APPELLANT

Vs

Daulat Ram and Another

RESPONDENT

Date of Decision : 07-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Limitation Act, 1963 — Section 5
Penal Code, 1860 (IPC) — Section 304B, 34, 498A

Citation : (2012) 4 AD 161

Hon'ble Judges : S.P. Garg, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Rajesh Mahajan, ASC, for the Appellant;

Final Decision : Dismissed

Judgement

Mr. Justice S. Ravindra Bhat

Crl. M.A. 19759/2011 (Under Section 5 of the Limitation Act)

For the reasons mentioned in the application, Crl.M.A. 19759/2011 is allowed. Crl.M.A. 19759/2011 is disposed of in the above terms.

Crl. L.P. 598/2011

1. The State seeks leave to appeal against the judgment and order of learned Additional Sessions Judge (ASJ) dated 28.09.2010 in S.C. No. 31/10 whereby the accused, arrayed as respondents, were acquitted in respect of the charges under Sections 498A/304B/34 IPC. The prosecution case is that Kalpana, the deceased (daughter of PW-1 Mahadev Sharma), married Umesh Kumar, one of the accused, on 21.05.2005. It was alleged that Mahadev Sharma, PW-1 spent beyond his means for the marriage ceremonies and gave sufficient articles commensurate with his status; the accused was not happy and wanted more. It was also alleged that at the time of marriage itself, the accused had expressed unhappiness and stated that they had been "cheated". PW-1 further stated that

his daughter was being harassed for bringing inadequate dowry. He alleged that as a result of the persistent demands, he bought a TV set and handed it over to the accused. According to him, they were still dissatisfied and wanted a motorcycle for Umesh Kumar. PW-1, in his statement u/s 161 Cr.PC to the Sub-Divisional Magistrate (SDM) dated 22.03.2006 also alleged that few days before Holi, in March 2006, the deceased called him up and expressed apprehension of her death at the hands of the accused on account of dowry harassment. On 21.03.2006, Kalpana was found hanging; the police registered a case against the accused. After conclusion of investigation, charges were framed against the respondents/accused. They denied guilt and claimed trial.

2. In order to prove the charges, the prosecution relied on the testimony of several witnesses, including PW-1; her brother - PW-14 and PW-3, Ms. Brijesh, the deceased's sister. The prosecution also placed on record several documents, including the Postmortem Report and other exhibits. On an overall consideration of these, the Trial Court concluded that the prosecution had not proved the respondents' guilt beyond reasonable doubt. It is urged by Rajesh Mahajan, learned ASC that leave ought to be given in the present case since the two ingredients which make up the offence u/s 304-B IPC were proved. He highlighted that the death occurred in this case barely within one year of the marriage and under unnatural circumstances. Learned Counsel argued that so far as the allegations of cruelty were concerned, the testimonies of PWs-1, 3 and 14 were consistent with each other and also consistent with what they had said during the investigation. Each of them had corroborated the fact that at the time of the marriage, all the accused were unhappy and had clearly given vent to such feelings, stating that they had been cheated and had been "looted" on account of insufficient dowry. Each of these witnesses also stated that Kalpana had been harassed and beaten at the time by the accused. PW-1 further deposed about having given a TV to Umesh Kumar, the deceased's husband, sometime after the marriage, but before her death. This was corroborated by PW-3. Learned Counsel submitted that having regard to these facts, the most important element in the entire record was the testimony of PW-1 that the deceased had in fact apprehended or feared her death, when she expressed her apprehension a few days before Holi, in the month of March 2006. It was submitted that the reasons given for acquittal cannot be sustained and the Court, therefore, ought to grant leave to appeal.

3. We have considered the record which were summoned for the purpose of this case and also the reasons given by the Trial Court for acquittal.

4. The Trial Court was unpersuaded by the prosecution's allegations. During the course of proceedings, we noticed that the SDM, who recorded the statements of the material witnesses, i.e. PW-1 and the mother of the deceased, Smt. Mahawati, who also died during the investigation, in fact went to depose in Court that at the time of recording the statement, there were certain allegations against the accused, as being involved in extra-marital affairs which was opposed

to by the deceased as well as by his mother. The Court further noticed that the statement of PW-3 was recorded much later even though no explanation was offered by the prosecution on that score. The Court also disbelieved PW-1's version of handing-over a TV to Umesh Kumar after marriage. In this regard, the Court took into account the testimony of PW-14 and more importantly, considered the material circumstance that a TV set was handed-over through a middleman. That middleman, i.e. Ms. Santosh was not in fact examined during the trial; the police apparently had not made an effort to record her statement u/s 161 Cr.PC. The Trial Court also was persuaded to conclude about the prosecution's inability to prove the case in the manner known to law on account of a very material and important circumstance, i.e. a complaint by Kalpana herself along with her mother-in-law, one of the accused before the Court and respondent in this case, alleging that both of them were being beaten when they objected to Umesh's extra-marital affairs. Although the prosecution had tried to distance itself from this fact, during the course of the trial, PW-15 proved Ex. PW-6/A and went on to say that he examined Kalpana on 27.01.2006 in connection with the complaint which had been assigned for investigation. He further confirmed that Kalpana had at that time recorded that she did not wish to proceed with the complaint and that she had no cause for further complaint as she was leading a happy life. The Court noted that at that stage, Kalpana did not complain or voice any instance of misbehavior against her husband or any accused although that was an appropriate occasion for her to do so. The other important reasons which persuaded the Trial Court to record the acquittal was that Brijesh used to live near Kalpana's house, apparently in the same locality. Her testimony also showed that she was in daily contact with the deceased. Although PW-1 had stated that Ms. Brijesh was aware about threat to Kalpana's life, Brijesh first confirmed it. In fact this omission amounted to a contradiction because PW-1 had expressly stated that Brijesh had been told about this fact. Furthermore, the Trial Court noticed that the prosecution had not proved any call details to substantiate the allegation that Kalpana had indeed contacted PW-1 telephonically at the relevant time.

5. In this case, we notice that the Trial Court's judgment is well reasoned and had taken into account several previous rulings of the Supreme Court on the question of what amounts to "cruelty soon before death" of the victim. The Court applied the well-established parameters in this regard, i.e. due care and caution has to be exercised where allegations of dowry harassment are made in vague and general manner, and lacking any particulars. There has to be some more corroborative material to bring home the guilt of the accused. As noticed earlier, the Trial Court took into consideration, in our opinion, quite correctly the complaint made almost contemporaneously with the period of time when Kalpana is said to have been treated cruelly; that she and her mother-in-law were beaten by the accused on account of their objections to his extra-marital affairs. That was a significant aspect highlighted by the respondent which was in fact corroborated by PW-15 during evidence. Even the SDM, who deposed during the

course of the trial, confirmed to this aspect. Having regard to these facts and applying the principle that the defence in criminal trial has to merely establish or prove a reasonable doubt, the Court, after considering all the incriminating circumstance, was satisfied that the allegations leveled against the accused had not been proved beyond reasonable doubt. It has been repeatedly reiterated that the standard to be applied by the High Court while considering the petitions for leave to appeal against acquittals is one where the prosecution establishes substantial and compelling reasons, which by and large are confined to serious or grave mis-appreciation of evidence, wrong application of law and an approach which would lead to complete miscarriage of justice. In the present case, the Trial Court has listed various grounds on which it acquitted the respondents/ accused. All of them, to our mind, are reasonable and none of them can be termed as misapplication of law or wrongful appreciation of the evidence placed before the Court by the prosecution.

6. Applying the existing standards, we are satisfied that the acquittal recorded by the Trial Court is based on sound reasoning and analysis which does not call for interference. For the above reasons, we find no merit in the Leave Petition. It is accordingly dismissed.