

(2016) 01 DEL CK 0016

In the Delhi High Court

Case No : Crl. A. 86/2007

Vikas and Others

APPELLANT

Vs

State (NCT of Delhi) and Others

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 107, Section 304B, Section 306, Section 34,
Section 498A

Citation : (2016) 01 DEL CK 0016

Hon'ble Judges : S.P. Garg, J.

Bench : Single Bench

**Advocate : Ravinder Chadha and Jagdish Prasad, Advocates, for the Appellant;
Sanjeev Sabharwal, APP, for the Respondent**

Final Decision : Allowed

Judgement

S.P. Garg, J.—1. Aggrieved by a judgment dated 12.01.2007 of learned Addl. Sessions Judge in Sessions Case No. 179/2006 arising out of FIR No. 262/2002 PS Bhajanpura by which the appellants were convicted under Sections 498A/306 IPC, they have preferred the instant appeal. By an order dated 20.01.2007, they were sentenced to undergo RI for three years with fine Rs. 10,000/- each under Section 498A IPC and RI for seven years with fine Rs. 15,000/- each under Section 306 IPC. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as projected in the charge-sheet was that on 15.07.2002, Sanju (since deceased), Vikas's legally wedded wife committed suicide at her matrimonial home at C4/19, Yamuna Vihar, Delhi. She was married to him (Vikas) on 03.12.1998. The police machinery came into motion on getting information vide DD No. 21A (Ex.PW-14/A) on 15.07.2002 at 09.55 p.m. in which the informant told that his sister had died suddenly at C4/19, Yamuna Vihar, Delhi. The investigation was assigned to SI Kanchan Lal, who along with Const.Tej Vir went to the spot. After recording statement of Mahesh Chand,

victim's father, police of PS Bhajanpura was directed by the Sub- Divisional Magistrate (PW-16 P.C. Jain) to proceed according to law. A case under Sections 498A/304B IPC was registered on 16.07.2002. In the statement (Ex.PW-2/A), victim's father gave detailed account as to how and under what circumstances, her daughter Sanju was harassed and tortured physically and mentally by her in-laws on account of dowry demands. Post-mortem examination on the body was conducted. Statements of the witnesses conversant with the facts were recorded. The appellants; Bal Kumar (victim's father-in-law) and Vipin (her brother-in-law) were arrested. Exhibits collected during investigation were sent for examination to Forensic Science Laboratory. Upon completion of investigation, a charge-sheet was filed against all the accused persons for committing offences under Sections 498A/304B IPC. To establish its case, the prosecution examined twenty-four witnesses. In 313 Cr.P.C. statements, the accused persons denied their involvement in the crime and pleaded false implication. They categorically stated that the victim had committed suicide due to depression as she was suffering from various ailments even before her marriage. DW-1 (Yogender Kumar), DW-2 (Satya Pal), DW-3 (Mahender Pal), DW-4 (Chater Pal) and DW-5 (Pramod Tripathi) appeared in defence. After considering the rival contentions of the parties and on appreciation of the evidence, the Trial Court, by the impugned judgment, acquitted Bal Kumar and Vipin of all the charges. It is relevant to note that State did not challenge their acquittal. The appellants were convicted under Sections 498A/306/34 IPC. Again, State did not file any appeal to challenge the appellants' acquittal under Section 304B IPC. Aggrieved by the impugned judgment, the instant appeal has been preferred by the appellants.

3. I have heard the learned counsel for the parties and have examined the record. Admitted position is that Sanju was married to Vikas on 03.12.1998. After the marriage, she lived at her matrimonial home and a female child was born to her out of this wedlock at St. Stephen Hospital. It is also not in dispute that on 15.07.2002, Sanju died otherwise than under normal circumstances by committing suicide in the matrimonial home. It is informed that presently the daughter born to the parties is around 16 years and is in the custody of her father. Copy of judgment dated 28.10.2005 of learned Guardian Judge is on record whereby Mahesh Chand, the maternal grand-father of the child was denied her custody.

4. Since Sanju had expired under suspicious circumstances in the matrimonial home within seven years of her marriage, Section 304B IPC was invoked; there being allegations of physical and mental harassment to the victim by her in-laws on account of insufficiency of dowry. The Trial Court, was, however, of the view, that the victim was never harassed on account of dowry demands and there was no nexus between her death and dowry demands. Specific findings were recorded in the impugned judgment that Rs. 25,000/- given by way of a cheque by the victim's father to her son-in-law Vikas in January, 1999 were not in connection with the demand of dowry. Admittedly, victim's father had given a cheque No. 787862 dated 30.01.1999 to Vikas, who deposited it in the bank

account of M/s. Ganpati Enterprises on 13.02.1999. The Trial Court was of the view that this amount was obtained by Vikas being in need of white money to run the business under the name and style of M/s. Ganpati Enterprises. The amount given within two months of the marriage after a firm was started by Sanju's husband is suggestive of the fact that it was in the form of help of the son-in-law and was not paid due to dowry demands. The Trial Court went to the extent of initiating proceedings against Vikas and Vivek for circumventing the law in this regard. Income tax authorities were directed to take necessary action against the defaulters in creating white money to defraud the revenue. They were further directed to revise their income tax returns as per law.

The Trial Court further observed that PWs - Meera, Mahesh Chand, Deepak Gupta and Subhash seem to have deposed facts regarding ill treatment of Sanju for dowry on account of psychological hatred against the accused persons. Consequently, the Court was of the definite view that depositions of the aforesaid witnesses, concerning dowry demands by the accused persons were not correct. Similarly, the Trial Court did not believe the prosecution witnesses if any dowry demand was raised by the accused persons after the birth of the female child or Rs. 50,000/- or computer was demanded in "Chhoochhak". The Court concluded that "Chhoochhak, is a custom prevalent in Northern India. When a child is born to a lady, her parents give gifts to her husband, in-laws, her child and to the lady herself. These customary gifts are neither as regard of the marriage nor on account of reason or motive for solemnisation of the marriage. Hence, giving and taking gifts in "Chhoochhak" would not be fall within the ambit of definition of dowry given in Section 2 of the Act." Reliance was placed on the decision of the Apex Court in Crl. A.No.1613/2005 decided on 05.01.2007. Apparently, the Trial Court did not adhere to the version of the material prosecution witnesses that there was dowry demand by the accused persons and on account of its non-fulfilment, Sanju was treated with cruelty; physically or mentally. It has come on record that during her stay at the matrimonial home, she was admitted at Ganga Ram Hospital and Vimhans Hospital for treatment and the entire medical expenses were borne by the accused persons. No contribution whatsoever was made by her parents at any stage. Nothing has surfaced to find out if for any ailment, Sanju was ever treated at any specific hospital by her parents during her visit to them.

5. The occurrence took place on 15.07.2002 when suddenly the victim took an extreme step to bring an end to her life by hanging. She did not suffer any fresh injuries on her body that day. In the post-mortem examination report (Ex.PW-23/A), PW-23 (Dr.Gaurav Vinod Jain) did not find any visible external injury on the body. The injuries found on the body were "old". Injuries described under heading "A" were about more than one month "old" produced by burn injuries; injuries under heading "B" were about one week old and produced by blunt force. Apparently, no physical beatings were given to the victim on the day of occurrence. Testimony of PW-7 (Anita Arora) is very crucial to ascertain the state of mind of the victim that day. She testified that the victim had joined her school

Tiny Tots Play Way School at House No.C-6/348, Yamuna Vihar for a short period of about fifteen days w.e.f. 03.07.2002. She left the school on 15.07.2002. During her employment, she found her hard- working, active, alive and affectionate to the children. She was very social and used to remain happy; she was liked by the children. She further elaborated that on 15.07.2002, she had come to the school at about 08.30 a.m. and had attended her duty and children willingly; she was cheerful. She left the school at about 01.00 p.m. On 17.07.2002, she came to know about her death. Needless to say that in the morning hours during her presence at Tiny Tots Play Way School, there was no inkling that the victim would commit suicide. PW-7 (Anita Arora) did not state if during these fifteen days, she had ever complained about the conduct and behaviour of her in-laws or about physical or mental torture to her. Even on the day of occurrence i.e. 15.07.2002, she had attended her duties as usual and returned to home at 01.00 p.m. At around 05.30 p.m. on that day, she was no more. The Investigating Officer was required to ascertain as to what really had occurred / happened during this period compelling the victim to take the extreme step. No evidence has come on record to show if during this period the accused persons implicated in this case were present at the matrimonial home or had played any specific role in physical or mental harassment to the victim compelling her to commit suicide. None from her neighbourhood was examined to find out as to what was the situation prevailing at the matrimonial home that evening or if they had heard any hue and cry or quarrel taking place in the house that time. No role whatsoever has been assigned to any of the individuals in instigating or abetting the victim to commit suicide.

6. Ingredients of Section 107 IPC defining "abetment" are not attracted and proved in this case. There is no proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegations of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

7. In "State of West Bengal vs. Orilal Jaiswal & Anr." , 1994 (1) SCC 73, Supreme Court held :

"....this Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged and such petulance, discord and difference 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.

XXX XXX XXX

21. The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide."

8. In fact, it was not the case of the prosecution that there was abetment on the part of the accused persons to provoke the victim to commit suicide. The Trial Court did not believe the prosecution case for commission of offence under Section 304B IPC. Since there was no active role played by the accused persons on the day of occurrence, it cannot be inferred that they had abetted the crime. It is relevant to note that on the same set of evidence co-accused Bal Kumar and Vipin were acquitted of the charges. Conviction under Section 306 IPC thus can't be sustained.

9. Regarding Section 498A IPC, the Trial Court was of the view that the victim was not harassed on account of dowry demands. Considering the injuries described in the post-mortem examination report (Ex.PW-23/A) proved by PW-23 (Dr.Gaurav Vinod Jain) and discharge report (Ex.PW-15/A) of Vimhans Hospital, the learned Judge concluded that the victim was treated in inhuman manner at her matrimonial home and that wilful conduct of the appellants fell within the mischief of Section 498A IPC which drove the victim to commit suicide. The Trial Court relied on the testimonies of PWs - Meera, Mahesh Chand, Deepak Gupta, Subhash, Neelu and Brij Bala in this regard.

10. It is pertinent to mention that during her stay at the matrimonial home after her marriage on 03.12.1998 till her death on 15.07.2002 no complaint whatsoever was lodged by the victim or her parents against any of the appellants for treating her with cruelty either physical or mental. Nothing has emerged if any "panchayat" was ever organised to raise any such issue. At no stage, the victim was medically examined for the "beatings" allegedly given to her during her stay at the matrimonial home. The Investigating Agency did not collect any call- details record to ascertain if on any particular date any conversation had taken place between the victim and her parents as alleged. The Investigating Officer did not associate any independent witness from the neighbourhood to find out as to what was the attitude and conduct of the appellants towards the victim during the relevant period. Appellants' conviction is based primarily on the statements of victim's parents and close relatives, who have made vital improvements in their depositions before the Court and have been duly confronted with their previous statements recorded during investigation. Undisputably, the Trial Court did not find their evidence sufficient and reliable to base conviction against Bal Kumar and Vipin, who were acquitted of the charges. After the unfortunate incident of suicide on 15.07.2002, all the family members were implicated for causing victim's death. FIR was lodged on 16.07.2002 on the statement (Ex.PW-2/A) of victim's father - Mahesh Chand in which he levelled

general allegations against the in-laws of the deceased. On perusal of their Court statements, it reveals that the victim used to stay mostly at her in-law's house. Only on certain occasions, she had visited her parents' house for short duration; she did not stay for unusual period at her parents' house. The victim's husband used to go at her parents' house to take her back to the matrimonial home. During her stay at the matrimonial home, she became pregnant and a female child was born to her at St. Stephen Hospital. She was taken due care by her in-laws and after discharge, she returned to her matrimonial home. It is informed that the female child is around 16 years at present and she continues to be in the company of her father. As observed above, the Guardian Judge declined to handover the custody of the child to Mahesh Chand, Victim's father. Statement of PW-7 (Anita Arora) has already been discussed where the victim had joined as a teacher in Tiny Tots Play Way School on 03.07.2002. She did not inform Anita Arora or any other teacher at the school about any physical or mental harassment to her at the hands of her in-laws. Even on the day of occurrence on 15.07.2002, she had attended her duties at the said school. During her employment there, she was hard-working and affectionate to children. She was very social and used to remain happy. PW-7 did not notice any visible injury on her body during her duty there.

11. PW-1 (Meera), victim's mother gave vague statement alleging that Krishna Devi - victim's mother-in-law had burnt her with a "chimta" and Vivek had caused burns to her with a hot pressure cooker. It was not elaborated as to on what specific date, the burn injuries were caused, and if so, on which body part. No complaint about such horrible incident was lodged by the victim and her parents; she was not even medically examined. Nothing is on record to show if any treatment was given to her for the burns allegedly caused to her with "chimta" or "pressure cooker". Victim's parents never provided any medical treatment to her at their place of residence for any ailment. No other incidence has been given by her as to when the victim was given physical beatings / torture. On 10/11.07.2002 allegedly she had received a telephone call from the victim informing her that her in-laws would kill her and she should be taken to her house. Despite getting the alleged distress call, none of the family members from the parents side of the victim went to her matrimonial home. PW-2 (Mahesh Chand) accused Krishna Devi and Vivek for giving her beatings with "chimta" and causing burns with hot "pressure cooker". No other specific role was attributed to any of the accused persons for causing beatings to her. None of the injuries was caused in his presence. He also did not specify as to when the injuries were caused and on what part of the body. PW-3 (Neelu) did not testify if the victim was caused burn injuries by Krishna Devi and Vivek. Statement of PW-4 (Deepak Gupta), victim's brother is silent if he had come to know about any such burn injuries at the hands of Krishna Devi and Vivek. So are the statements of PW-8 (Subhash) and PW-11 (Brij Bala).

12. It is true that in the post-mortem examination report (Ex.PW- 23/A), certain injuries were noticed on the victim's body. The injuries described under heading

"A" are puckered scars on arm, leg / thigh of the victim. The doctor opined that these were about more than a month old and were produced by burns. The Trial Court noted that due to inadvertence instead of recording "year", "month" was mentioned therein. Injuries under heading "B" were about a week old and were produced by blunt force. Injuries under heading "B" were bruises on the forearm. In the cross-examination, the doctor admitted that the victim was suffering from acute depression and in case of fall while working in kitchen, burns injuries were possible. Injuries mentioned under heading "B" were also possible due to fall from staircase.

13. In the absence of any cogent and clinching evidence, it cannot be inferred that the injuries recorded in the post-mortem examination report (Ex.PW-23/A) were authored by the in-laws of the victim. It is unclear as to when the victim sustained these injuries, and if so, at whose hands. The prosecution witnesses did not attribute any specific role to any other accused persons except Krishna Devi and Vivek for. Possibility of the victim sustaining injuries at the time of suffering from depression cannot be ruled out. As noted above, PW-7 (Anita Arora) at whose school the victim had worked for about fifteen days did not talk about any such injuries as mentioned in heading "B". Admitted position is that victim was admitted for treatment at Ganga Ram Hospital and Vimhans Hospital. All the medical expenses were borne by her in-laws. Her parents were duly informed at the time of her admission in the hospitals and they had visited her there. They had even stayed with her during admission in the hospitals. PW-15 (Dr.Vikas Mohan Sharma) had medically treated the victim when she was admitted there on 06.05.2002 with the alleged history of headache, episode of unresponsive behaviour, shouting, inability to speak after family quarrels. She was discharged on 08.05.2002 vide discharge summary (Ex.PW-15/A). He admitted in the cross-examination that there was adjustment disorder with convulsion symptoms as per his diagnosis. In adjustment disorder, the patient has a difficulty in adjusting with his surroundings and situations. The symptoms which can be noticed are restlessness, anxiety, emotional and behavioural symptoms. The patient can become agitative and furious. Physical symptoms can also be part of increased anxiety like a severe headache and vomiting. There were episodes of the patient getting agitated over staff during her admission. She was unable to take food and her sleep was disturbed. There was intractable vomiting and headache. As per report of Ganga Ram Hospital, there was history of psychiatric illness known case of depression also. He further admitted that in comparison to general population, patients suffering from such like adjustment disorder are at higher risk of self harm / suicide. It has also come on record that during her admission at Vimhans Hospital, the victim had confined herself in a room and it had to be broken open. The accused had paid Rs. 500 as damages for the broken door. Under these circumstances, the victim sustaining minor superficial bruises or injury on her body cannot be ruled out. At no stage during her admission, the patient / victim informed the examining doctors if she was ever given physical beatings by any of her family members on a particular date.

Merely because in the discharge summery, it is recorded that the doctor had discussed with the patient during OPD follow-up the issue of independence in family, more attention from her husband and less family intrusion, it cannot be inferred that she was treated with physical cruelty by the accused persons. Merely because Krishna Devi purportedly was of dominating character, it did not mean that she used to cause physical injuries with "chimta" to the victim. On the same set of evidence Bal Kumar and Vipin were given clean chit.

14. PW-8 (Subhash) in the cross-examination admitted that his niece Sanju used to remain ill; and get treatment for occasional ailments before marriage. This fact was denied by her parents. None of the doctors informed the Court that they had advised victim's parents to take her to their home as she was fearful and was terrorised by her in-laws.

15. In the light of above discussion, there is no cogent and reliable evidence on record to establish that the victim Sanju was maltreated, beaten or tortured by the appellants during her stay in the matrimonial home. The appellants deserve benefit of doubt. The appeal is accordingly allowed. Conviction and sentence recorded by the learned Trial Court are set aside. Bail bonds and surety bonds of the appellants stand discharged.

16. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.