

Madan Lal Vs. State

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Court : Delhi

Decided On : Jul-28-2014

Judge : Sunita Gupta

Appellant : Madan Lal

Respondent : State

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

28. h July, 2014 + CRL.A. 178/2012 MADAN LAL Through: Appellant Mr. S.B. Dandapani, Advocate versus STATE Through: Respondent Mr. M.N. Dudeja, APP for the State. CORAM: HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

: SUNITA GUPTA, J.

1. Challenge in this appeal is to the judgment dated 28.09.2010 and order on sentence dated 29.09.2010 passed by the learned Additional Sessions Judge, Fast Track Court, Rohini in Sessions Case No.18/1 in case FIR No.65/2009, P.S. Model Town u/s 498A/304B IPC whereby the appellant was convicted for offence u/s 498A/304B IPC and was sentenced to undergo seven years simple imprisonment for offence u/s 304B IPC and sentenced to three years simple imprisonment with fine of Rs.2,000/- for offence u/s 498A IPC; in default of payment of fine to undergo further 9 months simple imprisonment.

2. Prosecution case in nut-shell is that appellant Madanlal got married to Rakhi(since deceased) in February 2006. Out of the wedlock, Rakhi gave birth to a female child after about one year of the marriage but the said child expired. Thereafter she gave birth to one male child. After the marriage Rakhi started living at her matrimonial home at B-62, Punarvas Colony, Narela, Delhi After six months of the marriage, she along with accused shifted to KhilonaWala Bagh, Model Town, Delhi. It is further the case of prosecution that on 22.02.2009 information was given by the brother of the deceased that his sister had died due to burn injuries and he has apprehended the person who set her on fire. On the basis of this information, DD No.25A was recorded and was transmitted to Sub Inspector Dharampal, who along with Constable Jagdish and Constable Om Prakash reached E-2/472, Nand Nagri, behind Gagan Cinema where the dead body of Rakhi was lying in the gali. The dead body was sent to mortuary of Babu Jagjivan Ram Hospital. The jhuggi at Khilona Wala Bagh was locked to preserve the spot. On the next day i.e on 23.02.2009, Executive Magistrate Mr. M.Z.Ansari and Inspector Jeevan Ram Parmar reached the jhuggi at Khilona Wala Bagh, Model Town, Delhi. On the directions of Mr. Ansari, statement of Umesh and Devki, brother and mother, respectively of deceased were recorded. On the direction of Mr. Ansari, Executive Magistrate, FIR u/s 498A/304B IPC was registered and inquest proceedings were conducted. Crime team was called; photographs were taken; exhibits were lifted from the spot and accused was arrested. After completing investigation, charge-sheet was submitted against him.

3. In order to substantiate its case, prosecution examined 17 witnesses. All the incriminating evidence was put to the accused by recording his statement u/s 313 Cr.P.C. He pleaded his innocence and alleged false implication in this case by the police officials at the behest and at the instance of his in-laws. According to him he never mal-treated his wife in any manner and never demanded any dowry. He was working as security guard and his duty hours were from 8 a.m to 8 p.m. His in-laws used to interfere and instigate his wife against him. At the time of occurrence, he was not present in his house and when he returned back from duty, he came to know that his wife had expired. He did not prefer to lead any evidence. After scrutinising the evidence led by the prosecution, the learned Additional Sessions Judge convicted the appellant and sentenced him as mentioned herein above.

Aggrieved by the said order, the present appeal has been preferred by the appellant.

4. Challenging the finding of the learned Additional Sessions Judge, Sh. S.B.Dandapani, learned counsel for the appellant submitted that prosecution has failed to bring home the guilt of the accused beyond reasonable doubt. Although the brother and mother of the deceased have deposed that in pursuance to the demands, Rs.10,000/-, Rs.20,000/- and Rs.5,000/- was given to the accused, however, there is no proof of payment of the money. Moreover, the family members of the deceased were not so affluent so as to pay this amount as alleged by the witnesses. The capacity of the witnesses to pay this amount has not been proved. Moreover, there is no proof that any demand of dowry was ever made by the appellant or that he mal-treated the deceased. Furthermore, as regards Section 304B IPC is concerned, one of the essential ingredients that soon before death she was subjected to cruelty or harassment in connection with any demand for dowry has not be proved. Under the circumstances, the case is not proved beyond reasonable doubt. Alternatively, it was submitted that the maximum sentence inflicted upon the appellant was seven years imprisonment and only eights months are left for completing the substantive sentence imposed upon the appellant. Since the minimum sentence prescribed u/s 304B IPC is seven years which has been awarded to the appellant, under the circumstances although the Court cannot reduce this imprisonment but for offence u/s 498A IPC, the appellant was also burdened with a fine of Rs. 2000/-; in default to undergo 9 months simple imprisonment, as such that fine be waived.

5. Per contra it was submitted by Mr. M.N.Dudeja, learned Additional Public Prosecutor for the State that the impugned order does not suffer from any infirmity which calls for interference but as regards the fine imposed u/s 498A IPC is concerned, the Court may give concession to the appellant.

6. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

7. A perusal of the impugned judgment goes to show that the entire evidence has been meticulously considered by the learned Trial Court and for arriving at the

conclusion that the prosecution has been able to prove the charge u/s 498A IPC, the following reasoning was given:

(i) That PW2 Umesh Chand, PW3 Devki and PW12 have corroborated each other regarding the fact that Rs. 10,000/-, Rs. 20,000/- and lastly Rs.5000/- were given to deceased Rakhi or to accused Madan Lal. The contradiction, whether these amounts were given to Rakhi or to accused Madan Lal, is not a major contradiction and on this score only, witnesses cannot be disbelieved because at least depositions of these witnesses proved that Rs. 10,000/-, Rs. 20,000/- and Rs. 5000/- were given to the deceased and her husband. (ii) That PW2 Umesh Chand has also proved the fact that when he demanded his money back from accused Madan Lal, then accused Madan Lal replied that as no dowry was given in the marriage, so, he should treat the said money as dowry, which proves that on the part of accused Madan Lal, money was accepted by him as dowry and was demanded through his wife deceased Rakhi from the family of deceased Rakhi. PW3 Devki has also corroborated this fact that as per her instructions, these amounts were given. The contradiction appearing in the depositions of both the witnesses as to whether the money was kept for the marriage of PW12 Dayawati or PW2 Umesh Chand was having money from the sale proceedings of a plot, is also not major nor material because the witnesses have corroborated each other that these amounts of Rs.10,000/-, Rs. 20,000/- and Rs. 5000/- were given. Their sources can be different and there may be two sources of money. In such circumstances, it cannot be said that witnesses do not inspire any confidence and they cannot be relied upon. In both ways, witnesses were having money. PW2 Umesh Chand was having sale proceedings of a plot as well as they were also saving money for the marriage of PW12 Dayawati. (iii) That all the PWs i.e. PW2, PW3 and PW12 have also been able to corroborate the fact that Rs. 5000/- were given just few days before the incident. From the deposition of PW3 Devki, it is also clear that she used to look after deceased Rakhi and her children. She also used to provide milk to the children of Rakhi as she was having two cows with her. (iv) That PW12 Dayawati has specifically stated that about one or two months before, accused started torturing her sister and asked her sister to bring Rs. 15,000/- from her parental house. Her sister told this fact to her. She further told this fact to her brother and asked her brother to give Rs. 15,000/- to accused

Madan Lal, but her brother refused to give Rs. 15,000/- to accused Madan Lal as he was not having money. On this, accused Madan Lal became angry and he started beating her sister in her presence. Her sister told her that if the demand of accused is not fulfilled, then he will kill her. From this part of deposition, which is unrebutted and unshaken, prosecution has also been able to prove beyond reasonable doubts that accused Madan Lal demanded dowry and on this account, he harassed and treated Rakhi with cruelty. (v) that the contention of learned Amicus Curiae that PW3 Devki, mother of the deceased has admitted that accused Madan Lal never demanded any articles after the marriage from them proves that no demand of dowry was made by accused Madan Lal and witnesses have deposed falsely is also not tenable as marriage took place in February 2006. According to the witnesses i.e. PW2, PW3 and PW12, deceased Rakhi resided in her matrimonial house for six months or one year of the marriage and thereafter she shifted to jhuggi Khilona Wala Bagh, Model Town, Delhi. This must be around February 2007. It all started when, according to the witnesses, accused Madan Lal stopped doing any work. Although PW3 Devki has admitted that accused was doing job of security Guard in Chatrasal Stadium, but she has stated that accused used to tell his earnings as Rs. 2000/- or Rs. 2200/-. So, there were financial constraints, which resulted in the demand of dowry and accused Madan Lal started harassing Rakhi, due to which, Rs. 10,000/-, Rs. 20,000/- and Rs. 5000/- were given to them. Accused Madan Lal also told to PW2 Umesh Chand that these amounts should be treated as dowry as nothing was given in the marriage. So, if accused Madan Lal never demanded any articles after the marriage from them, then it only means that it was before the demands raised by him of Rs. 10,000/-, Rs. 20,000/- and Rs. 5000/- and also of Rs. 15,000/-. (vi) that the contradictions, as pointed out by learned Amicus Curiae, are minor and on these contradictions, witnesses cannot be unbelieved. Witnesses i.e. PW2 Umesh Chand, PW3 Devki and PW12 Dayawati inspire confidence regarding demand of dowry and payment of cash amounts, as demanded. PW12 Dayawati has specifically stated that accused Madan Lal demanded Rs. 15,000/and when they refused to pay, he started beating Rakhi and threatened to kill her.

8. For arriving at the conclusion that the prosecution succeeded in establishing its case u/s 304B IPC, it was observed:

(i) That on 23/02/2009, PW3 Devki and PW12 Dayawati reached at the house of deceased Rakhi on information that something has been done with Rakhi by accused Madan Lal. According to PW3 Devki, she saw her daughter lying in the house. She saw swelling on her face and burn injuries on her hands and face. Accused Madan Lal was also present there. They informed PW2 Umesh Chand, who also reached there. According to PW3 Devki, accused Madan Lal took the body in a rickshaw/thela for medical treatment and accused Madan Lal was apprehended by PW2 Umesh Chand. The contradiction, as to whether accused Madan Lal was apprehended with the dead body and whether he was alone or was having his two associates, is not a major contradiction because PW3 Devki has stated that accused Madan Lal was present at the spot. PW12 Dayawati left the jhuggi after picking up the child of her sister and went to her house. Accused Madan Lal was brought with the body to Nand Nagri by PW2 Umesh Chand in his house, where police of Nand Nagri was informed, who further informed PS Model Town as it was matter of their jurisdiction. (ii) The plea of accused Madan Lal as stated in his statement recorded U/s. 313 Cr.PC is that he was working as Security Guard and his duty hours were from 8.00 a.m. to 8.00 p.m. On the day of incident, he was not present at his house. When he returned from his duty, he came to know that his wife had expired. This explanation has not been suggested to any of the witness i.e. either to PW2 or to PW3. Both PW2 and PW3 have stated that accused Madan Lal was present at the spot and was apprehended with the dead body. It is not clear whether he was taking the dead body for medical treatment of Rakhi or for disposal, but that too, is not a major contradiction because at least accused Madan Lal was apprehended with the body of deceased Rakhi. So, he has to explain about his presence with the body of deceased Rakhi. Accused Madan Lal has not been able to prove the fact that on that day, he was not present in his house at the time of occurrence or at the time, as deposed by PW2 Umesh Chand and PW3 Devki. Accused Madan Lal has also not been able to prove that on that day, he was on duty from 8.00 a.m. to 8.00 p.m. and was working as security guard. (iii) That accused Madan Lal was arrested in the evening of 23/02/2009 nearby his house. In this respect, accused Madan Lal has explained in reply to question No.25 that he was forcibly removed from his house by police officials of PS Nand Nagri at the behest of his in-laws and thereafter kept in

wrongful confinement. Police officials of PS Model Town later on came and removed him. Although, it is not suggested to the IO, who arrested accused Madan Lal, but even then, if at all, accused Madan Lal was forcibly removed by the police of PS Nand Nagri from his house, then it proves that accused Madan Lal was present in his house and he was not on duty as security guard from 8.00 a.m. to 8.00 p.m., otherwise neither he could be forcibly removed from his house nor he could be kept by police of PS Nand Nagri. This fact, otherwise, proves that accused Madan Lal was present in his house and was apprehended with the dead body of deceased Rakhi by PW2 Umesh Chand. (iv) That according to postmortem report, postmortem was conducted on 23/02/2009 at about 3.45 p.m. and time since death is 18 to 24 hours, which shows that Rakhi must have died on 22/02/2009 at about 3.45 p.m. or thereafter. Dead body was brought from PS Nand Nagri to mortuary on 22/02/2009. Information about the burning of Rakhi was received by PS Model Town at about 4.40 p.m., according to DD No.25A Mark A, it corroborates with the fact that Rakhi must have died on 22/02/2009 at about 3.45 p.m. or nearby because her body was removed from Khilona Wala Bagh, Model Town to Nand Nagri and it must have taken sometime to reach at Nand Nagri. (v) That Rakhi died other than normal circumstances by burning within seven years of marriage. It is proved by the prosecution witnesses i.e. PW3 Devki and PW12 Devki (wrongly mentioned as Devki instead of Dayawati) that when they reached there, body of Rakhi was lying in burnt condition in the jhuggi and when PW2 Umesh reached there, dead body of Rakhi had already been taken by accused Madan Lal, which proves the presence of accused Madan Lal. Accused Madan Lal has not stated that he tried to save Rakhi from the fire or immediately removed her for her medical treatment. The only plea of accused Madan Lal is that he was not present in his house at the time of incident, which he has not been able to prove in any manner nor same was suggested to PW2 Umesh Chand and PW3 Devki in their cross examination in any manner. (vi) That PW2 Umesh Chand, PW3 Devki and PW12 Dayawati have also been able to prove beyond reasonable doubts that immediately before the death of Rakhi, she was subjected to cruelty and harassment on account of demand of dowry by accused Madan Lal. Thrice, Rs.10,000/-, Rs. 20,000/- and Rs. 5000/- were given. Once Rs. 15,000/-were demanded by accused through deceased Rakhi, which

PW2 Umesh Chand refused to give, as deposed by PW12 Dayawati and on this account, accused Madan Lal started beating Rakhi and threatened her to kill her and thereafter she was found dead by PW3 Devki and PW12 Dayawati. (vii) That from the statement of PW1 Sh. M.Z. Ansari, prosecution has been able to prove beyond reasonable doubts that statements of PW2 Umesh Chand and PW3 Devki were recorded by him and he instructed to get registered a case U/s. 498A/304B of IPC. PW1, the then SEM, has proved statements of both these witnesses as EX. PW1/A and Ex.PW1/B. The improvements made by PW2 and PW3 from their statements are not material in any manner because PW2, PW3 and PW12 have corroborated each other regarding demand of dowry by accused Madan Lal himself and through his deceased wife Rakhi. (viii) That PW3 Devki has stated that she is illiterate. So her statement should be appreciated in the same context. We cannot expect much details from an illiterate person in comparison to an educated person. PW3 Devki is also aged about 60 years and age factor is to be considered to memorize the facts and the time gap between the incident and her examination before the court. In such circumstances as the witnesses were examined after about one year, so, certain distortions and discrepancies are bound to come in the evidence of the witnesses. (ix) That other formal witnesses regarding the photographs and registration of FIR have corroborated each other. Certain articles were taken into possession from the jhuggi of deceased Rakhi. These have been exhibited by the witnesses as Ex. P1 to Ex.P4. The only contradiction which has appeared as to whether quarter bottle, which was taken from the spot, was of kerosene oil or was of liquor. Same is also not a major contradiction because according to PW17 Ms. Kavita Goyal, who has examined these exhibits, has stated that she found kerosene oil in Ex. 2 i.e. burnt orange colour bra, Ex. 4 one matchbox with two matchsticks, Ex. 2a i.e. clothes of deceased Rakhi and Ex. 3a i.e. scalp hair of deceased Rakhi, which proves that Rakhi was burnt with the kerosene oil. According to the report of PW17 Ms. Kavita Goyal Ex. PW17/A, Ex. 1 i.e. glass bottle was found containing kerosene. So, if IO found it to be a liquor bottle, is immaterial because it was containing kerosene. IO PW16 Inspector J.R. Parmar must have been misguided because quarter bottle was of Blue Chip Aristocrat Whiskey and empty quarter bottle might have some smell of liquor left behind and thereafter the bottle was used to keep kerosene oil. So, from the

deposition of PW17 Ms. Kavita Goyal and PW6 Dr. Kulbhushan Goyal, prosecution has been able to prove beyond reasonable doubts that Rakhi died due to burning by pouring kerosene oil. (x) That cause of death was asphyxia consequent upon inhalation of fumes from antemortem burns, which were thermal in nature. PW6 Dr. Kulbhushan Goyal has proved postmortem report Ex. PW6/A. (xi) That police witnesses i.e. PW7, PW15 and PW16 have corroborated each other regarding the postmortem of the dead body, arrest of the accused and collection and seizure of the exhibits from jhuggi. The exhibits have been identified by the witnesses as Ex. P1 to Ex. P4 and remaining case property has been identified by PW17 i.e. clothes of the deceased and some hair strands as Ex. P5 and Ex. P6, which were seized by the doctor, who conducted postmortem of the dead body and these clothes and scalp hair were found having presence of kerosene oil.

9. The aforesaid findings are borne out from the evidence coming on record and does not call for interference. Under the circumstances, the conviction of the appellant for offence u/s 498A/304B IPC is upheld.

10. Coming to the quantum of sentence, it was fairly conceded by learned counsel for the appellant that so far as the sentence of seven years awarded to the appellant u/s 304B IPC is concerned, this is the minimum sentence prescribed under the Section, as such, no interference is called for in this sentence. However, as regards Section 498A IPC is concerned, the appellant was sentenced to undergo simple imprisonment for a period of three years and was also directed to pay fine of Rs.2,000/-; in default to undergo nine months simple imprisonment. Although learned counsel for the appellant prayed for waiver of this fine and learned APP also did not oppose the request but the Section itself provides that the punishment may extend to three years and fine is also liable to be imposed. That being so, although the fine cannot be waived but the default period is reduced to one month.

11. With this modification, the appeal stands dismissed. Intimation be sent to the appellant through the Superintendent of the concerned jail. Trial Court record be sent back immediately along with copy of the judgment. (SUNITA GUPTA) JUDGE

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