

State Vs. Paramjeet Singh and ors.

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Court : Delhi

Decided On : Aug-21-2013

Judge : G. S. Sistani

Appellant : State

Respondent : Paramjeet Singh and ors.

Judgement :

\$~05. * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.L.P. 38/2012 % Judgment dated 21.08.2013 STATE Through : Petitioner Ms.Rajdipa Behura, APP for the State. versus PARAMJEET SINGH & Ors. Respondent Through : Mr. Suman Kapoor, Adv. with Mr. Tarun Sharma, Advocate CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MR. JUSTICE G.P.MITTAL G.S.SISTANI, J (ORAL) 1. State has filed the present leave to appeal under Section 378(1) of the Code of Criminal Procedure against the judgment dated 07.06.2011 passed by Additional Sessions Judge, arising out of an FIR lodged u/s 498A/304B/34 IPC (Subsequently charge u/s 302 IPC was added). The acquittal of the husband, mother-in-law and sister-in-law of the deceased by the learned trial court has led to the filing of the present leave to appeal.

2. The case of the prosecution, as noticed by the trial court, is that a call was received at Police Station, Rohini on 18.03.2008 at 8:06 pm stating "meri ladki ko sasural walon ne maar diya hai" which was reduced into writing vide DD no.42A. Thereafter, DD No.42A was handed over to SI Krishan Kant who along with Ct.

Narender Kumar went to the place of incident i.e. F-25/144, Sector-3, Rohini. Navpreet Kaur (deceased) was declared brought dead in Baba Saheb Ambedkar Hospital. SI Krishan Kant informed Sukhbir Singh, Executive Magistrate as the deceased had died within seven years of marriage under unnatural circumstances. Statement of the father of the deceased (PW-1) was recorded on the basis of which an FIR bearing No.160/08 u/s 498A/304B/34 IPC was registered. Subsequently, based on the post mortem report Ex PW-1/A, that mentioned the cause of death as asphyxia as a result of ligature pressure over neck produced by strangulation, an alternate charge u/s 302/34 IPC was framed against the Respondents.

3. In order to bring home the guilt of the Respondents, the prosecution has examined 17 witnesses.

4. Learned counsel for State, Ms. Rajdipa Behura submits that the trial court has erred in ignoring the vital pieces of evidence that have emerged during the course of trial. Counsel further submits that the order of acquittal passed by the learned trial court is not sustainable in the eyes of law as it is based on presumptions, conjectures and surmises.

5. The star witnesses on whose testimonies the prosecution has sought to place reliance in order to prove charges u/s 498A/304B/34 IPC are PW-1, father of the deceased and PW-15, mother of the deceased. Learned counsel for the state submits that both these witnesses support the case of prosecution as both of them have stated in their testimonies that the deceased was harassed after her marriage with respondent no.1 and demand of Honda City car was made from her by the respondents. Learned counsel for the respondents, on the other hand, submits that there are material contradictions in the testimonies of PWs with respect to the dowry demand. Counsel for the respondents further submits that no allegation with respect to any other specific dowry demand emerges from the testimonies of PWs so as to attract Sections 498-A/304-B IPC and that the overall allegations made by prosecution are vague and hazy.

6. We have heard the counsel for the parties and perused through the evidence on record. Careful examination of the statement made by PW-1 before the Executive

Magistrate i.e. Ex.PW-1/A, as well as testimonies of PW-1 and PW-15 reveal that there are material contradictions between all three of them, with respect to the time of demand of Honda City Car. As per the statement made by PW-1 in his cross examination, his elder son-in-law had bought the Honda City car in the year 2005 and ever since then Respondents started demanding the same from him, whereas, in his statement before the Executive Magistrate he stated that within a few days of marriage of the deceased with Respondent No.1 (which was performed on 07.09.2003), the Respondents started harassing her and demanded the Honda City car. As per the testimony of PW-15, mother of the deceased, the deceased had communicated the demand of Honda City car made by the respondents to her, on deceased's second visit to her parental home, which was sometime in 2003.

7. Therefore, we agree with the observation made by the trial court that the presence of material discrepancies, firstly, in the testimonies of PW-1 and PW-15 and secondly, between the testimony of PW-1 and his statement made before the Magistrate EX.PW-1/A, with respect to the demand of the Honda City car, do not inspire confidence.

8. Another factor that needs to be examined by us while dealing with the charge of dowry death is the proximity between the time of demand of dowry and the time of death of the deceased. It is a settled principle of law that the demand of dowry to be covered under Section 304-B of IPC, has to be made soon before death. It has been held that no definite interpretation can be given to the phrase soon before death. It would be appropriate to reproduce the observations made by the Apex Court in the case of *Satvir Singh v. State of Punjab*, (2001) 8 SCC633 with respect to the phrase soon before:

21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is at any time after the marriage. The third occasion may appear to be an unending period. But the crucial words are in connection with the marriage of the said parties. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can

be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of dowry. Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.

22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened soon before her death. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words soon before her death is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept soon before her death.

9. It is clear from the testimonies of PW-1 and PW-15 that the respondents continued to make the demand for Honda City car only till April 2007 i.e. till deceased came to her parental home for a period of six months due to her differences with respondent No.1, Paramjeet Singh. In October 2007, the deceased went back to her matrimonial house where she continued to stay till her death in March 2008. Applying the law laid down above to the facts of the present case at hand, since during the said period of 11 months preceeding her death, no demand for Honda City car was made by the respondents, there does not seem to exist any perceptible nexus between the dowry related harassment and her death. Therefore it has been correctly observed by the learned trial court that during the

period w.e.f April 2007 till her death in March 2008 no dowry demand has been made by the respondents and hence, the ingredient of soon before has not been satisfied. Furthermore, photographs have been submitted on record by the Respondents (DX-81 to 86 and DX-87 to

89) that have been taken on the occasions of second birthday of the daughter of respondent no.1 and deceased i.e. on 20.10.2007 and on the occasion of deceased's birthday celebrations on 07.12.2007 respectively. Deceased Navpreet appears to be happy in these photographs which have been taken as recently as three to six months before her death which further weakens the argument of harassment and dowry demand during the time period immediately preceding the death of the deceased.

10. Careful examination of all the above mentioned evidence would show that the prosecution has failed to prove that the cruelty meted out to deceased with respect to demand of Honda City car was the direct and proximate cause of the death of the deceased. Therefore, the prosecution has failed to prove its case beyond reasonable doubt for offences u/s 498A/304-B IPC.

11. Coming to the alternate charge u/s 302 IPC, the prosecution has sought to place reliance on the post mortem report ExPW8/A prepared by PW-8, Dr. Manoj Dhingra and PW-9, Dr. V.K. Jha to drive home the factum of death of deceased by way of strangulation. Relevant portion of the same has been reproduced below: "The cause of death is asphyxia as a result of ligature pressure over neck structures produced by strangulation. Injury No.2 is sufficient to cause death in ordinary course of nature. All injuries are ante mortem in nature.

12. On the contrary, learned counsel for the respondent submits that there are various factors that put a question mark on the reliability of the post mortem report as many significant elements that the post mortem report ought to have recorded so as to arrive at the conclusion of death by strangulation, are missing.

13. We find no reason to disagree with the observation made by the learned trial court that the cross examination of these witnesses i.e. PW-8 and PW-9 confirms the presence of numerous flaws in the post mortem report Ex PW-8/A. The

relevant portion of the learned trial courts judgment is read as under:

..there was no sub conjunctival hemorrhage on the dead body and no discolouration of lips or finger nails was found. In the post mortem report Ex PW8A, the margin of ligature marks are not mentioned. The ligature mark was found 5 cm below the chin which is unusual in the case of strangulation. No bleeding from mouth, ear or nose was reported. The distance of ligature mark from supra sternal notch was not taken. The distance of ligature mark from mastoid process was not taken. The condition of trachea is not mentioned in post mortem report Ex PW-8/A as the fracture of the larynx and tracheal rings are common in strangulation. No damage was found to the skin underneath the ligature. The ligature material was not examined to find minute fibres from the ligature or suspicious substances. However as per the post mortem report Ex PW-8/A, multiple scratch abrasions have been found on the right side of the neck during post mortem. It may indicate scuffle of the deceased with someone before the death but it does not necessarily mean that death was caused by strangulation by using chunni Ex.P-1 and Ex.P-2. There was no sign of considerable violence which is common in strangulation.

14. To substantiate these lacunae in the post mortem report and medical opinion of PW-8 and PW-9, further reliance has been placed by the counsel for the respondents on the statement of DW-1, Dr. Chandrakant who has a vast experience in the field of forensic science and has conducted over 14,000 post mortem examinations in the course of his medical career. DW-1 deposed that the ligature mark injury in case of the deceased has not been properly described and no measurement has been taken from the different points necessary to determine the ligature mark injury as oblique or horizontal. The neck was also not opened to examine the neck structures to differentiate between hanging and strangulation.

15. In our opinion, from the testimonies of PW-8 and PW-9 as well as the opinion of DW-1, it is clear that various crucial elements have not been examined and recorded in the post mortem report prepared by PW-8 and PW-9 and hence the opinion regarding the cause of death as asphyxia by strangulation as given in the post mortem report does not inspire any confidence. It appears to be the case of hanging and there is no evidence that any of the accused had abetted the suicide

of the deceased. The prosecution has, thus, failed to prove that the cause of death was strangulation as opined in Ex. PW8A. Therefore, no case has been made out against the respondents u/s 302 IPC.

16. We are satisfied that the prosecution has not been able to prove its case beyond reasonable doubt, there is no perversity in the appreciation of evidence. There exist no compelling and substantial reasons for interference in the judgment of the trial court. Accordingly, the leave to appeal is dismissed. G.S.SISTANI, J
G.P.MITTAL, J AUGUST21 2013 ssn

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