

Rajbir Singh Vs. State

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Court : Delhi

Decided On : Jul-21-2014

Judge : Pradeep Nandrajog

Appellant : Rajbir Singh

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: July 16, 2014 Judgment Delivered on: July 21, 2014 % + CRL.A. 451/1998 ISHWAR SINGH & ORS Represented by: Appellants Mr.D.C.Mathur, Sr.Advocate instructed by Mr.Ashish Jha, Mr.Amjad Hussain, Mr.Anupam Siddharth and Mr.Paul Roy Paske, Advocates versus STATE Represented by: Respondent Mr.Varun Goswami, APP for the State with Insp.S.K.Jha, ATO, P.S.Nangloi CRL.A. 477/1998 RAJBIR SINGH Represented by: Appellant Mr.Krishan Kumar, Advocate with Ms.Sunita Arora, Advocate versus STATE Represented by: Respondent Mr.Varun Goswami, APP for the State with Insp.S.K.Jha, ATO, P.S.Nangloi CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

1. Mange Rams daughter Sneha Lata was married to Rajbir on April 28, 1986. On the same day, Kusum Lata daughter of Suraj Bhan who is the brother of Mange Ram, was married to Rajbirs younger brother Mahavir. Ishwar Singh and Kasturi

Devi are the father and mother respectively of Rajbir and Mahavir. Shakuntala is their daughter. Sneh Lata was found dead in her matrimonial house on May 10, 1987. As per the post-mortem report Ex.PW-15/A, the post-mortem examination of Sneh Lata's dead body was commenced at 3:30 PM on May 11, 1987 by Dr.L.T.Ramani (PW-15) who opined that cause of death was asphyxia resulting from strangulation. A chunni which was tied around the neck of Sneh Lata when her dead body was recovered was the object used to strangle her. The ligature marks on the neck being horizontally placed around the middle of the neck with pressure abrasion marks at places, conclusively established that the death was homicidal. It was opined that the death took place two days prior to the day when the post-mortem was conducted. This means that as per the postmortem report, Sneh Lata died on May 09, 1987. Sneh Lata's husband Rajbir was found absconding. Her father-in-law Ishwar Singh surrendered before the learned Metropolitan Magistrate the day Sneh Lata's post-mortem was conducted i.e. May 11, 1987. He was arrested. So was his wife Kasturi and their son Mahavir as also their daughter Shakuntala. Rajbir was declared a proclaimed offender and a charge-sheet was filed against Ishwar Singh, Kasturi, their son Mahavir and their daughter Shakuntala for having harassed Sneh Lata with a view to coerce her or her parents to meet an unlawful demand for dowry as also for having murdered Sneh Lata. Accordingly, committed to trial, vide order dated October 16, 1987, charges were framed against Ishwar Singh, Kasturi, Mahavir and Shakuntala for the offence punishable under Section 498A IPC and for an offence punishable under Section 302 IPC. Prosecution started examining its witnesses.

2. Rajbir was apprehended on June 11, 1992 when trial against Ishwar Singh, Kasturi, Mahavir and Shakuntala was on. He was committed to face trial along with his parents and siblings. On September 22, 1992 charge was framed against him for having committed an offence punishable under Section 498A IPC and also for having committed an offence punishable under Section 302 IPC. Witnesses who had already deposed till then were recalled and Rajbir was given an opportunity to cross-examine the witnesses. 20 witnesses were examined by the prosecution and since some of them, when recalled for cross-examination were given a second number, we find a reference to 34 prosecution witnesses.

3. Mahipal has been referred to as PW-2 and PW-27, Ct.Jai Bhagwan has been referred to as PW-5 and PW-19, SI Devender Singh has been referred to as PW-8 and PW-24, HC Kuldeep Singh has been referred to as PW-9 and PW-23, SI Attar Singh has been referred to as PW-10 and PW-25, Ct.Rambir Singh has been referred to as PW-12 and PW-22, Ct.Sube Singh has been referred to as PW-14 and PW-21, Ct.Pandit Ram has been referred to as PW-16 and PW-33, ASI Ranbir Singh has been referred to as PW-18 and PW-32.

4. Prosecution closed its evidence on September 13, 1996. It dawned on the prosecution that there was no evidence that the five accused were present in the house on the day when Sneh Lata died as per the post-mortem report i.e. May 09, 1987. An application was filed to amend the charge, and we highlight not to frame an additional or an alternative charge. It was prayed that the five accused be charged for the offence punishable under Section 498A IPC and additionally for the offence punishable under Section 304B IPC. After hearing arguments the application was allowed vide order dated March 06, 1997. A fresh charge was drawn up. The first was that the accused had subjected Sneh Lata to cruelty, an offence punishable under Section 498A IPC. The second charge was that they had caused dowry death of Sneh Lata, an offence punishable under Section 304B IPC.

5. Vide impugned decision dated September 14, 1998 Shankutlala has been acquitted. Ishwar Singh, Kasturi, Mahavir Singh and Rajbir Singh have been convicted for having committed offences punishable under Section 498A and Section 304B IPC. All of them have been sentenced vide order dated September 15, 1998 to undergo imprisonment for life for the offence punishable under Section 304B IPC and to undergo RI for 3 years for the offence punishable under Section 498A IPC and additionally to pay fine in sum of `500/- each, in default of payment of fine to undergo SI for 3 months.

6. In concluding that Sneh Lata was subjected to cruelty in connection with a demand for dowry by the accused save and except Shakuntala, the learned Trial Judge has accepted the testimony of Mange Ram PW-1, the father of Sneh Lata and that of her brother Mahipal PW-2 as also the testimony of Omwati PW-3 the

sister of Mange Ram. It has been opined that the testimony of the three witnesses was sufficient evidence to conclude that Sneha Lata was subjected to dowry harassment. The death being within 7 years of the marriage, and the place of death having been held to be the joint residence of the accused and the deceased, death being otherwise than under normal circumstances, in the absence of any explanation by the accused who have been convicted, as to how Sneha Lata died the conclusion drawn is that the indictment stood proved against the accused, save and except Shakuntala.

7. Ishwar Singh, his wife Kasturi and his son Mahavir have challenged their conviction by filing a joint appeal No.451/1998. Rajbir has challenged his conviction by filing a separate appeal No.477/1998.

8. Ishwar Singh, Kasturi and Mahavir questioned their conviction on two counts. Firstly that Rajbir and Sneha Lata had shifted to the second house owned by Ishwar Singh in village Baprola and thus it was Rajbir who had to explain how his wife died. Secondly, there is no evidence to establish dowry being demanded by the three from either the deceased or her relations nor the deceased being subjected to cruelty or harassment with a view to coerce her or her parents to meet any dowry demand.

9. Rajbir questions his conviction adopting the second reasoning of his parents and brother and as regards his wife being found dead in their matrimonial house he pleads an alibi of having left the house on May 08, 1987 and having gone to Jaipur in connection with employment.

10. Section 304B IPC, by a deeming provision, makes it a penal offence if a woman dies due to burns or bodily injury or the death occurs otherwise than under normal circumstances within 7 years of her marriage and it is proved by the prosecution that soon before her death she was subjected to cruelty or harassment by her husband or relatives of her husband for or in connection with any demand for dowry. The deeming fiction is that such husband or relatives shall be deemed to have caused her death, called dowry death. Section 113B of the Indian Evidence Act, 1872 raises a presumption as to dowry death, by requiring the Court to presume that the person who subjected the woman to cruelty or

harassment by demanding dowry, has caused the dowry death. In other words the onus shifts on the accused to establish the circumstances under which the deceased died. Failure to discharge the burden is fatal. As regards Section 498A IPC, it makes it an offence where the husband and/or the relatives of the husband subject the wife of the husband to cruelty, which has been defined to mean either a wilful conduct which is of a nature as is likely to drive the woman to commit suicide or cause grave injury or danger to her life, limb or health or the woman is harassed with a view to coerce her or any person related to her to meet an unlawful demand for property or a valuable security.

11. Since it is the positive case of the prosecution that Sneh Lata was harassed for dowry, and for which three witnesses have been examined by the prosecution, our task is to consider the testimony of the said three witnesses, being the father, the brother and the paternal aunt of Sneh Lata, but before that a brief overview of the facts to set the scene.

12. At 10:30 AM on May 10, 1987, Mange Ram went to PS Nangloi and made a statement before the Duty Officer who recorded DD No.13A, Ex.PW-1/A. The translation whereof would be as under:

At 10:30 AM Mange Ram son of Bhagwan Singh has reached the police station to lodge a complaint. As per him his daughter Sneh Lata was married to Rajbir son of Ishwar Singh who resides in village Baprola. Due to tension between the father and son on account of domestic reasons on May 09, 1987 Ishwar Singh told his son Rajbir to vacate his house by the evening and threatened that if he did not do so he would kill him and his children. He has received information that Rajbir and his daughter have not been seen in the village since 10:00 PM last night he and his family made attempt to locate the two but in vain. Rajbir had left the house at the instance of his father and if the two commit a wrong then Rajbirs father would be responsible for the same.

13. On the intervening night of May 10, 1987 and May 11, 1987, a few minutes past midnight, Mange Ram once again went to the police station and got recorded his statement Ex.PW-1/B, in which he stated that he was working as a Laboratory Assistant in Government Boys Senior Secondary School and was residing in

village Malikpur within jurisdiction of PS Najafgarh. His daughter Sneh Lata was married to Rajbir son of Ishwar Singh on April 28, 1986. The same day, Kusum Lata the daughter of his younger brother Suraj Bhan was solemnized with Ishwar Singhs younger son Mahavir. That Kusum Lata had not joined her husband in the matrimonial house because her gona was not performed. Sneh Lata had joined company with her in-laws in her matrimonial house. Immediately after the marriage Ishwar Singh and his wife Kasturi as also Rajbir and his younger brother Mahavir started repeatedly demanding dowry in the form of cash and goods (saman). Furniture given at the time of marriage was attempted to be smashed by Rajbir. A few days ago, Rajbir demanded scooter from him and he gifted him scooter No.DDF5316 He then started demanding a car. On May 04, 1987 his son Mahipal went to bring his sister to their house. Ishwar Singh and his wife Kasturi assured him that they would send his daughter to her parents house on Sunday. On May 09, 1987 his son went to the house of the in-laws of his sister to fetch her. Kasturi told him that Rajbir had left with his daughter for his house. His son came back. Neither his son-in-law nor his daughter came to their house. He had lodged a missing person complaint. He and his family searched for his daughter and his son-in-law. A stranger told him that his daughter had been murdered and her dead body was concealed in a chaubara in their house.

14. Sub-Insp.O.P.Singh, was present in the police station and had recorded the statement Ex.PW-1/B. Accompanied by Ct.Jai Bhagwan and Mange Ram he went to village Baprola and was guided to the house of Ishwar Singh. Dead body of Sneh Lata was recovered from a room on the first floor of Ishwar Singhs house in village Baprola. The writing Ex.PW30/A was penned by SI O.P.Singh beneath Ex.PW-1/B to the effect that at midnight when they reached the house of Mange Ram the door of the chaubara on the first floor was locked. Ishwar Singh and his wife Kasturi who were present told him that the key was with their son Rajbir who was missing. A saw was summoned to cut the lock. On opening the door the dead body of a lady with a cloth tied on the neck was recovered which was identified by Mange Ram as his daughter Sneh Lata.

15. FIR for an offence punishable under Section 302 IPC was registered at around 5:00 AM on May 11, 1987. The dead body was seized and sent for post-mortem.

As noted above, Dr.L.T.Ramani PW-15 conducted the post-mortem at 3:30 PM on May 11, 1987 opining that the death was two days before. As noted above, four accused were initially sent for trial because Rajbir absconded and was declared a proclaimed offender. During trial of the four accused Rajbir was apprehended and thereafter all accused faced further joint trial with such witnesses which Rajbir wanted to cross examine being re-summoned.

16. Mange Ram PW-1 deposed that his daughter Sneh Lata was married to Rajbir on April 28, 1986. On the same day, Kusum Lata daughter of his younger brother Suraj Bhan, was married to Rajbirs brother Mahavir. Whereas Kusum Lata did not join the society of her husband since gona had not taken place, his daughter Sneh Lata has joined the society of her husband and was residing with her in-law in village Baprola. The accused started harassing his daughter demanding a scooter and other things. He purchased Scooter No.DDF-5316 and asked Rajbir to take the scooter but he said that he wanted a car. His daughter told him that if car was not given her life would not be spared. On May 04, 1987 he sent his son to bring Sneh Lata to her parental house. His son again went on May 08, 1987 to bring his sister but returned home and told him that Rajbir and Sneh Lata had left the house picking up a quarrel. He searched for his daughter and not finding her lodged the report Ex.PW-1/A on May 10, 1987. Some unknown person told him that his daughter has been killed. He went again to the police station and lodged the complaint Ex.PW-1/B. He accompanied the police to the house of the accused at 3:00 AM on the morning. From a room on the first floor foul smell was emanating. The accused could not produce the keys. Police broke open the lock. His daughter was lying dead.

17. During cross examination he admitted that various girls of their village were married in the village of the accused. That there were two houses of Ishwar Singh in village Baprola and that there were chabutaras in both the houses. He clarified that the scooter was demanded by Rajbir only. He said he purchased the scooter in the black market and did not have any papers to prove said fact. He admitted that Ishwar Singh and his son were with him searching for Rajbir and Sneh Lata on May 09, 1987.

18. Mahipal PW-2 stated that after the marriage of his sister the accused demanded a scooter which was purchased by his father but Rajbir did not accept it. He corroborated his father on his going to his sisters house to fetch her on May 04, 1987 and on May 09, 1987. He admitted during cross examination that Ishwar Singh had two houses in village Baprola.

19. Om Wati PW-3 deposed that after her marriage Sneha Lata had complained to her that her in-laws were harassing her for dowry. During cross examination she admitted that she had visited Sneha Lata three to four months after her marriage and was told by Sneha Lata that she was residing in a separate house with her husband and was not residing with her in-laws.

20. This then is the only evidence pertaining to dowry demand and harassment.

21. In his statement Ex.PW-1/B, Mange Ram has made a general statement that after the marriage of his daughter with Rajbir the accused started demanding dowry in the form of cash and goods. The only statement with particulars concerning dowry is that a few days ago only Rajbir demanded a scooter and he gifted one and that Rajbir started demanding a car. In his deposition in Court, Mange Ram has not deposed that the accused started demanding any cash or goods after the marriage. As against his statement Ex.PW-1/B wherein he stated that a few days ago only Rajbir started demanding a scooter, in his testimony in Court he said that the accused started harassing his daughter by demanding a scooter and other things. What were those other things?. One is left guessing. He said that he purchased a scooter in the black market and gave it to Rajbir. He said that Rajbir started demanding a car. demanded a scooter. Mahipal has said that all the accused Om Wati has simply said that Sneha Lata had complained to her that her in-laws were harassing her for dowry.

22. In the decision reported as 2004 (4) SCC109 Surender Kaur & Anr. Vs. State of Haryana the Supreme Court has held that statements which are omnibus in nature, sans particulars of the time and the date when a woman was harassed or when dowry demands were made, and the nature of the demands made not being amplified, lack in credibility. In the decision reported as 2012 (10) SCC741 Geeta Mehrotra & Anr. Vs. State of U.P. & Anr. statements making casual reference to

family members of the husband, be it the brother, unmarried sister or the parents without specific allegations bringing out the acts or the utterances of the individual accused were held to be worthless. Bald allegations without particulars were also held worthless. Unless allegations of active involvement with particulars are made, no offence under Section 498A IPC can be made out.

23. In the instant case the only specific allegation which we find consistently emerging is against Rajbir; of demanding a scooter and a car.

24. From the testimony of Mange Ram it has emerged that Rajbir was not only having a problem with his wife but was also having a problem with his father Ishwar Singh. It appears that Ishwar Singh and his wife were quite fed up with Rajbir's behaviour and had wanted him to leave their house and take along with him his wife, a fact stated by Mange Ram in his complaint Ex.PW-1/A. It also assumes importance that the daughter of Mange Ram's younger brother named Kusum Lata was also married to Rajbir's brother on the same day. Whereas Mange Ram claims that Kusum Lata had not joined her husband in her matrimonial house, but we find that Kusum Lata who has been examined as DW-1 has deposed to the contrary and her testimony on oath to said effect has not been challenged by the prosecution. Kusum Lata has deposed that she was not harassed for lack of dowry. The two cousins i.e. Sneha Lata and Kusum Lata were married to two brothers in the same family. Thus, a general demand for dowry by the family and it not being met resulting in only Sneha Lata being targeted and harassed confounds us because if there was a general demand for dowry in the form of household articles, both newlywed wives, who were cousins, would be harassed and not only one. Evidence brings out that whereas Mahavir was happy with the marriage and whatever articles were given in dowry and so were Ishwar Singh and his wife, only Rajbir was having an issue of a vehicle of conveyance not being gifted to him.

25. Evidence establishes that only Rajbir was harassing Sneha Lata and was wanting a scooter as also a car to be gifted to him and the demand persisted till when Sneha Lata died.

26. Since the charge for murder which was originally framed was abandoned by the prosecution and the altered charge against the accused was for an offence punishable under Section 304B IPC, we need not decide the controversy whether Rajbir and Sneh Lata were residing in the other house of Ishwar Singh in the village or the same house. Even if Sneh Lata died in her matrimonial house, the prosecution having given up the charge of murder against the accused and having proceeded on the altered charge under Section 304B IPC, for the unnatural death of Sneh Lata in her matrimonial house, since the ingredient of Section 304B that Ishwar Singh, Kasturi and Mahavir subjected the deceased to cruelty or harassment for or in connection with any demand for dowry has not been established, the three would be entitled to be acquitted for both charges framed against them.

27. As regards Rajbir his plea of alibi required him to establish that on May 08, 1987, having got a job in Jaipur he had left for Jaipur. He has not established the plea of alibi. Besides, if he had gone to Jaipur having got a job he would have given his address to his parents. He would have returned to visit his wife during vacation time. He was unheard of for five years. Attempts made to apprehend him were futile. He was arrested after five years. He has admitted in his statement under Section 313 Cr.P.C. that he and his wife used to reside together. The prosecution has proved all the ingredients of Section 304B IPC and Section 113B of the Indian Evidence Act required him to explain the circumstance under which his wife died. He has not done so.

28. Arguments advanced by learned counsel for the State that Sneh Lata died in her matrimonial house and thus the father in law, the mother in law as also the brother in law had to explain how she died, are neither here nor there for the reason though initially charged for the offence punishable under Section 302 IPC, the prosecution itself got the charge amended to one under Section 304B IPC. Besides, said argument for being considered would require the prosecution to prove that the accused were present in the house when the deceased died. We may additionally note that Sneh Lata's dead body was found in the chauraha of the house, which was on the first floor. The other family members were residing on the ground floor. Except for Rajbir, nobody would be liable to render an explanation as

to how Sneh Lata died in view of the fact that there is evidence that the parents of Rajbir were fed up with him and were wanting him to leave the house. There is a possibility that Rajbir and Sneh Lata who were living on the first floor of the house were not sharing the house as a home with the rest of the family members. The deceased had died on May 09, 1987 and her dead body was discovered in the chaubara at around 3.00 A.M. on May 10, 1987. The room in which Sneh Lata was died was locked from outside. In view of the strained relationship which Rajbir had with his parents it is possible that after he killed his wife and locked the room and thereafter left the house, everything went unnoticed by the parents and the other family members. It is not uncommon for family members not to notice the movement of other family members living on a different floor in the same building if relationships are broken or strained.

29. CrI.A.No.451/1998 is allowed. Accused Ishwar Singh, Kasturi Devi and Mahavir are acquitted of the charges framed against them. The bail bond and surety bond furnished by them are discharged.

30. CrI.A.No.477/1998 filed by Rajbir is dismissed. The conviction and the sentence imposed upon him are affirmed. Bail bond and surety bond furnished by him are cancelled. He shall surrender to suffer the remaining sentence.

31. TCR be returned. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA)
JUDGE JULY21 2014 mamta

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