

State vs.manju Vashisht

State vs.manju Vashisht

SooperKanoon Citation : sooperkanoon.com/1205623

Court : Delhi

Decided On : Apr-27-2017

Appellant : State

Respondent : Manju Vashisht

Judgement :

\$~25 * + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL. L.P. 249/2017 %
STATE MANJU VASHISHT Date of Judgment:

27. h April, 2017

... Petitioner

Through: Mr. Rajat Katyal, APP for State. Versus Through: None. Respondent
CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MR. JUSTICE VINOD
GOEL VINOD GOEL, J.

(ORAL) CRL.M.A. 6916/2017 (condonation of delay) This is an application filed by the petitioners seeking condonation of 94 days delay in filing the present leave to appeal. Heard. For the reasons stated in the application and in the interest of justice, present application is allowed. Delay in filing the present leave to appeal is condoned. Application stands disposed of. CRL.L.P. 249/2017 1. The petitioner/State of NCT of Delhi has sought leave to appeal under section 378 (1) of the Code of Criminal Procedure, 1973 against the judgment dated 30.09.2016 passed by the learned Additional Sessions Judge, Fast Track Court, North-West

District, Rohini Courts, New CrI. L.P. 249/2017 Page 1 of 13 Delhi, by which the respondent was acquitted of the charges under section 498-A/304-B of IPC. By the same order, the learned Additional Sessions Judge convicted accused Naren Vashisht under section 498-A/304-B of IPC. Accused Bhanu was acquitted in absentia.

2. The respondent along with her son Naren Vashisht faced trial under section 498-A/304-B/34 of IPC in respect of suicide committed by Smt. Preeti on 02.06.2013 at her matrimonial home by hanging herself with the help of a Chunni. As per the case of the prosecution, the convict Naren Vashisht was employed in Kutch, Gujarat. He had his house No.C-132, Pundrik Vihar, Pitam Pura, Delhi, where his mother Smt. Manju Vashisht used to reside. The daughter of the respondent Smt. Bhanu was already settled in England. The marriage of Naren with the deceased Preeti was solemnized on 18.02.2013.

3. On receiving information of the suicide, a DD No.43B (Ex.PW-19/A) was registered and SI Pancham (PW-22) along with Ct. Sanjay (PW-

18) reached at the spot. They found the room in question bolted from inside. The door was broken open and they found Preeti hanging there. One suicide note was also recovered from the spot, which was seized. The deceased was taken to casualty of Bhagwan Mahavir Hospital by Ct. Sanjay, where doctor declared her dead. MLC Ex.PW-4/A reflects that the patient was brought in casualty at about 06.15 PM and was declared brought dead as there was no cardiac activity present and ECG was showing straight line. Autopsy was conducted on the body of the deceased by Dr. Bhim Singh (PW-6) and as per his Post-Mortem Report Ex.PW-6/A, the death was due to ante- CrI. L.P. 249/2017 Page 2 of 13 mortem hanging via ligature tied around the neck. He did not find any external injury on her body, which indicate that death was due to suicide only and was not homicidal. Information was conveyed to the relatives of the deceased Smt. Preeti. SDM Sh. Mani Bhushan Malhotra (PW-20) recorded the statement of Smt. Ram Kali (PW-1), who is mother of the deceased as also Smt. Sunita (PW-2), who is Bhabhi of the deceased. After recording the statement, he directed the concerned SHO to take necessary action.

4. An FIR No.183/2013 was registered with PS Rani Bagh, under section 498-A/304-B/34 of IPC. As far as Ms. Bhanu is concerned, her involvement was also under investigation, which revealed that she had visited India when her mother Smt. Manju Vashisht (respondent) was lying admitted in the hospital but she left India on 02.06.2013 itself. Her extradition was found not feasible for want of Extradition Treaty with England and therefore neither she could be arrested nor challaned.

5. Convict Naren Vashisht and the respondent were charged by the learned Additional Sessions Judge under section 498-A/304-B/34 of IPC and in alternative under section 3 IPC.

6. To bring home the guilt of the accused persons, the prosecution examined 22 witnesses, which included PW-1 Smt. Ram Kali (mother of the deceased), PW-2 Sunita (Bhabhi of the deceased), PW-3 Sanjeev Goswami (Brother of the deceased), PW-4 Dr. S. Roy, who examined Smt. Preeti and PW-6 Dr. Bhim Singh, Autopsy Surgeon. The statements of both the accused persons were recorded separately under section 313 Cr.PC. The respondent in her statement under Crl. L.P. 249/2017 Page 3 of 13 section 313 Cr.PC stated that she was admitted in Maharaja Agrasen Hospital on 22.05.2014 for acute CVA with left hand sided Hemiplegia (paralysis) with loss of memory as well as of clear speech and therefore she was not able to perform even her day to day activities. She also claimed that at the time of her such condition, her son and daughter-in-law were in Kutch (Gujarat). She claimed that when she was hospitalized, she was not in a position to understand the circumstances which compelled Smt. Preeti to take such an extreme step. She further stated that there was never any demand of money. She stated that there was never any maltreatment to Preeti either by her or by her children Naren Vashisht and Bhanu.

7. Both the accused persons examined five witnesses in their defence. DW-1 Sanchit, DW-2 K.D. Sharma and DW-4 Pawan Kumar were examined to show that respondent was unwell since 22.05.2013 and remained hospitalized. DW-3 Rajender Singh has been examined to show that Naren Vashisht has obtained

medical insurance and therefore there was no occasion for him to raise any demand towards the treatment of his mother. DW-5 Dinesh Kumar has been examined to show that when accused Manju Vashisht was hospitalized, he financially helped the accused Naren Vashisht.

8. Since the respondent and convict Naren Vashisht were charge-sheeted under section 498-A/304-B/34 of IPC, it would be necessary to advert to the relevant sections of the IPC: - 304-B. Dowry death.-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any Crl. L.P. 249/2017 Page 4 of 13 relative of her husband for, or in connection with, any demand for dowry, such death shall be called dowry death, and such husband or relative shall be deemed to have caused her death. Explanation.-For the purpose of this sub-section, dowry shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961). (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. 9. For making out an offence of dowry death under Section 304-B, the following ingredients have to be proved by the prosecution: (a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances; (b) such death must have occurred within seven years of her marriage; (c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and (d) such cruelty or harassment must be in connection with the demand for dowry. 10. The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section expounds cruelty as: (i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical), or (ii) harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. Crl. L.P. 249/2017 Page 5 of 13 11. It is argued by the learned APP for the State that the learned trial court has not

properly appreciated the evidence as surfaced during the trial and the respondent should have been convicted. He submits that the trial court has not appreciated the evidence of PW-1 Smt. Ram Kali and PW-2 Smt. Sunita, who were mother-in-law and sister-in-law of the deceased and supported the case of the prosecution. He submits that the trial court has failed to appreciate that the deceased Preeti has specifically named the respondent in her suicide note that the respondent used to harass the deceased by abusing her.

12. We have heard the learned APP for the State and perused the record.

13. When crime team reached the spot i.e. House No.C-132, Pundrik Vihar, Pitam Pura, Delhi, one room was found bolted from inside and accused Naren was found sitting outside the room. The door was broken open with the help of Ct. Sanjay (PW-18). SI Pancham Kumar (PW-21) and Ct. Sanjay (PW18) found that one lady hanging with the ceiling fan by a Chunni. Suicide note and pen were seized from the spot by two separate Seizure Memos. PW-11 Ct. Poonam Rani recorded the information transmitted to her and she brought the PCR form Ex.PW-11/A, which indicate that one suicide note has also been recovered from the spot. This information was recorded at 17:29:40 hours.

14. PW-3 Sanjay Goswami, who is the brother of the deceased, testified that the suicide note Ex.PW-3/A was in the handwriting of his sister Smt. Preeti. During investigation, he had handed over Diary of the deceased Ex.PW-3/B to the Investigating Officer and one portion in CrI. L.P. 249/2017 Page 6 of 13 handwriting of deceased in the Diary dated 30th November was exhibited as Ex.PW-3/C. This portion Ex.PW-3/C was taken as admitted handwriting of deceased (A-1) for the purpose of forensic examination. PW-5 Ms. Sarita Sharma examined the questioned handwriting i.e. suicide note (Q-1), which tallied with the admitted handwriting i.e. A-1 (Ex.PW-3/C). Learned trial court found that the deceased left behind the suicide note Ex.PW-3/A. The suicide note was written in Hindi language, which reads as under: - Mummy main khush rahna chahti. Zindgi mein itne sanghrash baad laga laga ki ab jakar khushi milegi lekin mummy mein bahut akeli par gai hun. Mujhme aur zinda rahne ki himmat nahi hai. Mummy ye log bahut pareshan kar rahe hai. Kabhi bolte hai ghar se hamari maa ke ilaaj ke

liye paisa la nahi to ghar ja mummy Bhanu didi bahut pareshan kar rahi hai. Naren ki maa roz gaaliyan bakti hai. Naren kahta hai talaak le lo aur tarah-2 ke gande ilzam lagata hai. Mummy marne ke siva dusara rasta nahi dikhai de raha mere vajah se tumhe aur pareshani no ho. Bhaiya mummy ka dhayan rakhna unhe tumhari bahut jarurat hai. Aur mummy tumhe meri kasam bilkul rona nahi. Ab main hamesha ke liye sukh ki neend so jaungi. Tumhari lado 15. The English translation of the suicide note as mentioned in para No.8.2 of the judgment reads as under: - Mummy I wanted to live happy. After facing lot of hardship in the life, I felt that now I would get happiness. But mummy, I am left very alone. I am left with no strength to remain alive. Mummy, these people are troubling a lot. Sometimes, they ask to bring money from house for the treatment of their mother else return to home. Mummy, Bhanu sister is troubling a lot. Narens mother abuses me daily. Naren asks me to take divorce and also levels dirty allegations. Mummy, I do not find any alternate except to die. I do not want you to feel worried for me. Bhaiya, please take care of mother. She Crl. L.P. 249/2017 Page 7 of 13 needs you very much. Please swear on me mother, that you will not cry. Now, I will go for an eternal blissful sleep. Your Lado 16. A perusal of the suicide note indicates that that her in-laws were harassing the deceased and had asked her to bring money for treatment of their mother. She also alleged that Ms. Bhanu (sister-in-law) was troubling her a lot. Regarding the respondent, it is alleged that Narens mother abuses her daily. She also mentioned that Naren asked her to take divorce and also levels dirty allegations.

17. It comes out from the testimony of PW-2 Sunita that Preeti had made a call from Delhi only after she had returned to Delhi due to ill-health of respondent and it was only thereafter she informed that she was being harassed and there was a demand of Rs.3,00,000/- on account of dowry. But in the statement recorded by the SDM, PW-2 Sunita never informed the SDM about any demand made to her on account of dowry. She has alleged that this demand was on account of treatment of the respondent.

18. PW-3 Sanjeev testified that when Preeti reached Delhi on account of ill-health of the respondent, she informed him that her mother-in-law (i.e. the respondent) was hospitalized and also asked whether he could arrange some money as her in-

laws were forcing her to arrange some money. He deposed that the deceased Smt. Preeti informed him that she used to be abused and there used to be demand of money on account of dowry and she used to be asked to bring Rs.3,00,000/- and a sum of Rs.2,00,000/- as bare minimum. CrI. L.P. 249/2017 Page 8 of 13 19. PW-1 Smt. Ram Kali testified that her daughter Preeti (deceased) was married to Naren Vashisht (convict) on 18.02.2013 at Agra and after marriage she started living at her matrimonial home at Pitampura, Delhi. The family of in-laws of her daughter consisted of Naren, his mother (respondent) and his sister, who was settled abroad. After staying 02 or 03 days, accused Naren Vashisht took Preeti to Kutch, Gujarat, where he was working. Her son Sanjeev and daughter-in-law had gone to bring Preeti back on account of some ceremony (Pagfera), and at that time accused Naren had not behaved properly with them. They brought the deceased back with them and she remained at Agra for about a month. Naren was supposed to come to Agra to take her back but he did not come. However his mother (respondent) along with her brother and Bhabhi came there and took the deceased to Hathras, where Naren was having his Nanihal (home of maternal uncle), Preeti remained there at Hathras for 15-20 days then from there she was brought to Delhi. She further testified that Naren Vashisht then came to Delhi and took Preeti back to Gujarat where she remained for 15 days. PW-1 further testified that accused Naren Vashisht then brought Preeti to Delhi as his mother was unwell and then Naren Vashisht along with his mother and sister Bhanu, who came from England, started torturing the deceased and used to demand Rs.3,00,000/- and they did not even provide food to her properly. She also testified that Preeti made a call one day prior to her death. She proved her statement Ex.PW-1/A, which she made before the SDM.

20. In her cross-examination, PW-1 deposed that her daughter informed her on telephone from Kutch that when accused Naren was coming to CrI. L.P. 249/2017 Page 9 of 13 Delhi, he did not want to bring along Preeti with him. She also admitted that she did not come to meet the respondent. She admitted that she was having one mobile but did not reveal the number.

21. The testimony of PW-1 Ram Kali indicate that when Sanjeev and his wife went to Kutch, Gujarat to bring Preeti for the ceremony of Pagfera, the accused Naren

misbehaved with them; after respondent became unwell both the accused along with accused Bhanu, who had also come from England, by then started torturing Preeti and used to demand Rs.3,00,000/- and they also did not use to give food to her properly.

22. It also comes out from the testimony of PW-1 that Preeti remained with her mother-in-law (respondent) for a period of about 20 days.

23. It also appears from the statement of PW-1 that the respondent was leading a normal life. The respondent had rather come to Agra to bring back Smt. Preeti back and then from Agra she took her to Hathras, where they all stayed for about 15-20 days and from there she brought her to Delhi. This clearly shows that the respondent was quite mobile at that time and therefore there was no occasion for anyone to have made any demand of money on account of her ill health. It is, thus, quite evident that the demand emanated after the respondent fell ill and admitted to the hospital. PW-7 Prem Chand Gupta, Secretary of the Housing Society where the respondent was living, testified that the respondent was an aged lady and 4-5 days prior to the incident in question, the respondent was admitted in Maharaja Agrasen Hospital by the neighbours and at the time of her admission in the hospital even her son was not in Delhi, who came later on i.e. 2-3 days thereafter. Crl. L.P. 249/2017 Page 10 of 13 The demand of money was allegedly made to meet the medical expenses of the respondent and therefore this could be raised only when the respondent was taken to the hospital by her neighbours. It also appears from the testimony of PW-1 that demand was made when the accused Naren Vashisht brought Preeti to Delhi as his mother was unwell.

24. The record of Maharaja Agrasen Hospital regarding the admission of respondent was brought by DW-2 K.D. Sharma, which reflects that she remained admitted in their hospital from 22.05.2013 to 24.05.2013. As per the statement of DW-1 Sanchit of BLK Super Speciality Hospital, the respondent was admitted in their hospital on 24.05.2013 and discharged on 03.06.2013. As per the record of Maharaja Agrasen Hospital, the respondent was brought with the history of weakness of left side of body and loss of clear speech. Various tests were conducted including NCCT head. Though her condition improved, but fact remains

that she was discharged from said hospital against medical advice. From there, she was taken to BLK hospital. By that time, her son accused Naren Vashisht had reached Delhi. As per record of said hospital, she was having left side weakness, inability to talk and altered sensorium. The history appearing in discharge summary of said BLK hospital is as under: - Mrs. Manju Vashisht, 58 years old female, admitted with chief complaints of left sided weakness, inability to talk, altered sensorium. On examination, patient was drowsy, HP68mm, BP130/80 mm of HG, SPO299 on room air, chest B/L clear, CNS power in UL and LL-0/5. Patient was admitted in Maharaja Agrasen Hospital from May 22, 2013 to May 24, 2013, take LAMA, NCCT head was done on May 22, 2013 which was normal. Immediate MRI brain was done Crl. L.P. 249/2017 Page 11 of 13 which was suggestive of acute right MCA territory infarct. She was admitted and was put on inj. Dexa, Mannitol, IV antacids, Tab Clopitab, Aztor and IV fluids. Patient was catheterised. Other blood investigations were done revealed microcytic anaemia and leukocytosis. LKFTS were normal. During the stay, she complained of left shoulder pain for which x-ray of left shoulder was done that came out to be normal. Volini gel and physiotherapy was done. Foleys catheter is removed. Patient responded well to the given treatment, patient attendant requested to discharge the patient and so is being discharged on request. 25. The suicide note does not indict the respondent who was hospitalized on 22.05.2013 and discharged from the hospital on 03.06.2013. Even as per the suicide note, the deceased was asked by them to bring money for treatment of the respondent. Merely because the respondent used to abuse the deceased would not tantamount to demand of dowry within the scope and ambit of section 498-A IPC and section 304-B of IPC or section 306 of IPC.

26. It emerges from the testimonies of prosecution witnesses particularly PW-1, PW-2, PW-3 and PW-7 and defence witnesses DW-1, DW-2 and also keeping in mind the medical condition of the respondent from the time when she fell ill that the demand was only after her hospitalization and at that time she was in a very poor state of health, her speech being impaired and virtually she was in paralytic condition. In such a poor state of health she cannot be expected that she herself would either torture her daughter-in-law (deceased) or raise any demand of money falling within the definition of Dowry. She was living alone in Delhi and was admitted to hospital by her neighbours only and the deceased and Naren Vashisht

reached there only when they learnt about such admission of the respondent in the hospital. Crl. L.P. 249/2017 Page 12 of 13 Therefore, the learned trial court has rightly acquitted the respondent of all the charges.

27. Even otherwise, it is settled law that the appellate court may only interfere in an appeal against acquittal when there are substantial and compelling reason to do so [See Sheo Swarup v. King Emperor, AIR 1934 PC227(2); M.G. Agarwal v. State of Maharashtra, AIR 1963 SC2000(paragraph 16 and 17); Tota Singh and Anr. v. State of Punjab, AIR 1987 SC108 (1987) 2 SCC529(paragraph 6); State of Rajasthan v. Raja Ram, (2003) 8 SCC180(paragraph 7); and Chandrappa v. State of Karnataka, (2007) 4 SCC415(paragraph 42)].

28. We do not find any merit in this leave to appeal and the same is dismissed.
VINOD GOEL, J.

G. S. SISTANI, J.

APRIL27 2017 // sk Crl. L.P. 249/2017 Page 13 of 13

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com