

Ramesh vs.state (Gnctd) and Ors.

Ramesh vs.state (Gnctd) and Ors.

SooperKanoon Citation : sooperkanoon.com/1220172

Court : Delhi

Decided On : Dec-19-2018

Appellant : Ramesh

Respondent : State (Gnctd) and Ors.

Advocate for Pet/Ap. : Mr. Yadav, Mr. Rajendra Yadav

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

7. h December, 2018 Judgment pronounced on:19th December, 2018 CRL. L. P. 720/2018 RAMESH

... Petitioner

Through : Mr. Rajendra Yadav, Advocate. VersusResondents. Through : Ms. Radhika Kolluru, APP for the State with SI Ranbir Singh, PS-Neb Sarai. STATE (GNCTD) & ORS. CORAM: HON'BLE MR. JUSTICE SIDDHARTH MRIDUL HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL SANGITA DHINGRA SEHGAL, J CRL. L. P. 720/2018 1. In view of the decision of the Honble Supreme Court of India in Mallikarjun Kodagali (Dead), represented through Legal Representatives vs. State of Karnataka & Ors., reported at 2018 (14) SCALE32 the victim is no longer required to apply for leave to appeal against the order of acquittal. Consequently, the present criminal leave to appeal is allowed. The matter is directed to be registered as a Criminal Appeal. CRL.A. /2018 (To be

numbered) 1. This appeal is arising out of the judgment dated 31.08.2018 passed by the learned Additional Sessions Judge (ASJ)/Special Judge, NDPS (South), Saket Court Complex, New Delhi in case FIR No.776/2016 registered at Police Station - Neb Sarai, filed on behalf of the victim, CrI.A. _____/18(to be numbered) Page 1 of 19 Ramesh Vs State (GNCTD) & Ors. whereby the respondents were acquitted of the charge under Section 498A/304B/3 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC').

2. Brief facts of the case as noted by the learned Trial Court is as under: ...the accused Rakesh is husband, Shyam Singh is the father-in-law, Reshma is the mother-in-law and Deepak is brother-in-law of the deceased Ms. Shobha. The accused Rakesh got married to the deceased Ms. Shobha on 30.04.2011. On 30.09.2016, Ms. Shobha died after falling from the second floor of the house of accused i.e. A238, Devli Extension. On 30.09.2016, ASI Ranbir Singh reached Majidia Hospital, Hamdard Nagar with Ct. Manendra on receiving DD No.39A. He obtained the MLC of Ms. Shobha and took the statement husband Dharmender. Dharmender told that Ms. Shobha had gone to the terrace to pick-up clothes and she fell down. While ASI Ranbir Singh was taking the statement of Dharmender, family members of the deceased, their relatives and neighbours attacked the in-laws of the deceased and started causing damage of the property of the hospital. With lot of efforts, the situation was brought under control by the local police and police from PS-Neb Sarai. The in-laws of the deceased ran away from the hospital to save their lives... her of 3. After investigation was over, charge-sheet against the accused persons was filed before the concerned Court for the offences punishable under Sections 498A/304B/34 of IPC as well as offences punishable CrI.A. _____/18(to be numbered) Page 2 of 19 Ramesh Vs State (GNCTD) & Ors. under Section 3

to which they denied the allegations and claimed to be tried. To substantiate the accusation, the prosecution examined twelve witnesses in all. Statements of accused persons under Section 313 of Cr.P.C were recorded wherein they reiterated their innocence and examined one witness in their defence.

4. The learned Trial Court, upon analysis, examination and evaluation of the prosecution evidence and after considering the rival submissions recorded

acquittal of the accused persons for the charged offences.

5. Assailing the impugned judgment, Mr. Yadav, learned counsel for the appellant contended that the view and the ultimate conclusion recorded by the learned Trial Court in acquitting the accused persons for the offences punishable under Section 498A/304B/3

of IPC is manifestly perverse, unsustainable, tainted with non-application of mind to the vital evidences, a result of wrong interpretation of evidence of the eye witness and other substantial evidences, which has led to miscarriage of justice.

6. Mr. Rajendra Yadav, learned counsel for the appellant submitted that the statements of the prosecution witnesses, the parents (PW-1 and PW-4) and the brother (PW-3) of the deceased, on record, corroborate with each other and inspire confidence, thus should be relied upon. He further contended that the trial court erred in placing reliance on the testimony of PW-8 (neighbour of the victim), as he resiles from his statement.

7. Lastly, the learned Counsel for the Appellant has contended that there is evidence on record to show that the deceased had been subjected to cruelty and harassment by the accused persons in connection with the CrI.A. ____/18(to be numbered) Page 3 of 19 Ramesh Vs State (GNCTD) & Ors. demand of dowry which led the deceased to take the extreme step of committing suicide.

8. We heard learned counsel for the appellant and perused the entire material available on record.

9. Before delving into merits of the case, we deem it appropriate to discuss the relevant provisions which are involved in the present case. The respondents were acquitted for the offence punishable under Section 304B of IPC, which reads as under : than under otherwise "304-B Dowry Death- (1) Where the death of a woman is caused by any burns or bodily injury or occurs 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 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 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."

10. In Raman Kumar Vs. State of Punjab : (2009) 16 SCC35 Honble Supreme Court observed :

"13. The provision has application when death of a woman is caused by any burns or bodily injury CrI.A. _____/18(to be numbered) Page 4 of 19 Ramesh Vs State (GNCTD) & Ors. than under normal or occurs otherwise 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 relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304B IPC, the essential ingredients are as follows: (i) The death of a woman should be caused burns or bodily injury or otherwise than under a normal circumstance. (ii) Such a death should have occurred within seven years of her marriage. (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband. (iv) Such cruelty or harassment should be for or in connection with demand of dowry. (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

14. xxxxxxxxxxxx 15. xxxxxxxxxxxx As per the definition of "dowry death" in Section 304B IPC and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients, amongst others, in both the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand for dowry". Presumption under Section 113B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to the provisions is that CrI.A. _____/18(to be numbered) Page 5 of 19 Ramesh Vs State (GNCTD) & Ors. raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials: (1) The question before the court must be whether the accused has committed the dowry death of a woman, (This means that the

presumption can be raised only if the accused is being tried for the offence under Section 304B IPC.) (2) The woman was subjected to cruelty or harassment by her husband or his relatives (3) Such cruelty or harassment was for, or in connection with any demand of dowry. (4) Such cruelty or harassment was soon before her death otherwise 16. A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring normal circumstances". The expression "soon before" is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led in by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be than in CrI.A. _____/18(to be numbered)

Page 6 of 19 Ramesh Vs State (GNCTD) & Ors. the occurrence. laid down as to what would constitute a period of soon before It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present, with the idea of proximity test. No indicated and definite period has been the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods soon after the theft, is either the thief who has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If

the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

Crl.A. _____/18(to be numbered) Page 7 of 19 Ramesh Vs State (GNCTD) & Ors.

11. In Amar Singh v. State of Rajasthan : (2010) 9 SCC64 Honble Supreme Court observed: 29...What is punishable Under Section 498-A or Section 304-B Indian Penal Code is the act of cruelty or harassment by the husband or the relative of the husband on the woman. It will be also clear from Section 113-B of the Evidence Act that only when it is shown that soon before her death a woman has been subjected by any person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death within the meaning of Section 304-B Indian Penal Code. The act of subjecting a woman to cruelty or harassment for, or in connection with, any demand for dowry by the accused, therefore, must be established by the prosecution for the court to presume that the accused has caused the dowry death. 12. In the case of Rajinder Singh v. State of Punjab reported in (2015) 6 SCC477 the Supreme Court has observed as under:

"7. The primary ingredient to attract the offence under Section 304B is that the death of a woman must be a "dowry death" "Dowry" is defined by Section 2 of the Dowry Prohibition Act, 1961, which reads as follows:

"2. Definition of "dowry".-In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly- (a) by one party to a marriage to the other party to the marriage; or Crl.A. _____/18(to be numbered) Page 8 of 19 Ramesh Vs State (GNCTD) & Ors. II.-The expression (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies. Explanation I.- [***]. "valuable security" has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860)."

8. A perusal of this Section shows that this definition can be broken into six distinct parts: (1) Dowry must first consist of any property or valuable security - the word "any" is a word of width and would, therefore, include within it property and valuable security of any kind whatsoever.

2) Such property or security can be given or even agreed to be given. The actual giving of such property or security is, therefore, not necessary.

3) Such property or security can be given or agreed to be given either directly or indirectly.

4) Such giving or agreeing to give can again be not only by one party to a marriage to the other but also by the parents of either party or by any other person to either party to the marriage or to any other person. It will be noticed that this clause again widens the reach of the Act insofar as those guilty of committing the offence of giving or receiving dowry is concerned.

5) Such giving or agreeing to give can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnised.

6) Such giving or receiving must be in connection with the marriage of the parties. Obviously, the expression "in connection with" would in the CrI.A. ____/18(to be numbered) Page 9 of 19 Ramesh Vs State (GNCTD) & Ors. context of the social evil sought to be tackled by the Dowry Prohibition Act mean "in relation with" or "relating to".

9. The ingredients of the offence under Section 304B have been stated and restated in many judgments. There are four such ingredients and they are said to be: (a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred 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."

otherwise than under 13. The law as it exists is that to bring home the guilt of an accused under Section 304B of IPC, the prosecution is obliged to prove that: (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.

14. Two of the ingredients of Section 304B of the Indian Penal Code are answered in the affirmative as it is not in dispute that, firstly, the death of the deceased was within seven years of marriage and secondly, CrI.A. _____/18(to be numbered) Page 10 of 19 Ramesh Vs State (GNCTD) & Ors. death of the deceased was otherwise than under normal circumstances. Now, we have to examine, whether the respondents treated the deceased with cruelty or harassment on account of demand of dowry and abetted her in committing suicide and that the cruelty meted out to the deceased was so as to provoke her to end her life.

15. Returning to the facts of the present case, the marriage between the respondent No.1 and the deceased took place on 30.04.2011 and the deceased died on 30.09.2016 other than in normal circumstances within 7 years of the marriage. A legal fiction has been created to the effect that in the event if it is established that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any of his relative; for or in connection with any demand of dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. To establish that the cruelty was meted to the deceased for the want of dowry soon before her death, the prosecution examined the parents and brother of the deceased.

16. Father of the deceased stepped into the witness box as PW-1 and deposed that:

"...After the finalization of marriage and before its actual performance, the father of Dharmender had asked four wheeler from me, on which I replied that it is not in my capacity to give four wheeler to him and hereafter, when I returned to my house,

Shyam (father of accused Dharmender) and one relative namely Deewan(Bhanja) had telephoned me and asked, if I can give motorcycle to them, on which I replied them, I can give Crl.A. _____/18(to be numbered) Page 11 of 19 Ramesh Vs State (GNCTD) & Ors. motorcycle along with other dowry articles as per my means. Thereafter, marriage was solemnized on 30.04.2011. After three months of marriage, accused Shyam came to my house to take money for the vehicle. I told him that I cannot arrange the money for the same as I had already told him prior to the marriage about the same. The in laws and the husband of the deceased Soma used to beat and maltreat her also demanding the car. The deceased along with the husband was residing at a rented accommodation in Sangam Vihar for about two years before this incident. "...My daughter used to tell to my wife that accused persons used to beat and torture her and she was not telling me as she was feeling that I will be tensed..."

17. Brother of the deceased was examined as PW-3 and mother of the deceased was examined as PW-4, who deposed on the lines of PW-1, father of the deceased that the respondents were consistently making demand for a four wheeler.

18. A conjoint reading of testimonies of these witnesses goes to show that the alleged demand of dowry is general. The witnesses failed to ascribe that the deceased was harassed "soon before her death" for or in connection with demand of dowry. It is pertinent to mention here that during cross examination, PW-1 categorically stated that "It is correct that I had given all the articles for domestic and daily use as per my own wish."

He further added that "It is correct that my daughter was staying on rented accommodation along with her husband before the time of delivery". From the testimonies of these material Crl.A. _____/18(to be numbered) Page 12 of 19 Ramesh Vs State (GNCTD) & Ors. witnesses, it emerges that, the deceased was residing with her husband separately in a rented accommodation for two years before the incident. The alleged ill treatment, harassment and cruelty meted to the deceased is merely hearsay, speculative, arbitrary and based on no verifiable data. The general Rule of evidence is that hearsay evidence is not admissible.

Hence, we find it difficult to accept that the in-laws used to harass and torture the deceased on a regular basis.

19. So far as the contention regarding cruelty is concerned, it is essential to extract the said section and lay emphasis on it Section 498A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.--For the purpose of this section, 'cruelty' means--(a) 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) of the woman; or (b) 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.A. ____/18(to be numbered) Page 13 of 19 Ramesh Vs State (GNCTD) & Ors.

20. On a plain reading of Section 498A it transpires that if a married woman is subjected to cruelty by the husband or his relative, the offender is liable to be punished with the sentence indicated in the Section. But cruelty can be of different types and therefore what kind of cruelty would constitute offence has been defined under the explanation. As per first definition contained in Clause (a) it means a willful conduct of such a nature which is likely to drive the victim woman to commit suicide or to cause grave injuries to health and life, limb or health (mental or physical). The other definition of cruelty is in Clause (b) and is attracted when a woman is harassed with a view to coercing her or any of her relation to meet any unlawful demand for any property or valuable security or is on account of failure to meet such demand.

21. Under the present case the prosecution has failed to prove that the victim was subjected to cruelty soon before her death and that the incident leading to her death was not an accident. The Appellant is contending the case for such harassment which falls squarely under Clause (b) of the explanation of Section

498A of the IPC. But they were unable to produce any clear evidence for the same; conviction cannot be done on general statements of the appellant so we find no good reason to take a different view than that of the trial court.

22. The Apex Court held the same view in the case of, Gopal vs. State of Rajasthan: AIR 2009 SC1928 relevant portion is quoted below:

12. So far as Section 498A(b) is concerned, there must be an evidence of demand of dowry. There is no evidence in that regard adduced by the prosecution. That being so, as rightly contended Crl.A. _____/18(to be numbered) Page 14 of 19 Ramesh Vs State (GNCTD) & Ors. by learned Counsel for the appellant Section 498A(b) has no application.

23. The learned Trial Court has alternately charged the respondents for the offence punishable under Section 306 IPC. Section 306 IPC reads as under :

"Section 3

Abetment of suicide - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

24. In the instant case, PW-9 Dr. D.N. Bhardwaj, who conducted the postmortem, opined that, majority of the injuries are caused due to the deceased falling from the terrace of the second floor of her house. According to this witness, injuries 10 and 11 being self-inflicted are only a possibility and as far as injury 4 is concerned, it could have been due to some other mishappening. Relevant portion of his statement is quoted below:-

"The body was having total 12 injuries which are mentioned at column 5 of the postmortem report. The cause of death in our opinion was shock due to head injury alongwith spinal injury caused by blunt force impact and it is possible fall from height. Crl.A. _____/18(to be numbered) Page 15 of 19 Ramesh Vs State (GNCTD) & Ors.

25. The alleged incident is stated to have been witnessed by PW-8, Krishan Kumar, a neighbour, who was standing on the terrace at the relevant time. PW-8 deposed that:

"...I saw that one lady Shobha had fallen from the roof of her house. When i come down and after taking tea I saw that the relatives of Shobha had taken her to hospital. I had not noticed as to what Shobha was doing on the roof of her house. Later on I come to know that Shobha had expired due to injury received by her. Police official had visited my house and recorded my statement..."

26. From the perusal of the records, it is pertinent to mention that the railing on the roof, where the deceased was standing prior to her death, was only 2.5 ft. in height. So the possibility of a person slipping and falling from there cannot be ruled out. PW-8 deposed in his examination in chief that I saw that one lady Shobha had fallen from the roof of her house he has not stated about the presence of any other person on the roof. Furthermore, Dr. D.N. Bhardwaj, Professor, Forensic Medicine, AIIMS hospital had opined that the cause of death in our opinion was shock due to head injury alongwith spinal injury caused by blunt force impact and it is possible fall from height. So the medical evidence ascertains that the injuries sustained by the deceased were due to the fall only. Moreover, as discussed earlier the charge of cruelty against the accused persons has not been proved. Taking into account the facts of the present case, the CrI.A. ____/18(to be numbered) Page 16 of 19 Ramesh Vs State (GNCTD) & Ors. likelihood of the deceased falling from the roof accidentally cannot be ruled out.

27. It is a settled law that while deciding an appeal filed by the complainant, in case two views are possible, the High Court must not grant leave, if the trial court has taken one of the plausible views, in contrast thereto in an appeal filed against acquittal. Upon re-appraisal of evidence and relevant material placed on record, in case the High Court reaches a conclusion that another view can reasonably be taken, then the view, which favours the accused, should be adopted unless the High Court arrives at a definite conclusion that the findings recorded by the trial court are perverse, the High Court would not substitute its own views on a totally different perspective.

28. In Chandrappa v. State of Karnataka reported in (2007) 4 SCC415 the Apex Court has culled out the following principles qua powers of the appellate Courts while dealing with an appeal against an order of acquittal:

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

1. An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

2. The Code of Criminal Procedure, 1873 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law. CrI.A. _____/18(to be numbered) Page 17 of 19 Ramesh Vs State (GNCTD) & Ors. reasons', language' to emphasise 'good and 3. Various expressions, such as, 'substantial and compelling sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

4. An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, presumption of his further reinforced, reaffirmed and strengthened by the trial Court.

5. If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial Court."

that every person innocence is 29. In the case of State of Madhya Pradesh v. Dal Singh & Ors., reported at 2013 (8) SC625 the Hon'ble Supreme Court has held that the appellate court while considering the appeal against the judgment of acquittal shall interfere only when there are compelling and substantial reasons for doing so and if the judgment is unreasonable and relevant CrI.A. ____/18(to be numbered) Page 18 of 19 Ramesh Vs State (GNCTD) & Ors. materials have been unjustifiably ignored, it would be a compelling reason for interference.

30. Keeping in view the aforesaid settled law and the material available on record, we sum up with the conclusion that the learned Trial Court has rightly observed that the appellant failed to prove its case against the respondents beyond reasonable doubt. In view of the present circumstances, the appeal stands dismissed. SANGITA DHINGRA SEHGAL, J DECEMBER19 2018 /afa SIDDHARTH MRIDUL, J CrI.A. ____/18(to be numbered) Page 19 of 19 Ramesh Vs State (GNCTD) & Ors.

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