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Ashok Dogra Vs. State

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Court : Delhi

Decided On : Feb-13-2015

Judge : P. S. Teji

Appellant : Ashok Dogra

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on:

16. h January, 2015 Judgment Pronounced on:

13. h February, 2015 CRL.REV.P. 578/2006 ASHOK DOGRA ..... Petitioner Through: Mr. R.K. Handoo, Mr. Yoginder Handoo, Mr. Manish Shukla and Mr. Aditya Chaudhary, Advocates versus STATE ..... Respondent Through: Mr. P.K.Mishra, APP for State. CORAM: HON'BLE MR. JUSTICE P.S.TEJI P.S.TEJI, J.

1. Aggrieved by the judgment of conviction dated 16.01.1999 and order on sentence dated 18.01.1999 passed by the learned Metropolitan Magistrate, awarding the sentence to the petitioner to undergo rigorous imprisonment for a period of three years and fine of Rs.3,000/- under Section 498A IPC, in default of payment of fine to further undergo rigorous imprisonment for a period of six months; sentence to undergo rigorous imprisonment for a period of one year under Section 406 IPC and upholding the judgment of conviction by the learned

Additional Sessions Judge vide judgment dated 01.08.2006, the present revision petition has been filed by the petitioner. However, the sentence of imprisonment for offence under Section 498A IPC was modified to two years rigorous imprisonment.

2. Factual matrix, as emerges from the record, is that the complainant Smt. Asha Dogra made a complaint to the police that accused Ashok Dogra (husband), Tara Chand (father in law), Smt. Shakuntala (mother in law), Smt. Kusum Choudhary (sister in law) and Keshav Dev (brother in law-Nandoi) in furtherance of their common intention, subjected the complainant to cruelty for or on connection with demand of dowry. It was also alleged that accused Ashok Dogra, Tara Chand and Smt. Shakuntala were entrusted with the dowry articles. On the complaint of the complainant Smt. Asha Dogra, FIR No.351/1993, PS Defence Colony was registered. On completion of investigation, report under Section 173 Cr.P.C. was filed against accused Ashok Dogra, Tara Chand, Shakuntala, Kusum Choudhary and Keshav Dev.

3. Charge under Section 498A IPC was framed against all the accused persons, whereas separate charge under Section 406/34 was framed against accused Ashok Dogra, Tara Chand and Shakuntala. Accused persons including the petitioner Ashok Dogra pleaded not guilty to the charges framed.

4. To prove its case, the prosecution examined 9 witnesses. After conclusion of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. in which they had claimed innocence. The learned Metropolitan Magistrate vide judgment dated 16.01.1999 held the petitioner Ashok Dogra guilty for the offence punishable under Section 498A and 406 IPC and convicted him for the said offences. Accused Keshav Dev and Kusum Choudhary were also convicted under Section 498A IPC. Accused Tara Chand and Shakuntala were acquitted of the charges framed against them. The order on sentence was passed on 18.01.1999.

5. Thereafter, the petitioner as well as Kusum Chaudhary and Keshav Dev filed separate criminal appeals. The learned Additional Sessions Judge vide common order dated 01.08.2006, confirmed the conviction of the petitioner but modified the

sentence of imprisonment awarded to him. Accused Kusum Chaudhary and Keshav Dev were acquitted by the learned Additional Sessions Judge.

6. Feeling aggrieved by the same, the petitioner has preferred the present revision petition to set aside the judgments rendered by the courts below and claiming acquittal.

7. At the outset, it was argued by the learned counsel for the petitioner that when all the other accused are acquitted, the petitioner alone could not be convicted for the charges with the aid of Section 34 IPC as a single person cannot harbour common intention. The evidence adduced revealed the innocence of all the accused persons including the petitioner.

8. In support of the contentions raised, learned counsel for the petitioner has referred to judgments in case of Prabhu Babaji Navle vs. State of Bombay AIR 1956 SC51 Krishna Govind Patil vs. State of Maharashtra AIR 1963 SC1413 Sukhram vs. State of M.P. 1989 Supp. (1) SCC214 Vidyadharan vs. State of Kerala 2004 SCC (Cri) 260; Pandurang Sitaram Bhagwat vs. State of Maharashtra (2005) 9 SCC44and Sanjay @ Nagin @ Sohan Pal vs. State 133 (2006) DLT141
9. In Sukhrams case (supra), it was observed that when two named accused persons were convicted by trial court under Section 302 read with 34 and Section 436 read with 34 but High Court acquitted only one of them on benefit of doubt, the conviction of other accused under those provisions cannot stand. Relevant portion from the judgment reads as under :

There is another aspect of the matter which has also escaped the notice of the High Court when it sustained the conviction of the appellant under Section 302 read with Section 34 and Section 436 read with Section 34 IPC while acquitting accused Gokul of those charges. Though the accused Gokul and the appellant were individually charged under Sections 302 and 436 IPC they were convicted only under the alternative charges under Section 302 read with Section 34 and Section 436 read with Section 34 IPC by the Sessions Judge. Consequently, the appellants convictions can be sustained only if the High Court had sustained the convictions awarded to the accused Gokul also. Inasmuch as the High Court has given the benefit of doubt to accused Gokul and acquitted him, it follows that the

appellants convictions for the two substantive offences read with Section 34 IPC cannot be sustained because this is a case where the coaccused is a named person and he has been acquitted and by reason of it the appellant cannot be held to have acted conjointly with anyone in the commission of the offences. This position of law is well settled by this Court and we may only refer to a few decisions in this behalf vide Prabhu Babaji v. State of Bombay, Krishna Govind Patil v. State of Maharashtra and Baul v. State of U.P.

The other judgments relied upon by the learned counsel for the petitioner as referred to above are also on the similar proposition of law.

10. Case of the petitioner was examined in the light of above referred judgements. The complainant Smt. Asha Dogra was examined as PW1. She has stated that her marriage was solemnised on 22.02.1985 with Ashok Dogra which was arranged by Sh. Chet Ram. He told that the groom was B.A. Pass and working as Accountant in K.G. Khosla Compressor Limited Company. However, after marriage, it was revealed that he was only higher secondary passed and was working as clerk. After about 10 days of marriage, Sh. Chet Ram along with his wife came to her matrimonial house. Chet Ram said that he had brought gold mine and complainant was lone daughter of her father. On the festival of Karva Chauth, sister in law of the complainant gave a long list of articles to the mother of the complainant. On asking, parents of the complainant gave the articles. Thereafter, husband of the complainant asked for cash of Rs.25,000/-, but the complainant refused. Due to not bringing money, the complainant used to be given beatings by her husband. On 14.08.1986, a son was born out of the wedlock. The complainant was sent to her parental house 15 days before the delivery. All the hospital expenses were born by the parents of the complainant. Again her husband demanded cash of Rs.25,000/-. On the occasion of Lohri, the complainant had gone to her parental house. On the next day, her husband repeated the demand of money. Chet Ram, father in law and husband of the complainant came to her parental house and threw the dowry articles there and went away. The jewellery which the complainant was wearing was taken away by them. That incident was dated 17.01.1987. On 01.02.1987, death of brother-in-law of the complainant had taken place. The complainant went to her matrimonial house. The nanad (sister-in-

law) and nandoi (brotherin-law) of the complainant did not allow her to enter the house. She somehow managed to enter the house. After 16-17 days, her husband brought back the dowry articles which were thrown in the parental house of the complainant. In March 1987, husband of the complainant asked to get two wheeler scooter, upon which father of the complainant gave a sum of Rs.8500/-. Complainant further stated that her husband left his job and asked for money for establishing pen making factory. The machine was purchased by the father of the complainant which was later on sold by her husband for Rs.3,000/- and scooter was also sold for Rs.2,000/-. On 06.01.1993, complainant came to house and her husband asked her to have tea. After taking tea, the complainant became unconscious but she was not taken to hospital. On 19.01.1993, complainant was beaten by her husband and he even tried to press her neck. Once in the year 1991, when complainant delayed in preparing meals, she was attacked by her husband with knife. The complainant was also beaten by her husband on 31.01.1993 and 01.02.1993. On 02.02.1993, the complainant was thrown out of her matrimonial house. The complainant proved her complaint made to Women Cell as Ex.PW1/A. She proved the list of articles as Ex.PW1/B. The list of returned articles in broken condition was proved as Ex.PW1/C, whereas the list of the articles not returned was proved as Ex.PW1/D. She also proved the original letters as Ex.P1 to P13.

11. Almost similar statements have been made by PW2 Sh. Balak Ram, father of the complainant and PW5 Smt. Nikki Devi, mother of the complainant. Both these witnesses corroborated the testimony of their daughter PW1 Asha Dogra that she was harassed, tortured and beaten by the petitioner Ashok Dogra.

12. I am not agreeable with the arguments of the learned counsel for the petitioner that when all the other accused are acquitted, the petitioner alone could not be convicted for the charges with the aid of Section 34 IPC inasmuch as there are specific allegations against the petitioner Ashok Dogra. The complainant in her testimony has given the dates and incidents when she was beaten and tortured by the petitioner for bringing more money and dowry articles. She also testified that when she brought to the knowledge of her family members and cousins, the atrocities of the petitioner, she was again beaten by the petitioner. The testimony

of complainant has duly been corroborated by her parents who deposed that the petitioner used to demand money and torture/beat their daughter for bringing more money/articles. The petitioner is the main culprit who, as per testimony of the complainant and her parents, harassed/tortured the complainant for or in connection with dowry. In the present case, other co-accused were charged with the petitioner with the aid of Section 34 IPC for having common intention in committing the crime. The acquittal of other accused persons in no way affects the case of the petitioner as the petitioner is the main culprit.

13. When there are specific allegations against the petitioner from the mouth of his wife and her parents, the petitioner cannot escape from his guilt. It was the petitioner being husband of the complainant to maintain his wife well, but instead of doing so, he started harassing/beating his wife for bringing more money who was allegedly joined by other family members of the petitioner. So, the judgments referred by the learned counsel for the petitioner are of no help to him inasmuch as there are specific allegations of beating and torture by the petitioner to his wife/complainant in connection with demand of dowry.

14. Learned counsel for the petitioner further argued that there was no entrustment of any article of the complainant and if any, all the articles were returned to the complainant. In support of this contention, judgments in case of Harmanpreet Singh Ahluwalia and Others vs. State of Punjab and Others (2009) 7 SCC712and Sanjeev Kumar Aggarwal & Ors. vs. State & Anr. 2007 (4) JCC3074have been relied upon.

15. In Harmanpreet Singhs case (supra), it was observed that the element of wrongful intention should ordinarily exist from the inception of the contract. So far as the allegation in regard to criminal breach of trust is concerned, it related to the dowry articles. No allegation had been made that the appellants were guilty of commission of offence punishable under Section 3 and/or 4 of the Dowry Prohibition Act. If any dowry has been given, the same would attract the provisions of the special Act in preference to the general statute. Furthermore, if any article is given by way of dowry, the question of entrustment thereof for or on behalf of the bride would not arise. In Sanjeev Kumar Aggarwals case (supra), it was observed

that a sweeping statement was made by the complainant that her istridhan was entrusted to the family of her husband. There were no clear and specific allegations about the entrustment of istridhan to any of the petitioners.

16. The arguments advanced by the learned counsel for the petitioner is without any basis inasmuch the petitioner has categorically stated that earlier she left the matrimonial house and her articles were thrown by the petitioner at her parental house. But after the death of her devar i.e. brother-in-law, she returned to her matrimonial house and thereafter the petitioner brought all the articles which were thrown by him at her parental house. Thereafter on 02.02.1993, she was thrown out of her matrimonial house after giving beatings and all her articles were retained by the petitioner and his family members. There are specific allegations against the petitioner that those articles belonging to the complainant were entrusted to the petitioner which he did not return to the complainant after throwing her out of her matrimonial house. In view of specific allegations of entrustment of articles of the complainant to the petitioner, the judgments relied upon by the petitioner in case of Harmanpreet Singh (supra) and Sanjeev Kumar Aggarwal (supra) are of no assistance to him.

17. It was further argued by the learned counsel for the petitioner that the complainant Smt. Asha Dogra, her father Balak Ram and her mother Smt. Nikki have made contradictory statements and made improvements which discredit their testimony. There are contradictions in their testimony which makes the case of the prosecution doubtful.

18. I am not convinced with the arguments advanced inasmuch as the contradictions so alleged are not such which could go to the root of the matter and discredit the case set up by the prosecution. Secondly, in view of authoritative pronouncement by Honble Apex Court in case of State Vs. Saravanan and Others AIR 2009 SC152and Prithu @ Prithvi Chand and Another Vs. State of Himachal Pradesh (2009) 11 SCC588 it is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the court to reject the evidence in its entirety. Difference in some minor detail, which does not otherwise

affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. An undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be atuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses.

19. In view of ratio of judgment in case of Saravanan (supra) and Prithu @ Prithvi Chand (supra), the contradictions and improvements pointed out are not material which could go to the root of the matter. The contradictions are not such which could discard the testimony of the complainant and her parents. The improvements are bound to occur due to passage of time and it is not possible for a human mind to recall each and every incident as it happened.

20. The next argument advanced by the learned counsel for the petitioner is that the material witnesses i.e. Sh. Chetram and cousins of the complainant were not examined, for which a presumption under Section 114(g) of the Evidence Act is liable to be raised.

21. Section 114 and Illustration (g) of the Evidence Act reads as under :

114. Court may presume existence of certain facts.The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. The Court may presume-(g)That evidence which could be and is not produced, if produced, be unfavourable to the person who withholds it.

22. In the present case, Sh. Chetram and cousins of the complainant were not cited as witness by the prosecution, nor is there any statement of those witnesses on the record under Section 161 Cr.P.C., allegedly recorded by the police. As per list of witnesses, no such witness was cited by the prosecution. The petitioner, if desired, could have examined those witnesses at the time of adducing defence evidence. But the petitioner neither examined those witnesses in his defence nor

requested the Court to summon them as Court witnesses. Even no such plea was taken by the petitioner before the trial court and it appears that this plea has been taken just for the sake of arguments only. So, it is not a case to raise any presumption as provided in Illustration (g) of Section 114 of the Evidence Act.

23. I have gone through the ratio of judgment in case of Ram Briksh Singh and Others vs. Ambika Yadav and Another (2004) 7 SCC665in which it was observed that the revisional court does not function as a court of appeal and, therefore, cannot re-appreciate the evidence. Sections 397 to 401 of the Code are group of sections conferring higher and superior courts a sort of supervisory jurisdiction. These powers are required to be exercised sparingly. The jurisdiction can be invoked to correct the wrong appreciation of evidence. Though the High Court is not required to act as a court of appeal but at the same time, it is the duty of the court to correct manifest illegality resulting in gross miscarriage of justice. The High Court is not required to interfere in the concurrent finding of facts. I am of the considered opinion that the present case is not a fit case where the revisional jurisdiction is required to be exercised on the concurrent finding of facts recorded by the Courts below.

24. The learned counsel for the petitioner has submitted that the FIR of the present case was registered on 05.08.1993. The charge sheet was filed on 16.05.1994. The judgment of conviction was passed by learned MM on 16.01.1999 and order on sentence was passed on 18.01.1999. The learned Additional Sessions Judge passed the order on 01.08.2006 and presently we are in the year 2015. He further submitted that the petitioner has suffered the agony of the proceedings for more than 21 and half years and prayed for taking a lenient view on the quantum of sentence.

25. In view of discussion made above, the judgment passed by the learned Additional Sessions Judge is upheld. However, I am of the considered opinion that it would not serve any purpose to send the petitioner behind the bar. So, the sentence of imprisonment is modified to the period already undergone by the petitioner. The petitioner is directed to pay fine of Rs.15,000/- for offence under Section 406 IPC, in default of payment of fine, the petitioner shall undergo simple

imprisonment for four months. He is further directed to pay fine of Rs.25,000/- for offence under Section 498A IPC, in default of payment of fine, he shall undergo simple imprisonment for six months. Fine if so realised, be paid to the complainant Smt. Asha Dogra.

26. The petitioner shall appear before the Chief Metropolitan Magistrate (South) within the period of one month from the date of order to pay the remaining fine, failing to which surrender to serve the sentence in default of payment of fine.

27. The present revision petition is disposed of accordingly. P.S.TEJI, J.

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