

Ravi Kumar Vs. State

Ravi Kumar Vs. State

SooperKanoon Citation : sooperkanoon.com/693143

Court : Delhi

Decided On : May-17-1991

Reported in : 1991CriLJ2579; 44(1991)DLT366; II(1991)DMC54

Judge : R.L. Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 438; [Indian Penal Code \(IPC\), 1860](#) - Sections 304B

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1027 of 1991

Appellant : Ravi Kumar

Respondent : State

Advocate for Pet/Ap. : B.G. Singh,; P.P. Grover and; J. Sethi, Advs

Judgement :

B.L. Gupta, J.

(1) This is a third application for bail filed by the petitioner who has been booked in Fir 146/90 Ps Lahori Gate under Section 304B/498A read with Section 34 Indian Penal Code. The Fir has been recorded on the basis of a statement made by Usha Devi, stepmother of the deceased Varsha Gupta before the Sdm during inquest proceedings. Varsha Gupta is alleged to have committed suicide on 31.5.90 without leaving any suicide note or a dying declaration. It may be noted that vide

orders dated 13.2.91 this Court in Cr. M.(M) Nos. 1538/90 and 1783/90 admitted to bail the parents of the petitioner, namely, Raghbir Singh and Parkash Wati Gupta in view of their old age and infirm condition. By order dated 16.1.91 in Cr.M. (M) 2626/90 the bail of the petitioner, however, was rejected.

(2) Fresh grounds which, have been pleaded in this bail application are that in fact there is a tendency in the family of the deceased to commit suicide. Her elder brother Naresh Kumar committed suicide recently on 10.3.91 at the age of 28 years leaving his small child of 7 days only while he was married for about 15 months. Other circumstances which are pleaded are that the petitioner and his parents have actually been very affectionate, caring and loving towards the deceased, and instead of any demand for dowry, they have been bestowing gifts upon the deceased and her infant daughter Km. Chitra Gupta. Annexure A is a photo copy of a memorandum dated 28.2.87 executed by Parkash Wati, mother-in-law of the deceased by which she gifted Rs. 20,000.00 to the deceased by a cheque dated 15.12.86. It may be noted that the marriage of the deceased with the petitioner had taken place on 1.11.87 i.e. after about 10 1/2 months of this gift. This memorandum is signed not only by the deceased but also by her father Shiv Kumar Gupta. Annexure B is photo copy of another Memorandum by which Raghbir Singh father of the petitioner gifted Rs. 10,000.00 to the petitioner on 26.3.88 i.e. after about 5 months of the marriage of the deceased with the petitioner. Annexure C is a photo copy of a receipt allegedly signed by the deceased after receiving with thanks Rs. 40,000.00 from M/s Raghbir Singh & sons (HUF), obviously an Huf constituted by the petitioner and his father. All these amounts are alleged to be invested for purchase of Premises 3F situated at Dewan Chambers I-UA Jawahar Nagar, Malka Ganj, Delhi. The receipt of these three amounts is allegedly acknowledged on behalf of United Properties vide receipts photo copies of which are Annexures E1 to E3. Annexure F is an intimation to the deceased from the United Properties requesting her to contact their office for taking delivery of possession of the aforesaid premises.

(3) Annexure G1 is photo copy of memorandum of gift dated 30.11.89 executed by Raghbir Singh father of the petitioner gifting a sum of Rs. 20,000.00 by a cheque to his grand daughter Chitra Gupta aged only about 2 months which was accepted

on his behalf by the petitioner being her father. Annexure G2 is a copy of another memorandum of gift .dated 6.1.90 executed by Parkash Wati mother of the petitioner in favor of the grand daughter bestowing upon her a sum of Rs. 20,000.00 through the petitioner. Annexure Hi is the copy of an account maintained by M/s S.R. Enterprises, a firm of the petitioner's family showing a sum of Rs. 52,598/90 standing to the credit of the grand daughter as on 31.3.90. Annexure H2 is a copy of the similar account showing that the amount standing to the credit of Chitra Gupta as on 31.3.91 had increased to Rs. 58910.00 .

(4) Another set of documents are the photo copies of the bills/receipts Annexures J1 and J2 issued by Sunder Lal Jain Hospital showing in all an expenditure of Rs. 5630.00 incurred at the time of the delivery of the deceased when she gave birth to Chitra Gupta in September, 1989.

(5) Aforesaid facts prima facie indicate that the petitioner's parents had been gifting huge amounts to the deceased not only after marriage but even before her marriage with the petitioner. They also gifted various amounts to the infant daughter almost immediately after her birth.

(6) It is this type of the family against which there are allegations of harassment to the deceased and demand of dowry, made by the step mother Usha Devi in the Fir dated 31.5.90. This Fir is a very detailed document alleged to have been recorded by the Sdm, Kotwali at the time of inquest proceedings being conducted by him. It gives such minute details about the alleged involvement of the petitioner and his family members in making dowry demands upon them, that this Court at this stage refrains from making any detailed comments except saying that it simply gasps in wonder. Such a detailed statement at this stage seems to be unprecedented.

(7) Mr. Grover on behalf of the petitioner contended that inspire of the fact that Fir is such a detailed document, there is practically no allegation according to which there, was any demand of dowry from the side of the petitioner and his family members which could attract the rigour of Section 304B IPC. He has taken me, through the definition of dowry death as contained in this Section which may be reproduced for the sake of convenience.

'304BDowry 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 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. Explanationn-For the purposes of this sub-section 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).'

(8) Following ingredients are, thereforee, necessary to attract the provisions of Section 304B.

1.Death of a woman is either by burns or bodily injury or otherwise than under normal circumstances. 2. It should be within 7 years of marriage. 3. It should also be shown that soon before her death she was subjected to cruelty or harassment by husband or a relative. 4. Such harassment or cruelty should pertain to demand for dowry.

(9) Mr. Grover argued that there is no allegation even in the Fir that the deceased was subjected to cruelty or harassment' or that there was any demand for dowry soon before her death. He has also taken me through definition of dowry in Act 28 of 1961 according to which dowry means any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party or by the parents of either party to the marriage or by any other person, and or before or any time after the marriage. The only reference in this respect to the alleged demand of dowry is at page 4 of the Fir wherein it is stated, 'For the last 15 days I had no conversation with Varsha except on 29.5.90 at 5.30 to 6.00 A.M. Varsha told me over the telephone that she is ringing me at this time because every one is asleep. She told me that the Mundan was to be held and they should send whatever things they could to her in-laws. She barely spoke to me for a minute and hurriedly kept the phone down without listening my reply.' Mr. Grover argued that even if for the sake of argument the aforesaid averment was believed to be true, it did not come within the definition of dowry demand by the petitioner or his parents. It was simply a sort of a prestige of the deceased which might have

prompted her to request her step mother to send whatever they thought they could to her-in-laws. He also pointed that it was also a false allegation in the Fir that the petitioner or his parents had demanded from the parents of the deceased air conditioner and in fact the father of the deceased had voluntarily given the same to the petitioner. A photo copy of the declaration of gift of the father of the deceased is Annexure K wherein he says that he had gifted an .old air conditioner to the deceased valuing about Rs. 5000.00 on 1.7.89 out of natural love and affection and without any consideration whatsoever.

(10) Learned counsel for the State has taken pains to read the statements of Ashutosh Gupta, real brother of the deceased recorded by the police on 4.6.90 and those of other prosecution witnesses. According to Ashutosh Gupta, he was told on telephone by his sister i.e. the deceased that before the date of Mundan ceremony articles worth Rs. 20.000.00 should be given to satisfy greed of the petitioner and his family members. He further stated that he did not inform the date of the Mundan ceremony which was otherwise held on 30.5.90, to his other family members. However, in the Fir at the instance of the step mother Usha Devi, it is mentioned that the Mundan ceremony was to take place on 30.5.90. She is silent in this detailed Fir if Ashutosh told her if there was a demand of Rs. 20.000.00 from the side of the . petitioner and his family members.

(11) According to the Fir, the purpose for which Shiv Kumar Gupta contracted second marriage with Usha Devi was to look after the children from first wife. Usha Devi admittedly has a son from her first husband. However, it appears that after marriage, Usha Devi along with her husband started living at Raj Pur Road, Delhi while the children including the deceased continued to stay in the old house No. 1262, Rangmahal, S.P.M Marg, Delhi. During the course of arguments, learned counsel for the State submitted that in fact the deceased was living with them at Rajpur Road before her marriage although her name was shown in the ration card of Rangmahal address. But there is another witness Man Mohan Singh examined by the prosecution who is the resident of Nai Basti which is near Rangmahal. He has stated that Varsha Gupta d/o Shiv Kumar r/o 1265, Rangmahal after marriage had started living in 1576 Nai Basti and he knew her well. He had been seeing the deceased before marriage and she was a very gay type of girl, but after marriage

she started looking sad. This prima facie shows that the deceased was actually living in the Rangmahal house and not at Rajpur Road.

(12) The prosecution has also recorded the statement of Dr. Arun Gupta whose clinic is situated in front of the house of the petitioner. He stated that on 31.5.90 at about 12.30 P.M. the petitioner had come to him and requested him to accompany because his wife's condition was bad. On going there he enquired from the deceased as to what was the matter. Thereupon she told that she had consumed tablets which are used for killing worms. At that time she did not say she was subjected to any harassment or dowry demand on behalf of the petitioner. Similarly Dr. Sunil Khetrapal, CMO. Tirath Ram Shah Hospital where the deceased was taken in the Maruti van of Dr. Arun Gupta because the vehicle of the petitioner did not start, informed the police that the deceased was brought at 12.45 P.M. in the hospital. The petitioner also told him that his wife had consumed pesticide quick phos by nama and also given empty container which was taken in the police custody. Thereafter she was admitted in the Intensive Care Unit but she could not be saved and died. Learned counsel for the State argued that the time of death i.e. 2.35 Pm of the deceased indicated that poison must have been consumed at about 9.00 Am but no such inference can be drawn after perusal of various medical books cited by learned counsel for the State. In Modi's Text Book of Medical Jurisprudence and Toxicology 20th Edition at page 518, under the heads of Fatal Dose and Fatal Period, difference in time between the taking of the poison and death depends upon quantity of Tepp (Poison) consumed by the victim. The death may result in any period between 1/2 to 8 hours. It is not known at this stage as to what quantity of poison was consumed by Varsha Gupta. therefore, it cannot be said with reasonable certainty at this stage that the poison must have been consumed at 9.00 Am when we have the statement of Dr. Arun Gupta that the petitioner came to him at about 12.30 Pm and told him that his wife was not feeling well and requested him to accompany him to his house. . The deceased gave birth to a daughter in September, 1989. At the time of the death of Varsha she was about 8 months old and by now she would be about 1 year and 8 months. It is also admitted that Anita, married sister of the petitioner had applied for the custody of that child because after the arrest of the petitioner and his parents, there was no body to look after the child. It is admitted before me on behalf of the

State that the step mother who lodged the Fir, till date has not made any application for the custody of that child. Rather an application was filed on behalf of the State that Anita should also be made an accused. It is also admitted by learned State counsel that no family member of the deceased attended the Mundan ceremony which took place on 30.5.90, that is, a day earlier. The reason advanced is that they were not informed of the date of ceremony whereas in the Fir, it is admitted that Mundan was to take place on 30,5.90, giving rise to a prima facie inference that they were aware of the date of the ceremony. Suicide took place just on the next day. thereforee, the possibility of the deceased being in a fit of depreciation on account of the completely forgiven by the loving family members on such an important occasion, leading to the extreme step of suicide can also be not ruled out.

(13) This Court has no intention at this stage to express Its firm views one way or the other. However, we are confronted with two different sets of circumstances. One set of circumstances suggests that the petitioner and his parents had been bestowing lot of love and affection on the deceased and her infant child. They purchased a commercial complex in the name of Varsha and first Installment in this respect was paid even prior to her marriage through a document which is witnessed even by the father of the deceased. In all a sum of Rs. 70,000/ was invested by them. The argument of the learned counsel for the State that rich people try to purchase properties in the name of their children to evade income tax does not impress me. The reason is that even if the motive be as suggested by the learned counsel, the property purchased In this manner goes in the. name of the particular person and after the promulgation of the Benami Transactions (Prohibition of the Right to Recover Property) Act, 1988, such a person becomes the absolute owner. thereforee, the shopping complex even if purchased for reasons suggested by learned counsel for the State, would continue to remain in the name of Varsha Gupta. The other circumstances are that till the death of the deceased, there is not an iota of evidence on behalf of the prosecution to indicate if any complaint regarding the demand of dowry or harassment and beating of the deceased was ever made prior to the occurrence. All the evidence collected by the prosecution has sprouted only after the death of Varsha,

(14) It may also be noted that circumstance regarding the gifts bestowed upon Varsha and her daughter were not brought to the notice of this court when the bail application of the petitioner was earlier dismissed. Also the commission of suicide by the brother of the deceased occurred recently. As against the allegation of being compelled to give an air conditioner to the petitioner and his family members, the petitioner has placed on record Annexure K which is a photo copy of declaration of gift on the old air conditioner by the father of the deceased that he was giving the same out of his natural love and affection and without any consideration whatsoever. It is also admitted on behalf of the State that Naresh Kumar a brother of the deceased has committed suicide on 10.3.91 at the age of 28 years only when he was married only for about 15 months and left a 7 days old child only. Although there are allegations in this bail application that sister of the father of the deceased and her real mother also committed suicide, the same are not admitted.

(15) At this stage, it should also be borne in mind that the daughter of the petitioner is hardly, about 20 months old. The married sister of the petitioner Anita cannot be expected to look after the daughter for all times. The parents of the petitioner are old and infirm. The child will require the loving care of the father at this tender age. thereforee, taking the totality, of circumstances into consideration, I am of the view that it is a case in which the petitioner should be admitted to bail. I, thereforee, directed that petitioner shall be released on bail on his furnishing a personal bond in the sum of the 10,000.00 with one surety of the like amount to the satisfaction of the Court concerned. A copy of the judgment be forwarded immediately.

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