

State Vs Ashok Kumar and ors.

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Court : Delhi

Decided On : Jul-27-2010

Judge : Mr. Anil kumar, ; Mr. Suresh Kait. J J.

Appeal No. : CRL.LP No.198/2010

Appellant : State

Respondent : Ashok Kumar and ors.

Advocate for Pet/Ap. : Mr.Lokesh Sawhney, Adv.

Judgement :

1. Whether reporters of Local papers may be YES allowed to see the judgment?
2. To be referred to the reporter or not? NO
3. Whether the judgment should be reported NO in the Digest?

ORDER

This is an application seeking condonation of delay of 58 days in filing the leave petition. For the reasons stated in the application delay is condoned. CRL.LP No.198/2010

1. This is a petition under Section 378(1) of the Criminal Procedure Code for leave to appeal against the

JUDGMENT / ORDER

dated 2nd January, 2010 passed by the Additional Sessions Judge in the case FIR No.235/2003, under Section 498A/304B/34 of the Indian Penal Code, Police Station Gokal Puri acquitting the respondents Sanjeev Kumar, Rajeev Kumar, Ashok Kumar all sons of Vishambhar Dayal, Smt.Sharda Devi and Smt.Geeta Rani of the said offences.

2. Brief facts to comprehend the case are that deceased Kavita got married on 20th October, 2003 with respondent-3 Ashok Kumar about 5 months prior to 17th June, 2003 when she consumed Aluminum Phosphide tablets and succumbed to that.

3. Since deceased Kavita had died an unnatural death within seven years of her marriage, on the basis of the statements of the mother of the deceased Smt.Kaushaliya Devi, PW-2, made before PW-3, Sh. R.K. Chauhan, SDM on 17th June, 2003, investigation was carried out and the respondents were arrested after completion of formalities and post mortem of the body of the deceased. The allegations of the prosecution were that the husband Ashok, R-3 and in laws of the deceased Kavita used to taunt the deceased to bring dowry from her parental home and at the time of the marriage a motorcycle was demanded which was given to him. On 26th January, 2003 deceased visited her home and told her that the respondent Ashok had demanded Rs.11,000/- and had threatened to stab her if she did not get the money. 2-4 days after that deceased Kavita came back to the matrimonial home and stated that her husband Ashok has demanded Rs.20,000/- which was allegedly given by PW-1, the father to satisfy the dowry demand and to prevent any further harassment.

4. Challans were filed against Ashok Kumar, Smt.Sharda Devi and Smt.Geeta Devi, husband, mother-in-law and sister-in-law of the deceased for offences punishable under Sections 498A/304B/34 of IPC and thereafter on 15th March, 2004 supplementary challans against the brother in laws of the deceased namely Sanjeev Kumar (jeth) and Rajeev Kumar (Devar) were also filed under Section 498A/304B/34 of IPC. On conclusion of the trial the session Judge has acquitted all the accused vide judgment dated 2nd January, 2010 primarily holding after

analyzing the evidence on record that though first two ingredients of Section 304B that is death of deceased under abnormal circumstances and within seven years of marriage had been made out, however, the deposition of the witnesses made before the Court had major improvements in comparison to the statements made before the SDM and have major inconsistencies. The Session Judge analysed that the mother of the deceased PW-2 categorically deposed that she and her husband, PW-1 on their own free will had spent Rs.4.5 lakhs in the marriage of their daughter. After marriage, according to her, the respondent Ashok Kumar, husband had demanded Rs.50,000/-, however, the accused were given Rs.20,000/- through Kavita. The said witness of the prosecution was declared hostile. Though before Court she had deposed that accused had demanded Rs.11,000/- and Ashok Kumar had demanded Rs.50,000/- out of which Rs.20,000/- was given and a confrontation had taken place before the husband of the deceased and her brother Anil Kumar and that she had stated before the SDM that accused had killed her daughter, however, when she was confronted with the statement made before the SDM these facts were found to be missing. The mother of the deceased had admitted that the deceased used to visit after marriage and every time her husband used to take her back and she went back in happy mood. She also deposed that her daughter was happy on the occasion of marriage of Rajeev Kumar (Devar).

5. The learned Session Judge also noted that PW.8 Anil Kumar, brother of the deceased had admitted that the alleged demand of Rs.20,000/- was not made by the deceased in his presence. However, he used to give token amount of Rs.10/- as customary gift to the family members of the husband of the deceased which used to be accepted without any taunts or further demands. He also admitted that customary gifts were given to the deceased whenever she used to go back to her matrimonial house after her stay at parental house and she used to go back in happy mood. He admitted that both deceased and her husband liked each other. In these circumstances, the session Judge noted that the alleged demand of dowry of Rs.20,000/- has not been made out on account of inconsistencies in the statement of the witnesses and the fact that this was not mentioned in the statements made before the SDM and, therefore, it was not proved whether the demand of Rs.20,000/- was in lieu of demand of dowry or something else. The

session Judge relying on 2001 Cr.L.J 4700 (SC), Sunil Bajaj v. State of M.P and (2004) 4 SCC 109, Surender Kaur and Anr v. State of Haryana and held that there are no allegations of specific demands against the respondents and only vague allegations have been made. The allegation of the deceased was being harassed and tortured for demand of dowry are also vague and omnibus, could not be the basis for conviction. Reliance was also placed on the fact that none of the witnesses, relatives of the deceased made any complaint anywhere regarding harassment of their daughter and relied on the ratio of the case of Naraini Devi v. State, 1992 (1) C.C.Cases 524 holding that when no complaint of protest is made in any corner and no report or complaint is filed, it reflects and gives an impression that the entire theory of demand of cash/dowry is an after thought. Relying on Surinder Kaur and Anr (Supra), the Session Judge has also held that general allegations regarding harassment and cruelty made without proper time or date regarding the alleged harassment cannot be basis in dowry death case. Relying on the testimonies of PW.2 mother Smt.Kaushaliya Devi, PW.6 Usha Sharma, sister-in-law of deceased (Devrani) and DW.3 Ram Kumar it was held that no harassment or torture proximate to the unnatural death have been made out and thus have acquitted all of them.

7. This is no more res integra that unless the conclusions of the trial Court drawn on the evidence on record are unreasonable, perverse or unsustainable, the High Court should not interfere with the order of acquittal, although the power of the High Court to reassess and reach its own conclusions are as extensive as in an appeal against the order of conviction, yet as a rule of prudence, the High Court should always give proper consideration to matters such as i) the views of the trial Judge as to the credibility of the witnesses; ii) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; iii) the right of the accused to the benefit of any doubt and iv) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. It would also be relevant to note that where a view taken by the trial Judge is reasonable and probable view merely because some other view may also be probable or possible view, would not justify any interference by the appellate Court.

8. Even on perusal of the evidence by this Court especially of Sh.Prem Chand, PW.1, Smt.Kaushaliya, PW.2; Smt.Usha Sharma, PW.6 and Sh.Anil Kumar, PW.8 this Court is of the view that the prosecution has failed to make out a case against the accused. PW.1 Prem Chand father of the deceased though stated that they had given a motorcycle and an amount of Rs.11,000/- to Sanjeev Kumar (jeth) of the deceased though Sanjeev Kumar had demanded an amount of Rs.21,000/-. From the perusal of the testimonies of the witnesses especially Smt.Kaushaliya Devi, PW-2, it is apparent that Rs.4 to 4.5 lakhs had been spent by the parents of the deceased on their own free will. In the circumstances, if instead of scooter which was to be given by the parents of the deceased, a motorcycle was demanded and given, the same would not constitute a demand for dowry and similarly Rs.11,000/- will not constitute a demand of dowry. The brother of the deceased Anil Kumar, PW-8, has rather stated that on every occasion he used to give a token gift of Rs.10/- to the husband of the deceased and other family members. There is no deposition by the brother of the deceased that the token gifts given were not accepted or were frowned upon or they were taunted about a token gift of Rs.10/- only being given to them. Regarding the demand of Rs.20,000/- for washing machine also there are inherent contradictions in the statement of PW.1, PW.2 and PW.8., Sh.Prem Chand, PW-1, father had stated that no demand was made to him directly by any of the accused rather the demand was made through Mahender Kumar who was a mediator. Sh.Mahender Kumar has not been examined. The learned counsel for the petitioner has contended that Sh.Mahender Kumar is related to the accused and, therefore, he was not examined, however, from the perusal of the testimonies it transpired that there was another person to whom the complaints were allegedly made, however, even he was not examined by the prosecution.

9. PW.1, Prem Chand had stated that the demand of Rs.51,000/- was made from the deceased by the respondent Sh.Ashok Kumar her husband which was told to him by his deceased daughter and the amount of Rs.20,000/- was given by him for purchasing the fridge. The said witness had not deposed before the SDM that his daughter, deceased Kavita had told him about the demand of Rs.51,000/- made by the accused. He had also not disclosed before the SDM that he had given Rs.20,000/- to the deceased for purchasing fridge etc at the behest of the

accused. The father of the deceased rather admitted in the cross examination that no specific amount was demanded in cash by the accused at the time of the marriage except the amount of Rs.21,000/- at the time of her tikka. When the parents of the deceased have admitted that Rs.4 to 4.5 lakhs was spent by them on marriage on their own without any demand from the accused, the alleged demand of Rs.21,000/- at tikka ceremony pale into insignificance. PW.1 in order to improve his testimony stated that though he does not have any letter from the accused regarding any demands, however, his wife Kaushaliya Devi would be having. PW.2 Kaushaliya Devi, however, did not admit having received any letters of demand nor produced any. The said witness also deposed that she had made complaint in respect of harassment to Jaiprakash, however, Jaiprakash was not examined nor any detail of alleged harassment to the deceased after marriage or proximate to the death of the deceased have been given.

10. The mother of the deceased Smt.Kaushaliya Devi, PW-2 has categorically admitted that she and her husband wanted to give scooter to the husband of the deceased, however, at his request instead of scooter, a motorcycle was given and in the circumstances it cannot be construed as a dowry demand. Though Smt.Kaushaliya Devi, PW-2, deposed that Rs.11,000/- was demanded through the daughter 2-4 days after the marriage, however, such a demand was not disclosed before the SDM and the witness was confronted with the statement exhibit PW.2/A without any specific explanation. Even the fact that Rs.50,000/- was demanded and Rs.20,000/- was given was not disclosed before the SDM leading to an inference drawn by the Session Judge that the witnesses testimonies are inconsistent and on the basis of the same inference without any reasonable doubt cannot be drawn.

11. During the trial Smt.Kaushaliya Devi, PW-2, had deposed that there was a confrontation between Ashok Kumar, deceased's husband and her son Anil Kumar on account of giving and taking and she had interfered in the matter, However, no such facts were disclosed before the SDM. Her statement that the accused had killed her daughter and it was disclosed by her before the SDM was found contrary to the statement made before the SDM. In the circumstances, on the appreciation of evidence taking into consideration the various facets it is apparent that the

demand of Rs.20,000/- has been set up before the Court and not before SDM by any of the witnesses.

12. The allegations of harassment and torture are also omnibus in nature and has been made without any specific instances and more so in order to involve the entire family of the in-laws of the deceased Kavita. Regarding harassment, torture and cruelty no particulars of time and date of the alleged harassment so meted out has been given and in the circumstances such allegations are not sufficient to draw that there have been harassment and torture to the deceased before her death.

13. The essential ingredients of the offences with which the accused were charged are: 1) death of a woman otherwise than under normal circumstances; 2) such death having occurred within 7 years of marriage; 3) soon before her death she was subjected to cruelty or harassment by her husband or relatives of her husband; 4) such cruelty or harassment must be in connection with the demand of dowry and 5) such cruelty is shown to have been meted out to the woman soon before her death. On appreciation of evidence, therefore, the inevitable inference is that the prosecution has not been able to make out any cruelty or harassment by the husband of the deceased Kavita or husband's relatives, other accused. Even the demand for dowry has not been made out in view of the specific deposition that 4 to 4.5 lakhs was spent on the marriage by the parents of the deceased of their own and the brother had been giving token gift of Rs.10/- without any taunts, comments from the family member of the husband of the deceased. Prosecution has also not made out any cruelty meted out to the deceased soon before her death except making omnibus allegations of cruelty and harassment without specifying the nature of cruelty or harassment and the instances of such cruelty.

14. In the circumstances, even this Court is of the opinion that the prosecution has failed to establish that the deceased was subjected to cruelty or harassment by her husband or relatives of the husband, respondents, with a view to coerce the deceased to meet any alleged demands. In the circumstances, the appreciation of testimonies of these witnesses of the prosecution by the trial Judge does not suffer

from any grave infirmity so as to exercise discretion by this Court and grant leave to the petitioner.

15. No other grounds have been raised by the petitioners seeking leave against the judgment of the trial Court dated 2nd January, 2010 acquitting all the respondents under section 498A/304B/34 of IPC. It would also be relevant to note that where a view taken by the trial Judge is reasonable and probable view, merely because of some stretch of arguments some other view may also be probable or possible view, would not justify any interference by this appellate Court in the present facts and circumstances of the case. Therefore, the petition seeking leave to appeal is dismissed and leave is declined.

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