

State Vs. Mukesh and anr.

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Court : Delhi

Decided On : Nov-09-2010

Judge : Mr. Anil kumar, ; Mr. Mool Chand, J J.

Acts : Indian Penal Code (IPC) - Sections 498A, 304B, 302,34

Appeal No. : Crl. M.A. No. 14194/2010 ; Crl. LP No. 309/2010

Appellant : State

Respondent : Mukesh and anr.

Advocate for Pet/Ap. : Sanjeev Bhandari, Adv.

Judgement :

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

ORDER

Allowed subject to all just exceptions.

This is an application seeking condonation of delay of 109 days in filing the petition seeking leave to appeal.

The applicant has contended that the copy of the judgment dated 14th December, 2009 was applied on 18th March, 2010 which was delivered on 20th March, 2010.

The learned counsel has asserted that the certified copy of the judgment was applied after the expiry of period of limitation, however, considering the averments made in the application, there is sufficient cause for condonation of delay. The applicant has sought condonation of 65 days delay, however, on computation, it is apparent that there is a delay of 109 days in filing the petition for leave to appeal. Considering the facts and circumstances, there appears to be sufficient cause for condoning the delay of 109 days in filing the petition for leave to appeal. The application for condonation of delay is, therefore, allowed and delay of 109 days in filing the petition for leave to appeal is condoned.

The petitioner has sought leave to appeal against the order dated 14th December, 2009 passed by the Additional Sessions Judge in Session Case No. 03/2008 titled as State v. Mukesh and Anr., arising out of FIR 334/2008, PS Najafgarh under Section 498A/304B/302/34 of Indian Penal Code acquitting the respondents.

The case of the prosecution was that on 11th June, 2008, Jai Devi, wife of respondent No. 1 Mr. Mukesh and daughter of Sh. Kanta Prasad was found dead. Deceased Jai Devi was married to Mukesh CrI. LP No. 309/2010 Page 2 of 14 about six years prior to her death and was residing with her husband and mother-in-law and other relatives at her matrimonial home. From her marriage with respondent No. 1, Mukesh, she did not have any children.

On 11th June, 2008 when she was found dead, her parents were informed who reached Delhi at about 5:00 PM from Badaun, U.P. and their statements were recorded by Special Executive Magistrate. In the statement, before the SEM, the parents of the deceased Jai Devi had stated that no demand for dowry was made by the respondents and other in-laws of the deceased. It was, however, asserted that respondent No. 2, mother-in-law of the deceased used to beat her as she was suffering from some disease and used to have fits. The parents before the Special Executive Magistrate expressed their suspicion that their daughter was murdered by her mother-in-law and her husband and consequently, the case was registered against the respondents and they were arrested. After investigation, charge sheet

was filed against them and the case was committed to the Court of Sessions. The charges under Sections 498A/304B IPC and in the alternative charge under Section 302/34 IPC were framed against the respondents. The respondents pleaded not guilty and claimed trial. During the trial, the prosecution had examined 17 witnesses and the statements of accused persons under Section-313 of Cr.P. Procedure Code were recorded who denied incriminating evidence against them and pleaded innocence. The respondents, however, did not examine any witnesses in their defense.

After considering the evidence, the Trial Court noted that the parents of the deceased had not disclosed before the Magistrate regarding any demand for dowry. The demands for dowry, as has been alleged by the parents and other witnesses, were also found to be omnibus and no specific date, time or place or incident regarding alleged demands had been made out. It was also considered that during the six years of marriage, no complaint of demanding dowry was made by the parents of the deceased or by the deceased nor from the evidence any harassment or cruelty allegedly inflicted upon the deceased in order to meet the demands of dowry could be made out. The Trial Court also noticed that the prosecution has failed to produce any evidence that the deceased was alone with the accused in the house on the fateful night as the house has many other rooms. The witnesses, who appeared before the Trial Court, also deposed that the relation between the accused/respondents and the deceased were cordial. The statement of the father of the deceased, Shri Kanta Prasad , PW-5 was held to be reliable as there were material contradictions and improvements made by him and other witnesses.

The Trial Court has also taken into consideration that no evidence had been collected and had been produced by the prosecution from which it could be inferred that on the fateful night the deceased was alone in the house with the accused persons. The prosecution also failed to investigate the persons or other inmates of the house, about their respective roles and conduct in the house when the deceased was alleged to have died. In the circumstances, the Trial Court has inferred that on the basis of the testimonies, the accused/respondents cannot be inculpated.

The Trial Court was categorical in stating that suspicion and conjecture could not take the place of proof and also noticed that there was no evidence to show conclusively that the respondent No. 1/accused had told anyone that the deceased had committed suicide. The prosecution also failed to prove any motive for commission of crime and thus, acquitted both the accused.

This cannot be disputed that in reversing the finding of acquittal the High Court has to keep in view the fact that the presumption of innocence is still available in favor of the accused which is rather fortified and strengthened by the order of acquittal passed in his favour. Even if on fresh scrutiny and reappraisal of the evidence and perusal of the material on record, if the High Court is of the opinion that another view is possible or which can be reasonably taken, then the view which favours the accused should be adopted and the view taken by the trial Court which had an advantage of looking at the demeanor of witnesses and observing their conduct in the Court is not to be substituted by another view which may be reasonably possible in the opinion of the High Court. Reliance for this can be placed on 2009(1) JCC 482=AIR 2009 SC 1242, Prem Kanwar v. State of Rajasthan; 2008 (3) JCC 1806, Syed Peda Aowlia v. the Public Prosecutor, High Court of A.P, Hyderabad; Bhagwan Singh and Ors v. State of Madhya Pradesh, 2002 (2) Supreme 567; AIR 1973 SC 2622 Shivaji Sababrao Babade & Anr v. State of Maharashtra; Ramesh Babu Lal Doshi v. State of Gujarat, (1996) 4 Supreme 167; Jaswant Singh v. State of Haryana, 2000 (1) JCC (SC) 140. The Courts have held that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the findings are against the evidence or record or unsustainable or perverse. However, before reversing the finding of acquittal the High Court must consider each ground on which the order of acquittal is based and should record its own

reasons for accepting those grounds and not subscribing to the view of the trial Court that the accused is entitled to acquittal. Mr. Bhandari, learned public prosecutor has contended that along with the petition for leave to appeal, copies of the testimonies of all the witnesses have been annexed and the question of granting leave to appeal to the petitioner can be considered on the basis of the testimonies of PW-1 to PW-17 filed along with the petition and in the circumstances, it is also contended that the Trial Court Record may not be necessary.

This Court has heard the learned counsel for the petitioner in detail and has also perused the testimonies of all the prosecution witnesses. PW-2, Dr. Pravindra Singh, Junior Specialist, Department of Forensic Medicine had stated that the death of the deceased was due to asphyxia following combined effect of smothering and throttling. The post mortem report No. PM87/08, vide Ex. PW2/A also reveals the same reason for the death of the deceased Jai Devi. PW-1, ASI Suraj Bhan, Duty Officer, had recorded the FIR on receipt of rukka from constable Jai Prakash sent by ASI Dharmveer Singh, who had recorded DD No. 39A regarding the death of Smt. Jai Devi due to hanging. PW-4, Sh. Ram Asare Pathak has deposed that respondent No. 1, namely, Mukesh was also known as Kalu, who used to live at house No. F-30, Dharampura, Najafgarh at the time of the incident. He categorically stated that he had never seen respondents No. 1 & 2 fighting with the wife of respondent No. 1, deceased Jai Devi. He went on to depose that he could not say whether the respondents and the deceased were present together at House No. F-30 on the night of 10th June, 2008. The said witness was declared hostile, however, in the cross-examination, he categorically asserted that he had never met the police nor the police had recorded his statement and he denied that respondents used to fight with the deceased Jai Devi and also denied that he had seen the deceased Jai Devi with the accused on the fateful night at 10:00 p.m.. He also denied that he is not deposing correctly on account of having no sympathy with the father of the deceased who was not a resident of Delhi but of Badayun, UP. The father of the deceased Sh. Kanta Prasad, in his statement, alleged that dowry was demanded from his daughter and the respondents used to beat her on this account. He deposed that mother-in-law, respondent No. 2 of the deceased used to demand Rs. 20,000/- for the treatment

of her daughter as she was suffering from some "Upri Hawa" and her husband used to demand Rs. 50,000/- for starting some shop. In the cross-examination, however, he admitted that his statement was recorded by the SDM and his statement Ex. PW-5/A is correct. He admitted that before the SDM, he had not stated about any demand being made from his daughter by respondent No. 1, husband and respondent No. 2, mother-in-law. As to how he could not depose about the dowry demand just after the death of her daughter, before the SDM, he stated that he was under shock and that he had forgotten. He admitted that his daughter used to get fits. He denied that his daughter committed suicide on account of her sickness which used to create depression in her. This testimony of the father in the circumstances has been held to be unreliable by the Trial Court.

Another witness PW-7, Ram Chander deposed that he was residing near the house of the deceased and he identified the respondents in the Court but he denied that he knows anything about the date, month and year of death of the deceased Jai Devi. He stated that he did not know anything else about the case except that the respondents were living near his house and the wife of respondent No. 1 had died. The said witness was also declared hostile, however, even in the cross-examination, the prosecution has not been able to extract any such facts from the said witness, which would show that the respondents can be inculpated for the charges made against them. He stated that he leaves for his office at 6:20 a.m. in the morning and returns back at about 10/10:30p.m. in the night. He categorically denied that since he does not know the father of the deceased, that is why he has no sympathy for him and he has been won over by the accused/respondents.

Sh. Ishwar Dayal, PW-8 is the co-brother (Sadhu) of Kanta Prasad. His statement is also regarding the torture and beatings to the deceased on account of deceased being inflicted with "Bahri Hawa" and "Bhoot Pret Ka Saya". He also deposed that the husband had demanded Rs.50,000/- for opening a shop and respondent No. 2 demanded Rs.20,000/- for getting Jai Devi treated for "Bhoot Pret Ka Saya". In his statement about the alleged demands, no particulars have been given as to when the demands were made. From the statement of the said witness, it cannot be inferred that the respondents have murdered the deceased Jai Devi. The

allegation regarding demand also appears to be omnibus. He admitted that he had not made any complaint to the police regarding the torturing of the deceased rather he confirmed that the statement of the parents of the deceased were recorded at PS Najafgarh and before the SDM, however, it was not disclosed by them that the respondents had demanded money for opening shop and for treatment of the deceased. He was categorical that no demand was ever made directly from him by any of the respondents nor he had informed the father of the deceased Jai Devi through letters about the demands allegedly made by the respondents.

The mother of the deceased, Moharshri, PW-10 also parroted that the respondent No. 1 used to demand Rs.50,000/- for opening the shop and the mother-in-law used to demand Rs.20,000/- for treatment of her daughter as she could not conceive a child after marriage. She rather improved her statement by stating that two months prior to her death, her daughter had visited the village and had told about the demands of respondent No. 1 and respondent No. 2. She also alleged that the deceased used to be beaten with chappals and respondent No. 2 used to burn her with hot knife. She also admitted that her brother-in-law, namely, Ishwar resides at Sultanpuri, Delhi and he had been visiting the deceased and no complaints were made to him by the deceased nor he intimated about any such demands to her or to the father of the deceased. The testimony of the said witness is not reliable as before the SDM, it was not disclosed by her about the alleged demand made by respondents No. 1 & 2. There are variation in respect of reason for demand of Rs.20,000/- as the other witnesses have stated that Rs.20,000/- was demanded for treatment of "Upri Hawa" on the deceased whereas in her statement recorded on 19th May, 2009, it was deposed that Rs.20,000/- was demanded for the treatment of her daughter as she was unable to conceive. She also admitted that she had not made any complaints to the police when the deceased allegedly told her that she was burnt with the knife and respondent No. 1 used to beat her with chappals.

In the circumstances, learned additional public prosecutor is unable to show any such grounds for relying on these testimonies on the basis of which it can be inferred that the demands were made by the respondents from the deceased and

on account of which the deceased had committed suicide. The findings and inferences of the Trial Court cannot be held to be illegal, unsustainable or perverse in the facts and circumstances. The plea of prosecution that respondent no.1 had disclosed that his wife had committed suicide has not been established and plea of alleged suicide is also contrary to the evidence of PW-2 Dr. Pravindra Singh opining that the nature of death is homicidal. From the testimonies of the parents of the deceased, it also can be inferred that the deceased was having some disease for which she was treated prior to her marriage, and even after her marriage her condition was deteriorating instead of improving.

The learned additional public prosecutor is also unable to show from the evidence as to what could be the motive of the respondents for killing the deceased Jai Devi. It is also noticed that the conduct of respondent No. 1 is not such that suspicion can be raised on him, as on finding out about the death of the deceased, he intimated the parents of the deceased and waited for them to come before performing her last rites. The observation that if he had harbored any guilty intention, he could have proceeded with the last rites of Jai Devi on the same day without waiting for her parents till evening, cannot be held to be unsustainable and perverse in any manner.

The Trial Court has also relied on *Abdul Gani v. State of Karnataka*, 1995 CrL LJ 2248 (Kant.); *Hanumant v. State of MP*, 1953 Cri LJ 129; *M.V. Mahesh v. State of Karnataka*, 1996 CrL LJ 771 (Kant.) and *Adikanda Das v. State of Orissa*, 1988 CrL LJ 1884 (Orissa) to support the reasoning adopted by it and it cannot be held that the ratio laid down in these cases are not applicable to the facts of the present case.

The learned public prosecutor has not been able to make out any ground or has failed to disclose any such fact on the basis of which it can be inferred that the decision of the Trial Court is illegal or the findings and observations made by the Trial Court are unsustainable or perverse in any manner on the basis of evidence produced. The view taken by the Trial Court is permissible and even this Court is unable to take a different view and inference as has been taken by the Trial Court. Even if another view is possible, if the view taken by the Trial Court is permissible,

this Court does not have to substitute its view with that of the Trial Court acquitting the respondents.

In the totality of the facts and circumstances, the petitioner has failed to make out a case for grant of leave to appeal against the judgment dated 14th December, 2009 passed by the Sessions Court acquitting the respondents of the charges under Section 498A/304B/302/34 of IPC.

In the circumstances, petition for leave to appeal is without any merit and the petitioner is not entitled for leave to appeal. The petition is, therefore, dismissed.

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