

State Vs. Lal Mani and ors

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Court : Delhi

Decided On : Jul-26-2011

Judge : S. Ravindra Bhat; G.P.Mittal, Jj.

Acts : Indian Penal Code (IPC) - Sections 498-A, 304-B, 34; Evidence Act - Section 113-A

Appeal No. : CRL.L.P. 163/2011

Appellant : State

Respondent : Lal Mani and ors

Advocate for Pet/Ap. : Mr. Jaideep Malik, Adv.

Judgement :

1. The State has, by this Petition, sought leave to appeal against a judgment and order of the learned Additional Sessions Judge dated 16.09.2010 in S.C. No. 14/2008, by which the three accused (hereafter referred to as "the respondents") were acquitted of the charge of having committed offences punishable under Sections 498-A/304-B read with Section 34 IPC.

2. The prosecution alleged that the accused respondents tortured and harassed, and demanded dowry which led to the death of Anju. The allegations of torture, harassment and demand for dowry were made by PW1 Dharmender Prashad,

PW2 Ravinder Kumar and PW3 in the statements to the Police after Anju's death. The Trial Court acquitted all the accused due to insufficient evidence and inconsistencies in witnesses' statements.

3. According to the prosecution, the deceased Anju got married to accused Vinay Kumar on 02-07-2006. PW1 (brother of deceased Anju), Dharmender Prashad and PW2 Ravinder Kumar deposed that the mother-in-law Lal Mani Devi, brother-in-law (husband's younger brother) Arun Kumar, together with her (the deceased's) husband Vinay Kumar used to beat her and demand dowry. It was alleged that the accused Arun Kumar misbehaved and tried to rape the deceased Anju. On 09-11-2006 the deceased Anju took her own life by hanging herself by a chunni from the ceiling fan in her room, in her in laws house. On 12-11-2006 brother of Anju, PW1 Dharmender Prasad made a statement to Sub Divisional Magistrate (Delhi Cantt) and Anju's body was sent to Mortuary Safdarjung Hospital. An FIR was registered and accused persons, i.e. Vinay Kumar, Smt Lal Mani and Arun Kumar were arrested and charge sheet was filed. Thereafter the Trial court framed the charges and in order to prove its case the prosecution examined 16 prosecution witnesses. The defence examined one witness, Mrs Anita. The Trial Court acquitted all the accused persons of the charges framed against them.

4. The Trial court reasoned that several facts and circumstances improbabilised the prosecution story. It was held that the phone call allegedly made by Anju to PW-1 her brother telling him about the torture and demand for dowry was not on record at all; no complaint was made by PW-1 or PW-2 to the police regarding the alleged torture or demand for dowry and PW3 Ranjan Prasad stated that he never knew about his daughter Anju being mistreated in any way by her mother in law Lal Mani Devi. The statements made by PW1, PW2 and PW3 accusing Lal Mani Devi, Vinay Kumar and Arun Kumar of cruelty and torture and demand for dowry were vague. PW1 Dharmender's statement mentioning the telephone conversation with the deceased when she told him about the torture and demand for dowry was not corroborated independently and was merely an allegation. Therefore due to insufficient documented evidence and lack of independently corroborated

statements, the Trial court acquitted the accused of all charges.

5. It is urged that the Trial Court has fallen into error in not appreciating the evidence on record, which clearly implicated the respondents. The learned APP argued that the Trial court failed to appreciate that PW1 Dharmender Prashad had deposed that the deceased had informed him about the dowry demand, torture and harassment one month prior to the incident and that the statement had been corroborated by PW2 Rajinder Kumar and PW3 Rajan Prasad. It was urged, in this context that the court ought to have appreciated ground realities, since no one rushes to the police, when some harassment or ill treatment is meted out.

6. The APP next argued that the Trial Court overlooked the material, and erred in not appreciating that PW1 in his statement clearly said that accused Arun had attempted to rape the deceased. It was submitted that the cumulative effect of the witnesses' depositions was that the Court should have drawn the presumption under Section 113-A of the Evidence Act, in which event, the respondents would have been under the onus to show that they had not committed the crime.

7. The cause of death in this case, was by hanging. PW1, the deceased's brother stated that Anju (the deceased) married the accused Vinay on 22.07.2006. For two months Anju resided happily in her matrimonial home but thereafter she was tortured and harassed by Vinay who said that he did not like her. He taunted her, stating she was from a beggar's family as her parents had not given any dowry during their marriage. About a month prior to her death Anju telephoned PW-1 and said that Vinay used to beat her and told her to leave her matrimonial home. PW-1 visited his sister's matrimonial home to reason with accused Vinay and his mother Lal Mani Devi. Lal Mani Devi assured him that she and Vinay would not torture and harass Anju in the future. He went back home and the next day he received a call from a weeping Anju who said that the accused persons were demanding ` 20,000 as dowry. She also said that accused Arun, Vinay's younger brother, misbehaved with her and tried to rape her. Upon hearing this Dharmender was trying to arrange for his fare to Delhi when he received a call on 09.11.2006 from

Delhi Police informing him that his sister Anju had killed herself by hanging. He then went to Delhi with his brother-in-law Ravinder on 11.11.2006 and he was told he would get Anju's body on 12-11-2006. In his cross examination Dharmender deposed that Anju and Vinay had an arranged marriage in a temple due to her family's poor financial status. He said that the accused had demanded ` 20,000 from him when he visited their house after his sister's complaints. This contradicted his previous statement where he clearly stated that a weeping Anju had told him about the demand for ` 20,000 as dowry payment on the telephone. He also said that Anju and Vinay had met each other before marriage and had been agreeable to it.

8. PW-2, Ravinder Kumar deposed that the deceased Anju was had been his sister in law. He said that when he had spoken to Anju on the telephone she had told him that accused Vinay used to beat her quite severely and at one point of time caused severe injury to her ears. He said that he had accompanied PW1 Dharmender to Anju's marital home to reason with Lal Mani Devi, Vinay and Arun but PW1 Dharmender did not corroborate this in his statement. He stated having been told about the demand for dowry payment by Anju and that he in turn had mentioned this to PW1 Dharmender. He corroborated PW1 Dharmender's statement that he had accompanied him to Delhi after being informed of Anju's death. He also corroborated the statement made by PW1 Dharmender regarding Anju mentioning that she was unhappy in her marital home and that she was teased and taunted by accused Lal Mani Devi and her sons Vinay and Arun because she had not brought any dowry with her during her marriage. However he was unable to corroborate PW1 Dharmender's statement that accused Arun had misbehaved or attempted to rape Anju. He further corroborated the fact that PW1 Dharmender had wanted to take the deceased Anju home with him but she was unwilling due to family prestige.

9. In cross examination PW-2 Ravinder deposed that he used to call Anju after her marriage at a neighbour's house who used to then call Anju. He did this as Anju's in laws (husband's parents i.e. accused Lal Mani Devi) did not like her talking to him. Initially the deceased Anju said she was fine but during their third

conversation she mentioned an injury on her nose to him. He mentioned this to PW-1 Dharmender and when Anju was assaulted five or ten days later both of them decided to go to Delhi and meet Anju in her matrimonial home of their own accord. The statement of the injury on the nose has not been corroborated by PW-1 Dharmender even though he supposedly knew about it. During their visit to Anju's matrimonial home, both PW1 and PW2 stayed for about one or one and a half hours and Anju spoke to them in her mother in law, accused Lal Mani Devi's presence. He then said there was no talk of taking Anju to her parent's home which is a direct contradiction to his earlier statement. He once again contradicted himself when he said no special talks had taken place during their third conversation, which he had said was when she had told him about the injury to her nose which he had then told PW-1 Dharmender. He further contradicted himself while saying that PW-1 Dharmender had told him about the demand for dowry and not about a weeping Anju on the telephone. He further says that the police had called PW-1 Dharmender's native place and the information of Anju's death was conveyed to PW1 who then told him. This is in direct contradiction to what PW-1 Dharmender had said since he said he received a call from the Delhi Police directly. He contradicted his previous statement once again when he said that PW-1 Dharmender had never told him about the fact that Anju was unwilling to go to her parent's home due to question of family prestige. He mentioned that he and PW-1 Dharmender never made any official complaint for demand of dowry or torture and harassment against the accused.

10. PW6 Dr Gaurav Vinod Jain Asstt Professor, Department of Forensic Medicine, Safdurjung Hospital, said that on 12.11.2006 he conducted the post mortem examination of Anju, with an alleged history of hanging. The clothes on the body were all intact and there was a light coloured chunni tied around the neck with a knot under the left side of the chin. The only injury found was a reddish abraded ligature mark, 3 to 4 cm wide narrower and deeper on the right side of the neck. The mark was absent on the left side of the neck with an imprint under the chin. His findings indicated that Anju died by hanging and the absence of any other external injuries indicates that it is unlikely she was tortured or physically beaten by the accused.

11. It is well established that the High Courts while considering the petitions for grant of leave to appeal, have to be satisfied that the impugned judgment discloses substantial and compelling reasons to grant leave to appeal, against an acquittal recorded by the Trial court. The acquittal recorded by a competent court is an affirmation of the presumption of innocence which every accused is entitled to claim in this country. Therefore, unless the High Court is satisfied that the Trial Court has committed a substantial error in the appreciation of evidence, application of law or has returned the findings which are glaringly erroneous, as would cause miscarriage of justice, leave would not be granted.

12. We have carefully considered the findings of the Trial court, as well as its record, which was summoned, for purposes of these proceedings, as well as the submission of counsel. In view of the statement of all the witnesses and the evidence submitted, having regard to the material inconsistencies in witnesses' statements, the fact that no prior complaint was made against Anju's in-laws, lack of corroboration of PW1's statement of the phone call during which he was told about the torture and demand for dowry by Anju; no sign of prior injuries due to alleged physical abuse of Anju (as mentioned by witnesses' depositions), and having regard to the evidence of the forensic doctor PW6, we are of the view that the Trial Court's findings and judgement are unexceptionable. This Court is satisfied that the petition is lacking in merit; it is, therefore, dismissed.

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