

State Vs. Mohd Furkan and Others

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Court : Delhi

Decided On : Feb-17-2012

Judge : S. Ravindra Bhat & S.P. Garg

Appeal No. : CRL.L.P. 554 of 2011

Appellant : State

Respondent : Mohd Furkan and Others

Judgement :

S.RAVINDRA BHAT, J.

(OPEN COURT)

1. Through this Petition the State seeks leave to appeal against the Judgment and Order dated 27.11.2010 whereby the accused, Respondents to this Petition, were acquitted of all charges pertaining to the commission of the offence punishable under Sections 406/498A/304B IPC.

2. The prosecution allegations were that Sabila had married Respondent-Mohd.Furkan as per Muslim rites on 25.03.2008 at Khureji, Delhi. She died within a year of her marriage i.e. on 15.03.2009 at her matrimonial home i.e. at H.No.14, Basti 64 Khamba, Near Masjid, Meer Dard Road, New Delhi. The prosecution alleged that intimation about the incident was received by police, I.P.Estate at around 4:47 P.M. on 15.03.2009 by DD No.27 (Ex.PW9/A). It was also alleged that

this was relayed by PCR Call (Ex.PW-17/A) at 4 :48 P.M. on 15.03.2009. The police apparently reached the site and recorded the statement of the deceased's mother-Ruksana who deposed as PW-2 during trial. PW-8 HC Aryander Kumar had registered the FIR (Ex.PW-8/B) and also proved his endorsement on the rukka vide Ex.PW-8/B. On the basis of these materials, further investigation was conducted into the incident, which included post-mortem report that suggested homicidal death. The prosecution charged the Respondent for the offences mentioned previously.

3. Respondent-accused pleaded not guilty and claimed trial. The prosecution relied on the testimony of PW 2 (Ruksana) and PW-3 (Shaukat), parents of the deceased Sabila, who was aged about 20 years. It is also evident from the record that the deceased was pregnant and apparently had a three months old fetus at her womb at the time of her death. The prosecution further relied upon the testimony of PWs 6,7 and 10, neighbours of the deceased's parents. After considering all the materials which included exhibits, produced during trial, the Trial Court by impugned judgment held the Respondents not guilty of the offence and acquitted them.

4. Learned APP urges that the Trial Court overlooked the material circumstance that Sabila had died within a year of her marriage. It is further urged that the Respondents particularly the mother-in-law and the husband of Sabila were unable to explain how the death had occurred. Learned APP emphasized that the Trial Court fell into error in being largely influenced by the discrepancies in the testimony of prosecution witnesses, particularly the deceased's parents.

5. We have considered the materials on record. As observed earlier, the intimation about the death in the form of DD entry was first recorded at 4:47 P.M. on the date of the incident. This is evident from the DD No.27 (Ex.PW9/A). However the prosecution case throughout has been that the death had occurred at 11:00 A.M.

6. The post-mortem report which was relied upon during the trial and also spoken to by the concerned doctor, (who conducted the procedure), indicated that the death had occurred a week before the commencement of the procedure. The post-mortem was in fact conducted on 16.03.2009, obviously there was a typographical

mistake. Even if we so assume that the death occurred one day before the incident, according to the post-mortem report the time of death was in the vicinity about 2:00 or 3:00 P.M. on 15.03.2009. The Trial Court noticed that the charge for cruelty and unnatural death both punishable under Section 498A and 304 B IPC, could not be substantiated. It focused on the contradictions between the versions of PW-2 and PW-3 vis--vis the nature of demands made upon the deceased's parents to prove dowry harassment seen before the marriage. The Trial Court further noticed that during the course of investigation, particularly at the earliest point of time when the statements were recorded neither PW-2 nor PW-3 pointed out any finger of suspicion at the Respondents-accused. The allegation of dowry harassment etc. were improvements and therefore the testimony of these witnesses were discarded.

7. The main reasons which persuaded the trial court to acquit the Respondents are as follows:

“43 Learned Defence Counsel submitted that as aforesaid a mere demand of Rs.400/- by the accused from the parents of the deceased on two different occasions would not constitute “dowry demand”. Inasmuch as it is not the case of the prosecution that the deceased was subjected to any cruelty or harassment either by the accused or by any of his relative in connection with any such demand. He submitted that in absence of any evidence to this effect, a demand simplicitor for Rs.400/- on two occasions, cannot be termed as a demand for dowry.

44. He further submitted that as per the testimony of PW2 and PW3, the mother of the deceased i.e. PW2 was working as a maid servant and her father i.e. PW3 was a Hawker. It has also come in evidence that PW2 used to earn about Rs.2000-2500/- per month and PW3 used to earn about Rs.50-200/- per day. Both the said witnesses deposed that they had given one cycle and other dowry articles at the time of marriage of Sabila with the accused. It is also not in dispute that the family of deceased was related to the family of accused Furkan. In fact, as per PW3, his wife Ruksana (PW2) is the niece of the mother of the accused and thus, both the families were closely related to each other. In this regard, a reference can

be made to cross-examination of PW2 wherein she deposed that “when I got married my daughter with Furkan, at that time, the family members were aware about my work and also about my financial status. There was no demand at the time of marriage.” It was submitted by Learned Defence Counsel that in that view of the matter, the parental family of the accused was aware of the economic status of the parents of the deceased and hence, they could not have made an unreasonable demand of either cash of Rs.40/50,000/- or a car as deposed by PW2. Whereas PW2 has deposed regarding the demand of car, PW3 has stated that the accused used to ask for a motorcycle. The version of demand of a scooter, as deposed by PW6, PW7 and PW10 has already been discussed herein above. It was, thus, submitted that the prosecution witnesses have given different statements regarding the demand, allegedly raised by the accused or his family members from the parents of the deceased.

45. On going through the evidence on record and the light of the submissions made, I am inclined to agree with the arguments of Learned Defence Counsel that the prosecution witnesses have given varied versions of the demands, allegedly made by the accused and his family members from the parents of the deceased. Even the version PW2 and PW3 who are the mother and father of the deceased is at variance from each other since PW2 deposed that the accused used to demand Rs.40/50,000/- in cash and a car, whereas PW3 deposed that the accused used to demand a motorcycle. It would also be relevant to note that none of the prosecution witnesses have given any specific dates as to when the said alleged dowry demands were made either by the accused or by his family members.

46. Further, I find that there is not even an iota of evidence on record to establish that Sabila was subjected to any cruelty or harassment on account of any demand for dowry immediately prior to her death or that her death was in consequence of any such act of cruelty or harassment. The statement of the prosecution witnesses shows that except for some bald statements as aforesaid which are also not consistent with each other, there is no material on record to prove that the deceased was subjected to any cruelty or harassment on account for any demand of dowry before her death. At this juncture, it is also pertinent to refer to the cross-examination of PW3 Sh.Shaukat, father of the deceased where he has deposed

“My daughter used to visit my house after the marriage along with the accused Furkan. Sometimes she used to remain in the house for full day and sometimes for few hours. It is correct that sometime she used to stay in the parental house along with her husband and used to remain happy”. In this regard, a reference may be made to the judgment reported as **Biswajit Haldar @ Babu Haldar and Ors. Vs. State of West Bengal 2007(2) JCC 959** wherein the Apex Court held that **mere evidence of cruelty or harassment is not sufficient to bring in application under Section 304-B IPC that there was any cruelty or harassment for or in connection with demand of dowry.**

47. It is also noteworthy that admittedly, the deceased remained in her parental house for a period of four months when the accused went in the Jamat. PW3 has categorically admitted in his cross-examination that they did not lodge any complaint to the police during this period. It is also admitted that no complaint was made by the parents of the deceased to the Elders or Panchayat or in Biradari against the accused and his family members. It cannot be ignored that since the families of the deceased and the accused were closely related to each other, they would obviously have some common relatives, despite which, admittedly, no complaint was made by the parents of the deceased to any such relative or even to the police regarding any harassment or cruelty inflicted upon the deceased at the hands of the accused or his family members. It may also be pointed out that when confronted with statements Ex.PW2/DA and Ex.PW2/DB, PW2 clearly improved upon her earlier version and deposed about the alleged dowry demand of Rs.40/50,000/- in cash and one car when she stepped into the witness box. A perusal of the statements Ex.PW3/DA and Es.PW3/DB also show that PW3 also improved upon his earlier version when he deposed in the Court.

48. I also find force in the submissions of the Learned Defence Counsel that though the testimonies of PW2 and PW3 establish that the accused was paid Rs.400/- by them on two different occasions yet the same would not constitute a demand for dowry as per the provisions of S.304-B IPC. The record reveals that there is no material on record whatsoever to establish that the said amount was paid by the parents of the deceased Sabila to the accused pursuant to any „demand for dowry?or that the deceased was ever subjected to any kind of cruelty

or harassment either by the accused or his family members for any such demand on either of the two occasions.

49. Consequently, on going through the evidence on record in its entirety, the submissions made and the relevant case law, cited before me, I have no hesitation in concluding that the prosecution has failed to prove the essential ingredients of both S.304-B IPC and S.498-A IPC against the accused in this case. The presumption u/S 113-B Indian Evidence Act would also, in my opinion, arise only after the prosecution discharges its honorary duty to first establish the essential ingredients of S.304-B IPC, which as discussed herein above, it has failed to discharge. For the foregoing reasons and in the light of above discussions, the accused Mohd. Furkan S/o Mohd. Hisaq deserve to be acquitted from the charge as framed u/S 304-B and 498-A IPC and it is ordered accordingly.

8. It has been often remarked and reiterated time and again that High Courts while considering the petition for leave to appeal against acquittal have to be satisfied that there are substantial and compelling reasons which warrant a second opinion so as to grant leave to the State. This extends to the misapplication of law, overlooking material evidence and approach by the impugned judgment which leads to miscarriage of justice. In the present case the prosecution's attempt to implicate the accused, apparently never really took off. Firstly, there was a serious doubt as to the time of the death itself. Intimation about the death (which allegedly occurred at 11:00A.M.- according to PW-2) was given at 4:37 P.M. on the date of the incident. Further, and vitally neither PW-2 nor PW-3 made any statement implicating the accused in regard to dowry harassment in the first statement recorded during investigation. Although, our notice was drawn to written complaint by PW-2 to the concerned DCP three days after the incident, we are of the opinion that the same cannot be given much importance because this witness testified in the Court and was confronted with her previous statement in which she was silent about the nature of dowry demands. Further, there were contradictions between PW-2 and her husband with regard to what was demanded and when. Also PW-5 and 6, neighbours of the deceased's parents, mentioned some commotion at the time of marriage of the couple and that a demand for two wheeler was made. This too was not mentioned by the deceased's parents.

9. Having regard to the above position and also having independently gone through the record, we are satisfied that this petition does not merit acceptance as there are no compelling or substantial reasons for us to grant the leave sought for.

10. The petition is, therefore, dismissed.

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