

State Vs. Vikas Sharma

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Court : Delhi

Decided On : Apr-16-2012

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

Appeal No. : CRL. L.P. 544 of 2011 & CRL. M.A. 17890-17891 of 2011

Appellant : State

Respondent : Vikas Sharma

Judgement :

S.RAVINDRA BHAT, J

(Open Court)

1. By this Leave Petition the State seeks leave to appeal against the judgment and order of the Ld.Additional Sessions Judge dated 19.04.2011 in SC No.71/2010 by which the Respondent was acquitted for having committed the offences punishable under Sections 498-A/304-B IPC.

2. The deceased Kiran had married the Respondent/accused Vikas Sharma on 10.11.2008. The prosecution had alleged that the couple's engagement had taken 9 months prior to the incident. After solemnizing the marriage, the couple went to Vaishno Devi for 6 days. Later Kiran went to her parental house for 3 days. Thereafter, she joined her husband. It was alleged that the body of Kiran was found at around 4-5 P.M. On 25.11.2008; she was found to be hanging in the

matrimonial home, which is situated on the 2nd floor of the premises owned by PW-12. It was alleged that the accused was responsible for this on account of constant cruelty meted out by him, in connection with dowry harassment which ultimately led to the unnatural death.

3. After conclusion of investigation - during the course of which the accused was arrested, the police filed a charge-sheet. The trial Court framed the charges; the accused denied his guilt and claimed trial. During the course of the trial, the prosecution relied upon the testimonies of fifteen witnesses besides other materials as such as post-mortem report, forensic laboratory report etc. On an overall consideration of this Trial Court found that the prosecution was unable to establish the accused's guilt and accordingly acquitted him.

4. It is urged by the APP that the Trial Court overlooked the singular feature that the death occurred within 15 days of the marriage itself and there was no apparent cause. If this was to be connected with the statements of the prosecution witnesses, particularly PW-1 and PW-2 about the demands for car made by the accused, there could be no room for doubt that constant demands for dowry had led Kiran to end her life. In overlooking these aspects, the Trial Court fell into error.

5. The Trial Court records were considered by this Court for the purpose of examining whether the State ought to be granted leave. The substratum of its reasoning in the impugned judgment is reproduced below :

“27. The relatives of the deceased particularly her mother and brother are the crucial witnesses to give the details of the circumstances leading to the incident. They have been examined as PW5 and PW4 respectively and also the maternal aunt and uncle of the deceased have been examined as PW1 and PW2. All these witnesses have different versions to put forth on the aspect of alleged dowry demands. According to PW1 (Meena) accused demanded car from Manish (PW4) when he went to take the deceased on 20.11.08. Again on 23.11.08, when accused came to the parental home to take her wife back, he repeated his demand of car but the mother of deceased expressed her inability and convinced the accused not to harass the deceased. However, Manish(PW4) and Smt Maya Devi (PW5) mother of the deceased have not stated that any demand of car was

raised on 20.11.08 or 23.11.08 by the accused or his family members in their presence. Admittedly PW1 was not present on both these occasions. PW2 Rajesh, maternal uncle of the deceased stated that on 23.11.08 he went to the house of his sister and found the deceased Kiran in sad mood and she told that accused and his family members were demanding car in dowry. On 24.11.08, PW2 again visited the house of his sister and was informed that accused and his family members have been harassing Kiran for car. During cross-examination, it is admitted by PW2 that engagement ceremony took place nine months prior to the marriage and first time the demand of car was disclosed to him on 23.11.08. Now considering the testimony of mother and brother of the deceased, it is not mentioned by them that PW2 Rajesh was present on 23.11.08 when the accused came to parental home of the deceased to take her back. Therefore, the presence of this witness becomes doubtful at the relevant time at the parental home of the deceased. It is admitted by PW1 and PW2 that till the date of marriage, no dowry demand was ever raised by the accused persons. It is further evident from their testimony that no demand of car was raised by the accused or his family members in their presence.

28. The testimony of brother and mother of the deceased is most important to ascertain the truth of the circumstances. PW4 Manish Kumar (brother) is the complainant and gave his statement to the police EXPW4/A and also to the SDM EXPW4/B. In his statement before the police, Manish Kumar stated that demand of car was raised by accused and his brothers. When he went to the matrimonial home of his sister, her mother in law taunted his sister and even misbehaved with him for not giving the car in dowry. PW4 further stated that when accused came to take the deceased back to matrimonial home, he taunted the deceased in presence of her mother for not bringing the car. On 24.11.08 the deceased called her mother and asked her to call her back otherwise she would be killed by her in laws. In her statement before SDM, Manish Kumar stated that her sister has taken this extreme step being fed up with the taunts of her in laws and the in laws were demanding car in dowry. In his testimony as PW4, Manish kumar has not deposed anything about the alleged demands raised on 20.11.08 and 23.11.08 by the accused and his family members. He simply stated that on 23.11.08 his mother told him that Kiran was not willing to go back to her matrimonial home. On

25.11.08, a call was received from the accused and they were instructed to visit their home immediately. On visiting matrimonial home of his sister, he found her dead. His statements were recorded by the police and also by SDM. It is nowhere stated by PW4 in his testimony that any dowry demand was ever raised by the accused or his family members or that the mother of the accused taunted the deceased for not bringing the car in dowry. In this way, PW4 has totally confronted his statement recorded before the police and failed to confirm the specific allegations made therein. It is clear that no demand of dowry was witnessed by PW4 from the accused or his family members nor the deceased ever disclosed to her about any such demands.

29. Coming to the testimony of mother of the deceased Maya Devi (PW5), she stated before SDM that on 23.11.08 her daughter disclosed to her that her husband and in laws have been demanding car. During her cross-examination before the court she stated that her daughter told her on 20.11.08 that she was scared of her in laws and on inquiry she stated that her in laws were demanding car from her. PW5 further stated that accused Vikas came on 23.11.08 and took Kiran alongwith him. On 24.11.2008 her daughter informed her on phone that she was feeling frightened but she did not disclose any reason for the same. On 25.11.08, the phone call was received from the accused and on reaching the matrimonial home, they found the deceased lying dead. PW5 did not state that accused raised demand of car at any point of time in her presence. She did not state that accused taunted her daughter on 23.11.08. However, on cross-examination by Ld APP she stated that her son Manish told her about the demand of car raised to him on 20.11.2008. She also stated that on 23.11.08 accused taunted her and deceased for not giving the car.

30. On careful evaluation of the testimony of all the above witnesses, I find that they are inconsistent and contradictory. No witness has testified before the court that accused or his family members raised the demand of car in his or her presence. According to PW1 and PW2 demands were raised from PW4 but PW4 has not supported this. PW4 has not stated anything about dowry demand made to him as alleged by him in FIR. Statements of the witnesses are contradictory and do not support the version put forth by each other. No witness has stated in

convincing and confident manner that accused or his family members raised the demand of car either on 20.11.08 or 23.11.08. Witnesses have failed to support their previous statements recorded by the police or the SDM. In this way the witnesses have failed to remain consistent on the aspect of dowry demand allegedly raised on behalf of accused or his family members.”

6. This Court further notices that the couple had been engaged for 9 months. If, in fact, there had been any reason for the accused to make a demand for dowry, he would have done at any time before the marriage. Furthermore, the absence of clarity as to the time when the demand was made and more crucially the silence of the deceased's nearest relatives i.e. PW-4 (deceased's brother) and PW-5 (deceased's mother) about this demand for a car, completely knocks out the prosecution allegations with regard to dowry demand. The allegations with regard to cruelty also lack in material particulars.

7. Applying the well settled standards in examining petitions for grant of leave of appeal i.e. existence of substantial or compelling reasons, occasioning failure of justice, this Court is of the opinion that no such elements exist in the prosecution case wanting a second review in the appeal. The petition being unmerited is therefore, dismissed.

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