

State Vs. Sanjay and ors.

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Court : Delhi

Decided On : Nov-27-2012

Judge : Sanjiv Khanna

Appellant : State

Respondent : Sanjay and ors.

Judgement :

\$~3. *IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL APPEAL NO. 1430/2011 Date of decision:

27. h November, 2012 STATE Appellant Through Mr. Dayan Krishnan, ASC. versus SANJAY & ORS. Respondents Through Mr. Sanjay Jha, Advocate. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE S.P.GARG SANJIV KHANNA, J.

(ORAL): State has preferred this appeal against the judgment dated 20th December, 2010 passed by District Judge-VIII, Additional Sessions Judge and Incharge of Rohini Courts, in SC No. 82/2010 titled State versus Sanjay and Another arising out of FIR No. 691/2006, Police Station Tilak Nagar, Delhi. By the impugned judgment, the accused Sanjay (hereinafter referred to as A-1) has been convicted under Section 498A and 306 of the Indian Penal Code (IPC, for short). However, accused No. A-1 and other accused, namely, Jagdish Prasad, Sonu and Bishan Devi (hereinafter referred to as A-2 to A-4) have been acquitted of the charges under Section 304-B/302/34 IPC. A-2 to A-4 have also been acquitted

under Sections 498-A/34 IPC.

2. The case pertains to death of Gudiya, wife of A-1, on 10th September, 2006. On the said date, she was brought to DDU Hospital and, on examination, she was declared to have been brought dead vide MLC (Ex. PW-13/A) which has been proved by Dr. Ashok Arora, CMO, DDU Hospital, written by Dr. Ishwar, who had since left the hospital. The MLC records that, as told, the injuries have been sustained by the deceased apparently due to fall from height.

3. The prosecution has alleged that the deceased was murdered and in support of the case, had relied upon statements of Sarla (PW-1) mother of deceased Gudiya, Suraj Pal (PW-2) father of deceased and the neighbor/landlord Meena (PW-3). We may, however, note that some of the neighbours- Babita (PW-4), Raman Sharma (PW-6), Vineeta (PW-7) and Preeti (PW-9)- have not fully supported the prosecution case. The prosecution has also relied upon statement of K.K. Sharma, SDM, Patel Nagar, who was examined as PW-5.

4. We are not examining, in detail and depth, the witnesses statement, in view of the order of remand which we shall now be passing. Detailed examination and consideration of the said statements will cause prejudice to the parties. The Court is passing the order of remand for reasons stated below; 5. In paragraph 31 of the impugned judgment, the Trial Court has recorded as under:31. It is admitted case of the parties that deceased Gudia was married to accused Sanjay and PW-1 Mrs Sarla and PW-2 Suraj Pal are her parents. It is also not disputed that the death of Gudia occurred within seven years of her marriage with accused Sanjay. It is also not disputed that the victim Gudia died due to fall from the roof though there is dispute as to how she fell down. According to prosecution, she was thrown by the accused persons from the roof while, as per the case of the accused persons and the defence, she jumped from the roof herself and committed suicide as she was having problems from her parental side and not from the accused persons or in matrimonial home. (emphasis supplied) 6. The Trial Court, Paragraph 33 onwards in the impugned judgment, has examined the charge of murder under Section 302 IPC. While examining the said charge, the Trial Court has dealt with the question of whether the deceased was thrown by the accused from the roof or she had

jumped from the roof herself and committed suicide. After considering the evidence, the Trial Court has, in paragraph 35, recorded the findings that there was no direct evidence and no eyewitnesses to prove that they had seen the accused persons, individually or collectively, throwing Gudiya from the roof to the ground and causing her death. It observed that, in the present case, there was no weapon of offence involved and there was no direct or substantive evidence to implicate that the accused had pushed the deceased from the roof top. It records:35. .The fact that there was demand of money from the victim or her parents is remote cause for inferring the commission of offence under Section 302 IPC by the accused persons though it may be relevant and is to be analysed in relation to the charge under Section 304B/498A IPC.

7. Thereafter, the Trial Court has examined the charge under Section 304B and, as noticed above, the accused A-2 to A-4 have been acquitted observing that the allegations pertain to accused A-1, the deceaseds husband only, and no exculpatory statement had been made against accused A-2 to A-4. The trial Court stated that there was also substantial improvement in the statements made in the court, from the statements recorded before the Investigating Officer. Thereafter, the Trial Court, in paragraph 38 of the impugned judgment, has recorded as under:38. The second question raised on behalf of accused persons is also equally important. In the light of Appasahebs case relied upon by learned Amicus Curie(sic) for the accused persons every demand made from the wife or her parents cannot be termed as a demand for dowry. The demand from the wife or her parents should satisfy the criteria of Section 2 of the Dowry Prohibition Act to fall within the ambit of Section 304B IPC. In that case the demand for money from the wife/her parents for domestic expenses or purchasing manure was held to be not demand for dowry within the meaning of Section 304-B IPC. In the present case in the statement before SDM the parents of the deceased/victim Gudia have made allegations of demand of money against accused Sanjay the husband of Gudia only. Further they have also stated that there son-inlaw (Sanjay) was unemployed and for doing business he used to pressurize Gudia to bring money and he used to beat her. These statements made before SDM are also confirmed in the statements made by them before court but they have exaggerated the incriminating circumstances against the other three accused person also, should

not be believed in the light of the above discussion. Further, in the light of Appasahebs case (supra) the said demand of money for the purpose of business by accused Sanjay or demand of money for domestic expenses do not fall within the meaning of demand of dowry which is essential feature of Section 304-B IPC.

8. In the end, the Trial Court has convicted only accused A-1 for offence under Section 498A IPC holding that the deceased Gudiya and her parents were constantly harassed and persistently asked to get money. The Trial Court, while referring to Sections 498A IPC, observed that the Explanations A and B, under the said Section, were applicable.

9. Similarly, for the offence under Section 306 IPC- abetment of suicide, the Trial Court has observed that there was persistent demand of money, by the accused A-1 from Gudiya, and from her parents and, therefore, Gudiya had committed suicide by jumping from the roof on the fateful day. Thus, the accused A-1 was convicted under the said Section. However, accused A-2 to A-4 were acquitted.

10. During the course of hearing, Learned Counsel for the State has drawn our attention to Post Mortem Report (Exhibit PW-17/A) and Viscera Report (Exhibit PW-17/B) of the deceased. The aforesaid Exhibits were proved by Dr. L.C. Gupta (PW-17), who had conducted the said post mortem on 12th September, 2006.

11. The said documents and statement of PW-17 form the basis of the present order, therefore, we deem it appropriate to reproduce PW17s court statement regarding the external injuries on the deceaseds body and cause of death, in the present case. The relevant portion of his statement reads as under:Following external injuries were present on the dead body: A. Lacerated wound in an area of 8 cms x 15 cms with ragged and serrated margins, tissues in between was missing, present at front of forehead, without subscalp and and subperiostal haematoma and effusion of blood. It was postmortem injury. B. Deformity with swelling was present at right side hip joint which was extending upto upper half of the thigh and on dissection underneath joint found dislocated with shaft of the femur bone found fractured without collection of local haematoma. It was postmortem injury. C. Mucosal aspect of both lips found contused deeply with mark of indentation responding to anterior set of teeth, both lips were swollen and on incision

underneath tissues deeply contused with local effusion of blood. It was antemortem injury and fresh prior to induration. D. Abraded bruise which was extending into 27 cms x 13 cms area, irregular in shape with swelling, on dissection underneath shoulder joint found dislocated and local haematoma was found collected at the dislocated area. It was reddish in colour and injury was antemortem in nature and fresh prior to death induration. E. Abraded bruise 2 x 2 cms, irregular shape was present at right elbow and on dissection underneath tissues found effused with blood. It was reddish in colour, antemortem in nature and fresh prior to death in duration. F. Reddish bruise of irregular shape was present at front of right thigh on its upper 1/3 part and on incision underneath tissue found effused with blood. It was antemortem in nature and fresh prior to death in duration. G. Contusion of 8 cms x 6 cms was present at left side iliac crest. It was reddish in colour and on incision underneath tissue found effused with blood. It was antemortem in nature and fresh prior to death in duration. H. Swelling over top of head was present, on incision of scalp, a subcalp haematoma of size 13x14 cms was present at both sides parietal region and on occipital bone area. It was reddish in colour and antemortem in nature. I. Multiple irregular shape bruise of varying size between 2 cm x 1 cm to 0.5 cm x 0.5 cm with crescentic abrasions were present over the chin and its both side, submandibular region and at upper 1/3 part of neck at its front and both lateral aspect. On incision, underneath tissue upto tissue between trachea and esophagus found effused with blood and blood clots. On further dissection, following internal findings were revealed. Head: Skull was NAD (No abnormality detected), vessels were dilated and engorged, brain matter was congested and oedematous. Neck As mentioned rust colour blood mixed with froth was present in trachea. Chest: Both lungs were congested oedematous, heart was empty and NAD. and Abdomen: Stomach was empty and healthy and there were multiple intestinal loops were found contused and reddish in colour. It was antemortem injury and fresh prior to death in duration. Other abdominal viscera were congested. Rest was NAD. Sample of Viscera, blood in gauze piece and clothes were preserved and sealed to IO with total 25 photographs were handed over to the police. Opinion about time since death: It was about 36 hours prior to postmortem examination. Opinion about cause of death: Cause of death was asphyxia resulting from manual strangulation and

sustained pressure over the mouth which was sufficient to cause death in ordinary course of nature. Postmortem findings were consistent with antemortem injury as well as postmortem injuries and were suggestive of postmortem knock down in this case. Injury caused by manual strangulation mentioned at point no. (I) was alone sufficient to cause death and nature of death was homicidal. The PM report is Ex. PW 17/A which is in my handwriting bearing my signature at point A. I have seen the viscera report received from FSL which is Ex. PW17/B. As per FSL report, the stomach and piece of intestine/piece of liver, spleen and kidney preserved during postmortem, on examination, were found to contain Nitrazepam. Nitrazepam is a tranquilizer and sedative and can be given to a person without his or her recognition mixed with water, tea or milk etc. and it will give no sign on postmortem examination. Probably in this case, initially, Nitrazepam was given and thereafter attempt of manual strangulation and smothering was made and thereafter her death, she was knocked down.

12. PW-17 was cross-examined, on behalf of the accused, and the same reads as under: No foreign body or foreign tissue was found on the irregular shape over the injured area of neck. Crescentic avulsion were the typical injuries caused by other party when applying force over the neck manually. No visible finger impressions or finger prints could be traced out. Number of crescentic avulsion not specified in the PM report. Volunteered they were multiple in number. It is wrong to suggest that the crescentic avulsions present over the neck in this case can be possible by the deceased herself. It is correct that quantity of Nitrazepam is not mentioned in the FSL report Ex. PW17/B. It is correct that it is not specified in the report as to what is the fatal dose of Nitrazepam. It is correct that one can consume Nitrazepam at his own also. Volunteered This medicine is not sold without doctors prescription in general. It is incorrect to suggest that there is no basis for opinion that probably in this case, initially, Nitrazepam was given and thereafter attempt of manual strangulation and smothering was made and thereafter her death, she was knocked down. It is further incorrect to suggest that I have prepared the opinion as per wishes and asking of the police officials.

13. The Post Mortem Report and the Viscera Report corroborate PW-17s court statement. As per the Post Mortem Report, the cause of death was asphyxia

which resulted from manual strangulation and sustained pressure over mouth. In PW-17 opinion, this was sufficient to cause death in the ordinary course of nature. Several injuries, as per the Post Mortem Report, were post death injuries and not ante mortem injuries. The manual strangulation, it was opined, was alone sufficient to cause this homicidal death. The Viscera Report (Exhibit PW-17/B) shows that the stomach, intestine etc. contained nitrazepam, a tranquilizer and sedative. As per PW-17, this drug when mixed in liquid drinks like water, tea or milk, might not be recognized or realized by the person consuming the drink. PW-17 has further opined that, in the present case, the said drug was given and, thereafter, manual strangulation and smothering was done. As per PW-17, after Gudiyas death, she was knocked down, i.e. thrown from the roof. These evidences throw light on a crucial aspect of this case.

14. Perusal of the Trial Court judgment reflects that these aspects i.e. the Post Mortem Report (Ex. PW-17/A), the Viscera Report (Ex. PW-17/B), the statement of PW-17 and the effect thereof have been ignored or not noticed. They have not been given any consideration. There is no discussion on the aforesaid documents and statement and they have been completely disregarded. The documents and statement of PW-17 is indicative of a serious and fundamental lapse. The judgment has proceeded on an incorrect edifice and premise, contrary to the medical opinion. The cause of death has gone unnoticed or presumed to be wrong.

15. While deciding on the appeal by the State, we are inclined to examine and consider the Post Mortem Report, Viscera Report (Exhibits PW-17/A and PW-17/B, respectively) and PW-17s statement but find that we are handicapped as it is not permissible for us to examine these aspects, in view of the Charges framed against the accused A-1 to A-4. For the sake of convenience, we are reproducing the charge as was framed: I, Arun Kumar Arya, Addl. Sessions Judge, Rohini Courts, Delhi do hereby charge you 1.

2.

3.

4. Sanjay, s/o Jagdish Prasad Jagdish Prasad, s/o Lahori Ram Sonu, s/o Jagdish Prasad Smt. Bishan Devi, w/o Sh. Jagdish Prasad That on or before 11.09.96 at unknown time at A-343, JJ Colony, Khyala, Delhi within jurisdiction of PS Tilak Nagar, you all being husband and his relatives in furtherance of your common intention subjected cruelty for demand of dowry to the deceased Gudia @ Laxmi, D/o Surajpal and thus you all have committed offence punishable u/s 498A IPC and within my cognizance. Secondly, on the aforesaid date and time and place you all being husband and his relatives in furtherance of your common intention committed dowry death by causing the death of Smt. Gudia@Laxmi; within seven years of her marriage; and thus you all committed offence punishable u/s 304 B read with Sec. 34 IPC and within my cognizance. Thirdly that on the abovesaid date and time you all in furtherance of your common intention you all committed murder of Gudia@Laxmi by pushing her from the roof and thus you all have committed an offence punishable u/s 302/34 IPC and within my cognizance. And I hereby direct that you all be tried by this court of the said offences.

16. The accused A-1 to A-4 were charged with the offence of murder of Gudiya by pushing her down from the roof and not for committing murder by asphyxia etc. The Trial Court, at the time of framing of charge, did not take into consideration the Post Mortem Report and the Viscera Report and probably did not, therefore, appreciate the consequences and the effect thereof. As a result, the accused A-1 to A-4 were required to meet the prosecution case on an entirely different aspect and not on the case as set out or on the basis of the aforesaid documents.

17. Further, the prosecution, in the charge sheet, had not invoked and pleaded a case under Section 306 IPC but the Trial Court, in the impugned judgment, has observed that the deceased had committed suicide and the accused A-1 had abetted the commission of the said suicide. Accordingly A-1 has been convicted under Section 306 IPC. In view of what is stated by PW-17 and what is mentioned in the Exhibits PW-17/A and PW-17/B, the findings recorded by the Trial Court, for convicting the accused A-1 under Section 306 IPC, appears to be erroneous and cannot be sustained unless these material evidence and statement are ignored. We reiterate that the medical opinion and evidence on the cause of death have not been examined by the Trial Court, in the impugned judgment, and were not

reflected in the subject matter of the charge as framed. The charge framed was contrary to the medical evidence.

18. Interestingly, in the questions, which were put to the accused under Section 313 Cr.P.C., the Trial Court had recorded as under:Q39. It is evidence against you that on 12/9/06, PW 1.Dr. L.C. Gupta conducted postmortem on the dead body of Smt. Gudiya @ Laxmi wife of Suraj Pal vide PM No. 816/06. Time since death was about 36 hours prior to postmortem examination. Cause of death was asphyxia resulting from manual strangulation and sustained pressure over the mouth which was sufficient to cause death in ordinary course of nature. Postmortem findings were consistent with antemortem injury as well as postmortem injuries and were suggestive of postmortem knock down. Postmortem report Ex PW 17/A and viscera report received from FSL is Ex PW 17/B. What you have to say? Ans. I do not know.

19. Additionally, Learned Counsel for the State has relied upon decision of the Supreme Court in Ashok Kumar v. State of Haryana, (2010) 12 SCC 35.wherein the term dowry, as used under Section 498A IPC and Dowry Prohibition Act, 1961, has been expounded and explained. The Supreme Court duly considered the expressions or any time after marriage and in connection with the marriage of the said parties which was introduced with effect from 2nd October, 1985 and 19th January, 1986, respectively and held that the amendments were made with the intention to cover all demands, at any time before or even after the marriage, so far as they were in connection with the marriage. It emphasized that term in connection with the marriage cannot be given a restricted or narrow meaning.

20. We are not inclined to examine the aforesaid contention relating to offence under Section 498A IPC in greater detail as an order of remand is being passed on the main issue itself and any comment may cause prejudice. The two aspects may be inter-connected. Without expressing any firm opinion, one way or the other, we feel that this issue should be also re-examined by the trial court threadbare and without being influenced by the earlier decision.

21. The present case is of death of a young girl Gudiya. We do not think the present case should be closed, in view of the wrong Charge framed and the case

which the accused were asked to meet ignoring material evidence- the Post Mortem Report and the Viscera Report (Exhibits PW-17/A and PW-17/B, respectively) and PW-17s statement and to decide the present appeal without referring to the said evidence/material as it will lead to mistrial and injustice.

22. Accordingly, the appeal is allowed but with an order of remand to the trial court to have a fresh trial, after recording Charges duly taking into consideration the Post Mortem Report and the Viscera Report. The charge will be accordingly amended and the accused will be asked to specify the witnesses, who should be recalled and to whom they will like to cross-examine.

23. We are informed that accused A-1 has been released as he had completed his sentence, as awarded under Section 306 IPC and 498A IPC. The accused A-1 to A-4 will appear before the Trial Court and furnish bail bonds in the sum of Rs.10,000/- each, with one surety of the like amount, to the satisfaction of the Trial Court. The accused A-1 to A-4 will remain on bail during the trial. We also clarify that, in case any of the accused are sentenced, the period of detention undergone will be set off from the sentence awarded.

24. To cut short the delay, it is directed that the parties will appear before the trial court on 17th December, 2012 at 2.15 P.M. Trial court record be transmitted immediately. The appeal is accordingly disposed of. SANJIV KHANNA, J.

S.P. GARG, J.

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