

Mahesh Kumar and ors. Vs. State

Mahesh Kumar and ors. Vs. State

SooperKanoon Citation : sooperkanoon.com/978926

Court : Delhi

Decided On : Jul-19-2013

Judge : Mukta Gupta

Appellant : Mahesh Kumar and ors.

Respondent : State

Advocate for Def. : Mr. Manoj Ohri

Advocate for Pet/Ap. : Mr. M.L. Yadav

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 216/2003 Reserved on:

13. h May, 2013 Decided on:

19. h July, 2013 % MAHESH KUMAR AND ORS. Through: Appellants Mr. M.L. Yadav, Advocate with Appellant in person. versus STATE Through: Respondent Mr. Manoj Ohri, APP for the State. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA 1 The Appellants, who are the husband, mother-in-law and father-in-law of the deceased Ritu, lay a challenge to the judgment dated 4th April, 2003 whereby they have been convicted for offences under Sections 498A/304B IPC and the order on sentence dated 4th April, 2003 directing them to undergo Rigorous Imprisonment for seven years each and to pay a fine of Rs. 1,000/- each

and in default of payment of fine to undergo Simple Imprisonment for a period of 15 days under Section 304B IPC. For offence under Section 498A IPC they have been directed to undergo Rigorous Imprisonment for three years each and to pay a fine of Rs. 1,000/- each and in default of payment of fine to undergo Simple Imprisonment for a period of 15 days.

2. Learned counsel for the Appellants contends that the FIR was registered belatedly. On the date of incident, that is, 26th September, 1998 statements of brother, father and mother of the deceased were recorded by the SDM vide Ex. PW1/DA, PW2/DB and PW2/DA wherein they stated that they had no grievance against the Appellants or his family members. However, as an after thought on 2nd October, 1998 on the statement of the mother of the deceased FIR No. 783/1998 was registered against the Appellants and their family members. On the same set of evidence the other family members have been acquitted, however, the Appellants have been convicted. PW1, Mahesh Chand, the brother of the deceased stated before the Court that there was no demand for 1 months after marriage. PW2 Ram Dass, the father of the deceased also did not level any allegation of harassment in relation to the demand of dowry soon before death. The learned Trial Court relied upon the hearsay evidence as dying declaration. Relying upon Gananath Pattnaik vs. State of Orissa, 2002 (1) JCC 43.SC and Goverdhan vs. State of Madhya Pradesh, 2007 (3) Crimes 246 it is stated that these hearsay evidences cannot be used for convicting the Appellants. Conviction is based on the assumption that normally demands are by husband and in laws and not by other members of the family. Thus the learned Trial Court wrongly convicted the Appellants.

3. Learned APP for the State on the other hand contends that the marriage between the Appellant No. 1 and the deceased survived only for four months and thus the allegations of harassment caused during this period would qualify the test of harassment soon before the death. In Uday Chakraborty vs. State of West Bengal, AIR 201.SC 350.the Honble Supreme Court held that even a period of two years was too short a time and would fall within the ambit of soon before death. In Devinder Singh and others vs. State of Punjab, 2005 (12) SCC 10.it was held that in the absence of statement of the deceased, the statement of the parents of the

deceased as to what deceased stated to them would be relevant. PW1 and PW2 clearly stated about the harassment in relation to the demand of dowry and the witnesses did not admit their signatures on the statements made to the SDM. Further Ex. PW1/DA was only a photocopy of the application which gave even the wrong date of marriage. The original of Ex. PW2/DB was not produced in the Court and the document did not indicate as to whom the same was addressed. The father of the deceased was not cross-examined with respect to these documents and he stated that Ex. PW2/DB did not bear his signatures. No one deposed before the Court that Ex. PW2/DB was signed or written by PW2. Similarly Ex. PW2/DA was also stated to be not the statement of PW2 and the witness was not confronted with the statement made therein. PW1 Mahesh Chand admitted that Ex. PW1/DA bore his signature however he stated that this statement was made at the time when they were informed that their sister died due to electric shock. In view of the explanation by the brother, the FIR cannot be said to be belatedly registered thereby affecting the prosecution case. The testimony of the witnesses on record proves the case of the prosecution beyond reasonable doubt and the appeal be thus dismissed.

4. I have heard learned counsel for the parties.

5. FIR No. 783/1998 was registered under Sections 498A/304B IPC at PS Ambedkar Nagar, Delhi on the statement of the mother of the deceased. However, this witness could not be examined in the Court as she died before her examination. Consequently, the two witnesses produced by the prosecution in support of their case were PW1 Mahesh Chand, brother of the deceased and PW2 Ram Dass, father of the deceased.

6. PW1, Mahesh Chand stated in his examination-in-chief that his sister got married on 27th May, 1998. They gave dowry articles in the marriage beyond their capacity but the in-laws of Ritu were not satisfied with the articles. The accused used to harass Ritu for not bringing sufficient dowry after the marriage. They used to beat her. After 2 months of marriage, at the time of Raksha Bandhan accused Sanjay, Mahesh, Sachin, Rahul and Smt. Santosh came to their house and demanded a sum of Rs. 50,000/- and a scooter. Thereafter he along with his

parents went to the house of Mahesh and asked accused Meena and Anokhe Lal as to why they were demanding Rs. 50,000/- and a scooter, on which they stated that they will have to give Rs. 50,000/- and scooter as they did not give sufficient dowry in the marriage. On 26th September, 1998 one Raju informed on telephone installed in the neighbourhood that Ritu got electric shock. In cross-examination this witness admitted that he made no allegation against the accused in his statement Ex. PW1/DA as he was informed that his sister died because of electric shock. He further stated that he did not state to the police in his statement that the accused persons used to beat her. He further admitted that he did not state to the police that after 2 months of the marriage of his sister the accused Sanjay, Mahesh, Sachin, Rahul and Smt. Santosh came to their house on Raksha Bandhan and demanded Rs. 50,000/and a scooter. He further admitted that the settlement of dowry articles was not made at the time of marriage between them and the accused person. In cross-examination this witness further admitted that after three days of marriage his sister came back to their house and stayed there for about 1 months and during that period there was no demand of dowry from the side of the Appellants. He further stated that his sister told 2 months before her death that the accused persons started demanding dowry and he admitted that this fact he did not state to the police in his statement under Section 161 Cr.P.C.

7. PW2 Ram Dass, father of the deceased also stated that after the marriage Ritu told them that her husband and her in-laws were not happy with the marriage and they were harassing her for not bringing dowry. They had given dowry articles to Ritu beyond their capacity but her in-laws were not happy. He further stated that the accused person also demanded Rs. 50,000/- and a scooter but he could not give this amount demanded by them. On 26th September, 1998 an information was received by them on telephone installed in neighbourhood that Ritu received an electric shock. According to him all accused person were responsible for the death of his daughter as they used to harass her for not bringing sufficient dowry. PW2 in his crossexamination admitted that his statement was recorded in police station by the police however he denied his signatures on Ex. PW2/DA and Ex. PW2/DB but stated that they were similar to his signatures. He further stated that he could not definitely state whether the signatures were his. He also admitted that after three-four days of marriage his daughter came back to their house and

stayed for one month. During that period his daughter told his wife and him that the mother-in-law used to give her beatings and asked for more dowry. He admitted that he had not made any such statement before the police under Section 161 Cr.P.C.

8. A perusal of the testimony of these witnesses clearly shows that whatever they stated in their examination-in-chief were improvements from their statements made to the Police. Since the statements of the witnesses are improvements from their earlier statement, they are required to be looked into with greater caution. The only allegation against the Appellants is demand of Rs.50,000/- and a scooter. PW1 in his examination in chief stated that after 2 month of her marriage at the time of Rakshabandhan accused Sanjay, Mahesh, Sachin, Rahul and Smt. Santosh came to their house and demanded a sum of Rs.50,000/- and a scooter and thereafter PW1 and PW2 went to house of the deceased and asked about the demand. In cross-examination PW1 was confronted with his statement recorded by the Police under Section 161 Cr.P.C. on 2nd October, 1998 where this fact is not recorded. Thus this is a clear improvement even from the statement recorded under Section 161 Cr.P.C. belatedly. Further this fact is not deposed by PW2, the father of the deceased. PW2 has stated that during this 1 month his daughter told that her mother-in-law used to give her beatings and asked for more dowry. It may be noted that deceased live only for 3 days in the matrimonial home before coming back to her parents home and lived there for 1 months. There is no averment either by PW1 or PW2 as to when in these 3 days after marriage the deceased was beaten by her month-in-law. Rather PW1 has stated that there was no demand by the in-laws till the deceased stayed in their house. There is no doubt that the family members of the deceased are not in proper frame of mind immediately after the death of their daughter to give complete statement and the Courts cannot adopt a hyper technical approach that since the statement made under Section 161 Cr.P.C. did not include the allegations, the statements before the Court are a clear improvement, however even ignoring the delayed statements there are material contradictions in the statements of two witnesses as deposed to in the Court.

9. In view of these material improvements and there being no specific allegations against the Appellants, it would be unsafe to base the conviction on the evidence on record. For the aforesaid reason the impugned judgment and order on sentence are set aside. The Appellants are acquitted of the charges framed. The appeal is accordingly disposed of. The bail bond and the surety bond are discharged. (MUKTA GUPTA) JUDGE JULY 19 2013 vn

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com