

Sanjay Kumar Jain Vs. State

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Court : Delhi

Decided On : Aug-06-2013

Judge : R.V. Easwar

Appellant : Sanjay Kumar Jain

Respondent : State

Advocate for Pet/Ap. : Mr. K.T.S. Tulsi, Mr. Kuber Bodh, Ms. Jasbir Kaur

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:6th August, 2013 % 1. CRL.A. 107/2000 SANJAY KUMAR JAIN Appellant Through: Mr. K.T.S. Tulsi, Sr. Advocate with Mr. Kuber Bodh, Advocate. versus STATE Respondent Through: Ms. Jasbir Kaur, APP 2.CRL.Rev.P.237/2000 B.S. JAIN Appellant Through: Mr. K.T.S. Tulsi, Sr. Advocate with Mr. Kuber Bodh, Advocate. versus STATE Through: Respondent Ms. Jasbir Kaur, APP CORAM: MR. JUSTICE R.V. EASWAR JUDGMENT R.V. EASWAR, J.: Criminal appeal No.107/2000 is directed against the judgment dated 1st February, 2000 of the Additional Sessions Court in case FIR No. 195/93 in P.S. Shalimar Bagh under sections 498-A, 304-B and 306 of the Indian Penal Code, 1860 (IPC). The appellant is Sanjay Kumar Jain, who has filed the appeal under the following circumstances. Criminal Revision Petition No.237/2000 has been filed by Bishan Swarup Jain against the acquittal of the parents of Sanjay Kumar Jain by the same judgment. The facts:

2. The appellant married Kavita Jain, the deceased, on 19-2-1989. A male child was born to them on 6-3-1990. They were residing at the first floor of house not BFH-9, Shalimar Bagh, Delhi along with the parents (Harish Jain and Manju Jain) of the appellant. They were tenants; the landlord Tilak Singh Yadav was residing in the ground floor with his family. On 19-7-1993, at about 6-30 AM, he heard the shrieks of a woman from the first floor from the side where the bathroom is located; he went up to the first floor, woke up the appellant, who tried to open the bathroom but could not; he walked along the shaft from the other bathroom, broke open the window pane of the bathroom from which the shrieks came and found his wife lying on the floor of the bathroom with her body burnt fully. The appellants parents were not at home; they had gone for their morning walk. Tilak Singh Yadav informed the police. A post-mortem was conducted at around 9 AM. At 4-30 PM the Investigating Officer (IO) recorded the statement of the father of the deceased, i.e., Bishan Swarup Jain who spoke about dowry demands from the family of the appellant, torture and physical abuse of his daughter; he referred, inter alia, to the reference made by her to a demand made on 11-7-1993 by her in-laws for a Maruti car. On 20-7-1993 the appellant was taken into custody. The inquest was conducted by the Sub-divisional Magistrate on 21-7-1993. On 26-9-1993 a charge sheet was filed charging the appellant and his parents under sections 34, 306, 304-B and 498-A of the IPC. The trial court acquitted the parents of the appellant, but the appellant was found guilty of the offences under section 304-B (causing dowry death within 7 years of marriage) and section 498-A (subjecting wife to cruelty driving her to death). The appellant was sentenced to seven years R.I. under the former and to two years and fine of Rs. 1000 under the latter. The findings:

3. The findings of the trial court are as follows: a) There was a demand of a Maruti car by the in-laws of the deceased a week before the date of occurrence (on 11-7-1993), as they had incurred loss in the business. The contention of the defence that it would be ridiculous that such a demand would be made because of loss in the business has no merit, since demand of dowry has no logic and cannot be tested on the anvil of reason. b) The parents of the deceased were compelled to give a sum of Rs. 60,000/- to the appellant and his parents in January, 1992. This was done through three demand drafts of Rs. 20,000/- each, given to the

deceased as a gift. The argument of the defence that this might have been done by the parents of the deceased in order to save income-tax, by claiming deduction from their income, is not acceptable since it does not stand to reason that they would give away Rs. 60,000/- to save tax of Rs. 24,000/-, even at the highest rate of 40%. The saving of the tax, if any, could at best have been only incidental. Further, the drafts were payable to the deceased, but payable at Bagpat where the business of the appellant was being carried on. c) There was tension between the parents of the appellant and the parents of the deceased on account of the demand of dowry and other demands, as deposed by the landlord. d) The death occurred within 7 years of the marriage and as per the post-mortem report it was caused by the burns on the body of the deceased. It was thus established that she committed suicide. The presumption under section 113-B of the Indian Evidence Act, 1872 applies.

4. The appellant-accused had made a statement under section 313 of the Criminal Procedure Code, 1973 (Cr.P.C.) In that statement, he stated that his wife Kavita Jain did not want his parents to live with them and wanted them to go to Bagpat where the other members of their family lived and where the business of the appellant was also being carried on. Though his parents were not keeping well and were under medical treatment, Kavita Jain insisted that they were sent away to Bagpat. This conflict of ideas gave rise to frequent arguments between them (i.e., the appellant and Kavita). The last of such arguments took place on the night of 18-7-1993, after which the appellant and Kavita went to sleep, with their son sleeping between them. He woke up the next morning only hearing the knocks at the door by the landlord and his family, and on coming to know that Kavita was not in the bed, tried to open the bathroom. He could not do so, as it was locked from inside. Thereafter he took the risk of walking the narrow shaft between the two bathrooms and broke open the window pane of the bathroom and unlocked the window and entered the bathroom through the window. He accompanied the body of Kavita in the police van and also informed the doctor about the quarrel between him (the appellant) and his wife, and wanted to elaborate, but the doctor did not permit it, saying that he had to examine Kavita. He denied that there was any demand for a Maruti car or any other dowry demand; according to him, the business was located in Bagpat and he and his father were going to that place

every day in their own Maruti car. Sometimes, he used to go by bus also, whenever he was not well. So ran the statement of the appellant under section 313 of the Cr. P.C.

5. On the basis of the aforesaid statement and the testimony of the landlord Tilak Singh Yadav (PW 4), it was argued before the trial court that it was highly probable that Kavita decided to take away her life since she found that the appellant was not willing at all to accept her request that his parents should be sent to Bagpat, and that she will have to put up with the sick in-laws and serve them by taking up the burden of all the household work. It was argued that Kavita was in the habit of confiding in Tilak Singh Yadav about the issue between her and the appellant and this had been brought out during the cross-examination of Tilak Singh Yadav. The trial court, however, was not prepared to believe the testimony of Tilak Singh Yadav on this point. Firstly, the trial court observed that PW4 did not say anything on this aspect to the IO in the police statement and that it was for the first time this was brought out during the cross-examination. Secondly, even her in-laws had certified to the good nature and good behaviour of Kavita, which showed that she bore no ill-will towards them, which would have been the natural reaction if it was true that she did not want them to stay in the same house. Since she did not exhibit any hostile attitude towards them, their staying in the same house could not have been an issue between her and the appellant. Therefore, the statement of PW4, during cross-examination, about Kavita mentioning to him about the issue between her and the appellant on account of the in-laws staying with them was not believable.

6. The trial court did not also attach much weight to the fact that the appellant volunteered to give details about the quarrel between him and the deceased the previous night to the doctor. According to the trial court, the MLC mentioned that Kavita was brought dead and therefore the doctor could have had no difficulty in noting down a few more facts about the quarrel. The inference of the trial court was that the appellant did not volunteer any such information. The trial court also inferred that the statement of the appellant (Ex.PW-6/D-A), on which reliance was sought to be placed by the defence, was introduced in the inquest file at some later stage and therefore did not bear the signature of the SDM.

7. The trial court however acquitted Harish Chander Jain and Manju Jain, the parents of the appellant. So far as Harish Chander Jain is concerned, it found that the allegation that he used to taunt the deceased for bringing insufficient dowry was an after-thought and was not made in the FIR; as regards Manju Jain, she was found to be physically challenged, having undergone a hip replacement surgery, and therefore incapable of inflicting any physical injury upon the deceased by beating her, which was the allegation. They were thus given the benefit of doubt. The rival arguments:

8. It was argued for the appellant that the testimony of the landlord Tilak Singh Yadav (PW4), who was a retired college professor, shows that there was nothing to suspect or involve the appellant Sanjay Jain, husband of the deceased Kavita Jain, in any offence under section 304-B or section 498-A of the IPC. It was claimed that PW4 was a natural and honest witness. The other important argument was that Bishan Swarup Jain (PW1), the father of Kavita Jain, kept improving his statements from time to time and adding new facts/allegations. Comparisons were made between the police statement given by him under section 161 Cr.P.C. and the statement given to the SDM on successive dates which contained several embellishments and improvements. The facts mentioned by him in the FIR (which was filed by him) and the statement before the SDM were sought to be improved upon by further embellishments during the testimony in court. It was pointed out that the only allegation of PW1 was that the appellant and his parents demanded a Maruti car; the allegation of torture and harassment made in the court was not substantiated, were vague, and no dates or time were mentioned. Out of the following allegations made before the SDM, i.e., (i) payment of Rs. 11,000/- and clothes for Rs. 25,000/- to Kavita; (ii) Rs. 10,000/- which he was forced to pay during festivals and functions (such as the birthday function of the grand-daughter); (iii) to give gold ornaments during functions, festivals etc., (iv) to give a Maruti car, only the allegation of demanding Maruti car was stuck to by PW1, and the other allegations were dropped in court during the testimony, which fact was crucially lost sight of by the trial court. During the testimony, PW1 introduced three new allegations, according to the appellant: (i) Rs. 10,000/- paid on each of the four occasions to satisfy the demands; (ii) Rs. 22,000/- paid for attending the wedding of Shalil Kumar, brother of Kavita Jain in November, 1989

and (iii) Rs. 10,000/- paid on the birthday of Bishan Swarups granddaughter. Thus, according to the learned counsel for the appellant, the witness went on improving and changing or embellishing his statements as he wished, without mentioning any dates or otherwise being specific and hence his testimony was unreliable.

9. As regards the evidence of PW3 (mother of Kavita Jain) is concerned, it was submitted that she did not generally support the embellishments made by PW1 and specifically refuted at least two of them. With regard to the testimony of Shalil Kumar Jain (PW2), the brother of Kavita Jain, it was pointed out that he did not support the embellishments of PW1, but relied on the demand of Maruti car and the payment of drafts for Rs. 60,000 (3 drafts of Rs. 20,000/- each) to the deceased as dowry demand. It was contended that the evidence of PW1 to PW3 were full of improvements and cannot be relied upon.

10. Referring to the testimony of the Manager of the State Bank of India, Chandni Chowk, Delhi (PW8), it was submitted that the drafts issued on 9/10-1-1992 in the name of the deceased were not encashed at all until the date of the occurrence (19-7-1993) which belied the claim that the drafts represented dowry payments on the compulsion or demand of the appellant or his parents. It was pointed out that the drafts were in the name of the deceased, and were not encashed at all by her for nearly 18 months (for reasons best known to her) which belied the allegation that they were dowry payments. At best, they can be gifts given by Kavitas parents to her, which can by no means be called dowry.

11. On the basis of the entire evidence, facts and circumstances brought out, it was submitted on behalf of the appellant that no offence under section 304-B or section 498-A was established. They pointed out to only the fact that the bone of contention between the appellant and the deceased was the stay of the appellants parents with them; while the deceased was insisting that they be sent to Bagpat, the appellant was resisting it. His reason was that after he lost his brother and being the only surviving son, it was his duty to look after and support his parents; and sending them away, when they needed medical care, to Bagpat would force them to be without solace and support, which was not possible. This conflict, according to the learned counsel, for the appellant can hardly amount to cruelty on

the part of the appellant towards the deceased. According to him, the cruelty must have a causal connection with the demand of dowry and a conflict between the husband and wife on account of a domestic matter can hardly amount to this.

12. In support of his submissions, the learned counsel for the appellant relied on the following authorities: (i) Appasaheb & Anr. Vs. State of Maharashtra (2007) 9 SCC 72.(ii) Deepak Poddar & Anr. Vs. Dinesh Poddar (decided on 17.8.2007) (iii) Division Bench judgment of this court in State Vs. Rakesh & Ors. (decided on 15.5.2012) (copy filed) 13. The arguments of the learned Assistant Public Prosecutor, appearing for the State, are as follows. The ingredients of the offence under section 304-B, as laid down in Mustafa Shahadal Shaikh Vs. State of Maharashtra (2012) 11 SCC 39. are satisfied in the present case. There was a dowry demand soon before the death, on 11-7-1993, as is evident from the testimony of PW1 (Bishan Swarup Jain) and his statement before the SDM under section 164 of the Cr.P.C. Any minor variations or discrepancies in the testimony of witnesses are not material, considering the overall circumstances of the case, as rightly pointed out by the trial court in paragraph 9 of the impugned judgment. There was ample evidence that there were conflicts between the two families on account of the unreasonable and hefty dowry demands and they were not even visiting each other; the parents of the deceased were talking to her only over the phone (paragraph 12 of the impugned judgment). It was submitted that the appellant, being the husband of the deceased, was the best person to explain the circumstances resulting in the death of his wife which was not forthcoming. It was finally pointed out that the deceased was expecting her second child and no woman would think of ending her life in such a condition, unless the atmosphere in the house was unbearable; in the present case, such atmosphere prevailed in the house on account of the unreasonable and persistent dowry demands, which the deceased could not longer bear and she therefore decided to put an end to her life. It is urged that for this, it is the appellant who was the cause.

14. In his brief rejoinder, the learned counsel for the appellant submitted that the trial court erred in not applying to the appellants defence the same standards which it applied to the defence of his parents who were acquitted. The decision:

15. I may first refer to the deposition of PW 1 Bishan Swarup Jain who is the father of the deceased, Kavita Jain. He deposed that the accused and his mother Manju Jain used to beat Kavita for not bringing sufficient dowry. A sum of Rs. 10,000/- was paid four times to Kavita to satisfy the dowry demand. She was also given Rs. 60,000/- to be given to them through three bank drafts of Rs. 20,000/- each. This was paid, according to PW1, to save Kavita from the beatings. He also stated that he paid Rs. 22,000/- to ensure the attendance of Kavita at the marriage of his son, Shalil Kumar Jain in Nov., 1989. He also had to pay Rs. 10,000/- to ensure Kavitas attendance at the birthday function of the child of Shalil Kumar Jain. On 11-7-1993, Kavita had come to his house to say that the appellant and his parents would kill her if he did not get a Maruti car; he therefore came to the appellants house and assured that he would arrange for the car. According to him, Kavita either committed suicide or was killed by the accused by burning her. If she had committed suicide, it was only because of the harassment, taunts and dowry demands of the accused persons. In the course of the deposition before the court, PW1 admitted that he did not mention in the FIR the fact that he had to pay Rs. 10,000/- four times or about the payment of the three drafts for Rs. 60,000/-. He denied the suggestion that he did not mention about the drafts because he had not handed over them to Kavita as promised, as a gift to her. He also admitted that, in the statement before the police under section 161 Cr. P.C. (Ex. PW1/A) and in the statement before the SDM (Ex. PW1/B), he did not mention about the drafts for Rs. 60,000/- or the amount of Rs. 22,000/- said to have been paid to ensure Kavitas attendance at the wedding of Shalil Kumar Jain or about the amount of Rs. 10,000/- said to have been paid to ensure Kavitas attendance at the birthday function of Shalil Kumars daughter. PW1 admitted in his deposition before the court that it is correct that accused Harish and Sanjay daily went to Bagpat in the morning and return in the evening to their house in a Maruti car and also in the bus. It is correct that accused persons have a Maruti car.

16. The deposition of PW1 shows that he has been improving his case with regard to the dowry demands from time to time; from the FIR stage to the statement under section 161 Cr.P.C. and to the statement before the SDM and eventually before the court during the trial. The learned counsel for the appellant is therefore right in saying that much weight cannot be attached to the allegation of dowry

demand (of cash payments) by the appellant and his parents. The drafts for Rs. 60,000/-, as per the deposition of the manager of the SBI, Chandni Chowk branch, were in the name of the deceased and though they were issued in January, 1992, were not encashed till the date of occurrence. It has not even brought out whether the appellant was in the know of these drafts. This is important, since had the appellant been aware of the drafts, he would have compelled or forced the deceased to encash them and hand over the proceeds to him, if the allegation of dowry demand were true. The allegation that the appellant and his parents demanded a Maruti car on 11-7-1993 stands belied by the admission of the witness himself that the appellant had his own Maruti car in which he and his father used to go to Bagpat daily to look after the business. The improvements and embellishments, which were abandoned during the testimony in court, cannot be brushed aside as minor or inconsequential variations, since they form the foundation of the complaint/charge against the appellant. Since it forms the basic ingredient of the offences under sections 304-B/498-A, it has to be strictly proved and established.

17. PW2, Shalil Kumar Jain, is the brother of Kavita. In his evidence, he speaks generally of cash payments on various occasions as and when required which did not change the attitude of the appellant and his parents; specifically, however, he refers only to the drafts for Rs. 60,000/about which I have already commented in the preceding paragraph. He refers to the demand of Maruti car, which he came to know from his mother (PW3 Suman Jain). He admitted that when Kavita was supposed to have come to the house with the demand of the car, he was not present in the house. But in the statement before the police, he had stated that the telephone call regarding the demand for Maruti car was attended by him. He has thus not supported the improvements and embellishments made by PW1. As far as the demand of the Maruti car is concerned, apart from the contradictions he said to the police that he received the phone call regarding such demand, but in court says that he heard about the demand from his mother (PW3) the fact remains, which was brought out in the deposition of PW1, that the appellant had his own Maruti car in which he and his father used to travel daily to Bagpat for business.

18. PW3 Suman Jain is the mother of the deceased. Her deposition shows that she does not support the embellishments in the deposition of her husband PW1, at least two of them. She has referred to payment of Rs. 10,000/- several times and the drafts for Rs. 60,000/-. She has also referred to the demand of Maruti car.

19. The deposition of PW4 Tilak Singh Yadav who is the landlord may now be examined. He deposed that he actually saw the appellant walking on the water pipes connecting the shaft between the two bathrooms, break open the window pane and enter the bathroom. He entered the bathroom when it was opened by the appellant from inside and saw Kavita open her eyes when the appellant asked what she has done and why. He wanted to take her to the hospital, but PW4 told him to wait till the police came, as it was a case of burning.

20. PW4 was a lecturer in Venkateswara College, Dhaura Kuan. He stated in his deposition that Kavita was a regular visitor to his house and used to meet him in a friendly manner. He stated that Kavita did mention to him that since Harish Jain, the father-in-law was a heart patient and Manju Jain, the mother-in-law was unable to walk properly, and further since the servant had also left the services, it would be better that her in-laws lived separately; that the brothers of Harish Jain lived in Bagpat, UP. PW4 thus deposed that according to Kavita, both Harish Jain and Manju Jain should reside in Bagpat. He had also stated before the police, which he confirmed in court, that he had never seen any quarrel or mar-peeet between the appellant and Kavita. What he stated before the police was only that there was some tension between the parents of Kavita and her in-laws and they did not visit each other. He also denied the suggestion that he was favouring the accused since he wanted him to vacate the premises; he had already vacated the house by the time trial had started.

21. It appears to me that if there was any dowry harassment or related torture or ill-treatment of Kavita by the appellant or her in-laws, she would have mentioned it to PW1, going by the fact that she mentioned to him that it was her desire that her in-laws should stay away from them in Bagpat, UP. If she had thought it fit to mention such a conflict, which was not of any serious nature so as to cause concern or any threat of physical danger, nor unusual or uncommon in

households, I am fairly certain that she would have mentioned it to PW1 if there was any torture or ill-treatment of her by the appellant or her in-laws related to dowry. To sum up, the trial court should have preferred the evidence of PW4 (Tilak Singh Yadav, the landlord) as he was an objective or neutral witness and had deposed that he had not seen the appellant and his wife quarrelling or indulging in mar-peat; the deceased, who used to visit the landlords house in the ground floor, never mentioned anything about any dowry demand or the related ill-treatment/torture/abuse. This aspect was overlooked by the trial court. The trial court placed undue weightage on the evidence of PW1, forgetting that he was an interested witness and that had improved or embellished his version from time to time. He also admitted that the appellant had his own Maruti car, which takes away the bottom of his allegation that the appellant and his parents demanded a Maruti Car as dowry. It also overlooked that the three drafts for `60,000/- were made out in the name of the deceased and remained without being cashed from January, 1992 to the date of occurrence. Finally, in any case, if the deposition of the prosecution witnesses were not good enough to convict the appellants parents and they could be given the benefit of doubt, on the same evidence the appellant could not have been held guilty.

22. Taking all the above into account, I am of the view that the offence under sections 304-B and 498-A have not been established or proved beyond reasonable doubt. I therefore set aside the impugned judgment and the sentence and allow the appeal. The sureties, if any, are discharged.

23. Consequently, the revision petition filed by Bishan Swarup Jain for suspension of the impugned judgment in so far as it acquits Harish Chander Jain and his wife Manju Jain (parents of the appellant in the criminal appeal) is dismissed. (R.V. EASWAR) JUDGE August 06, 2013 //vld

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