

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: 1st October, 2010

Date of Order: 2nd December, 2010

+Crl. Appeal No. 93 of 2004

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02.12.2010

RANI ... Appellant Through: Mr. Bhanu Pratap Singh, Advocate

Versus

THE STATE OF NCT OF DELHI ... Respondents Through: Mr. O.P. Saxena, Addl. PP for the State

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes. JUDGMENT

1. Present Appeal has been preferred against the Judgment dated 1st October, 2003, and order on Sentence dated 13th October, 2003, whereby the Appellant was convicted under Section 304B/498-A IPC read with Section 34 IPC and sentenced to undergo Rigorous Imprisonment for a period of 7 years with fine of ` 1,000/-.

2. Janki was married to son of the Appellant on 5th December, 2000. She committed suicide by hanging herself on 1st March, 2001. After her death, her brother Ved Prakash, PW-2 gave a statement to SDM that he had visited Janki's house on 23rd February, 2001 and found her in a sad mood. She told him that her in-laws were asking for ` 50,000/- and a scooter as they wanted to open a shop and the scooter was required for roaming around. Ved Prakash stated that thereafter he talked to in-laws of her sister and told them that he would respond after thinking over. He asked them to send Janki with him. On this, he was told that they would take her to his house after 2-3 days. After that he received information that Janki had died. Crl. Appeal No. 93 of 2004 Page 1 of 8 He expressed his doubt that his sister had been killed by her husband, parents of her husband and husband's sister Kiran.

3. In the name of investigation, police took photographs of deceased, recorded statement of brothers of Janki, collected postmortem report about the cause of her death, and FSL report of viscera. Even the site plan of the place of suicide and of the house was not prepared. The postmortem report shows that there was no external injury on the body of Janki. The cause of death was given due to asphyxia. Ligation mark present on the neck showed that there was no ligation mark on left side of neck showing that ligation was caused due to hanging. FSL report showed presence of insecticide in the body. No investigation was done by the police on the aspect of purchase of insecticide or administration of insecticide etc. Charges against the accused persons were framed under Section 304B read with Section 498-A IPC read with Section 34 of IPC.

4. Prime witnesses in this case are PW-2 Ved Prakash and PW-7 Jai Prakash, the two brothers of the deceased Janki. Ved Prakash is the one who claimed to have visited Janki on 23rd February, 2001 and stated that Janki was in sad mood and she complained that her in-laws were demanding ` 50,000/- and a scooter. PW-7 Jai

Prakash stated that Janki had come to his house in the village after about a week of her marriage and had told him that her in laws were demanding scooter and ` 50,000/-. He then sent his brother Jaidev @ Ali to the house of his sister Janki and this demand was repeated to him and Jaidev informed him about the demand.

5. PW-4 Laxman is 3rd brother of Janki. He testified that he had visited his sister at her matrimonial house after about a month of her marriage. He stayed there for few moments and at that time he had no talks with his sister. Thus, as per his CrI. Appeal No. 93 of 2004 Page 2 of 8 testimony, no complaint was made to him by his sister about demand of ` 50,000/- and a scooter.

6. These three witnesses were practically not cross examined on the charges framed against the accused persons. The only cross examination done by the defence counsel was putting to the witnesses statement recorded under Section 161 Cr. P.C. and giving suggestion regarding denial of the demand.

7. On the basis of the testimony of two brothers i.e. PW-2 and PW-7, the appellant and other two accused persons were convicted under Section 304B/ 498- A/34 IPC.

8. It is apparent that the allegations were very vague in nature. Who demanded ` 50,000/- and scooter, whether it was the demand of husband or of mother-in-law or of father-in-law, when was it made answers to all these questions are absent. Even if it is presumed that demand was made, the ingredients of Section 304B IPC were totally absent in this case as there was no evidence on record to show that cruelty of any kind was perpetuated on Janki for this demand. Section 304B IPC reads as under:

"(1) Where the death of a woman is caused by any
burns or bodily injury or occurs otherwise than under
normal circumstances within seven years of her
marriage and it is shown that soon before her death
she was subjected to cruelty or harassment by her
husband or any relative of her husband for, or in
connection with, any demand for dowry, such death
shall be called "dowry death" and such husband or
relative shall be deemed to have caused her death.

(2) Whoever commits dowry death shall be punished
with imprisonment for a term which shall not be less

CrI. Appeal No. 93 of 2004 Page 3 of 8 than seven years but which may extend to imprisonment for life."

To bring home an offence under Section 304-B IPC it is an obligation of the prosecution to prove in those cases where death of a woman occurs within 7 years of her marriage, that soon before her death, she was subjected to cruelty or harassment by her husband or any other relative, in connection with a demand of dowry. Mere making of demand is not the only pre-requisite for proving an offence under Section 304B IPC. The prosecution was thus supposed to prove that the demand made by the accused was coupled with a harassment or cruelty in connection with the demand. Unnatural death can be called a dowry death only if,

after making a demand of dowry, the accused perpetuates cruelty on the victim so that the demand made by him is got fulfilled by perpetuation of cruelty on the victim. If the alleged demand of dowry is not coupled with cruelty, harassment or any other such act on the part of accused, Section 304B of IPC would not be made out. In this case, none of the three brothers stated that cruelty was perpetuated on Janki or she was harassed by the appellant or by any other relative for not fulfilling the demand. I consider in these circumstances conviction of the appellant under Section 304B IPC was totally illegal and unjust. The conviction seems to be the result of a callous criminal justice system where neither the defence counsel prepared the case nor the prosecutor discharged his duty in an impartial manner nor the Judge considered it as his duty to see what offence was made out and everyone acted in a mechanical manner.

9. The other question arises whether the appellant could be convicted under Section 306 IPC i.e. for the offence of abetment of suicide, since the deceased committed suicide within three months of her marriage. In order to convict a person for abetment of suicide, apart from proving suicide, it has to be proved that the appellant or accused was instrumental in commission of suicide. Section 113A of Crl. Appeal No. 93 of 2004 Page 4 of 8 Evidence Act which raises a presumption regarding abetment of suicide in respect of a married woman reads as under:

"113A. Presumption as to abatement of suicide by a

married women - When the question is whether the

commission of suicide by a women had been abetted by

her husband or any relative of her husband and it is

shown that she had committed suicide within a period of seven years from the date of her marriage and that her

husband or such relative of her husband has subjected

her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such

suicide had been abetted by her husband or by such

relative of her husband."

A perusal of above section would show that abetment of suicide of a married woman by relatives would be presumed by the Court if it is shown that her husband or such other relative of husband had subjected her to cruelty. In the present case, there is not an iota of evidence in respect of cruelty perpetuated upon the victim, either medical evidence or oral evidence. I, therefore, consider that that the appellant could not have been convicted even under Section 306 IPC.

10. It is seen that the Appellant herein belonged to a very poor family of vegetable seller. She had three young daughters and two sons. She herself was a house-wife and not working and that seems to be reason that during trial she and her husband and son could not engage a counsel with some experience who could have done justice to the brief. The witnesses were not cross-examined in a proper manner and cross-examination done to the witness was only to confront them with their statements under Section 161 Cr. P.C. Along with the Appellant, her husband and her son were also convicted. Even during Appeals, this family could not engage an efficient counsel and that is why her husband and son remained in JC during entire Crl. Appeal No. 93 of 2004 Page 5 of 8 Appeal period. After undergoing entire sentence, they appeared in the court and stated that they do not wish to pursue their Appeals, so, the Appeals were dismissed.

11. A perusal of record shows that the deceased's brother had made application before the Court for return of dowry articles and Istridhan during trial and gave a list of the articles given at the time of engagement ceremony (sagai) and marriage. The list reads as under;

(i) One Silver Coin, (ii) One Three Piece Suit for Boy, (iii) One Gold Ring, (iv) 51 Utensils, (v) Fruits and Dry Fruits, (vi) Nine Sarees, (vii) Nine Gents Shirts, (viii) Four Pairs of Clothes for Children and (ix) ` 501/-.

At marriage the dowry list is as under;

(i) One Silver Coin, (ii) 5 Units of Clothes for Boy, (iii) One HMT Wrist Watch, (iv) 27 Utensils (of Steel and Brass), (v) Ear-ring (Kundal) + LONG of Gold for Girl, (vi) A set of Silver pajeb + Key Ring, (vii) One Double-Bed with

Matress, Quilt and Pillow, (viii) One Chair, One Table, One Stool, One Dressing Table, One Cooler, One Godrej

Almirah and One Small Box.

This list, prepared at the time of marriage was duly signed by husband Raju. The list would show that both parties belonged to poor strata of society and except ` 501/-, there was no cash transaction as dowry between the parties and the parties knew each-other's financial position well. No question was asked about the list nor the investigating agency made the list as a part of their investigation nor the dowry list attracted attention of the Judge concerned. This list would have shown that it was not a case where dowry has been demanded. Where the parties knew that the status of girl was such that even at marriage and engagement ceremonies only ` 501/- cash was given, the husband of relatives would not have thought of CrI. Appeal No. 93 of 2004 Page 6 of 8 demanding ` 50,000/- and scooter within few days of marriage. The most disturbing factor is that no evidence, whatsoever, was collected by the police about the real facts. No effort was made by learned Public Prosecutor or by Trial Judge to even go through the evidence and consider what charges were made out. Charges seemed to have been framed in a mechanical manner. No effort is seem to have been made by the Trial Judge either at the time of framing charge or later on as to what offence was made out.

12. Every suicide after marriage cannot be presumed to be a suicide due to dowry demand. The tendency of the Court should not be that since a young bride has died after marriage, now somebody must be held culprit and the noose must be made to fit some neck.

13. There is an unfortunate development under criminal justice system that even in those cases where accused should be examined as a witness by the defence, the accused persons are not examined as a witness. In matrimonial offences, it is the accused and his family members who know what transpired within the family and they should always volunteer themselves as witnesses in the Court so that the Court gets their side of the version by way of evidence and testimony. Under Section 106 of Evidence Act, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. When a death takes place within the four walls of matrimonial home, the husband and in-laws should come forward and depose as to what was the real cause of death. The criminal practice in India has been on the lines of old track that accused must not speak and he should not be examined as a witness. I do not know why this practice developed but in all matrimonial offences, this practice is shutting the doors of the Court, to the version of the other side, by their advocates.

CrI. Appeal No. 93 of 2004 Page 7 of 8

14. Adversarial system of trial being followed in this country has turned most of the trial court judges into umpires and despite having sufficient power to ask questions to the witnesses and to find out truth, most of them do not ask questions to the witnesses to know the truth. In fact, the witnesses are left to the Advocates

and the Judges just sit and watch. This tendency of being only umpires works heavily against the poor who are normally not defended by Advocates of competence and standing, as they cannot afford their fee. The Trial Courts, therefore, must shed their inertia and must intervene in all those cases where intervention is necessary for the ends of justice.

15. In this case the High Court did not find time to hear the appeals of other two appellants, who continued to remain in jail during trial period as well as appeal period for no crime. In all such cases where appellants are in jail and sentence is not suspended, the High Court should fix a time limit for disposing of such appeals. Neither the criminal should be let off by default as High Court has no time to hear appeals nor should the innocents rot in jail by default. The whole criminal justice system needs overhauling so that the constitutional mandate of equality before law is made meaningful and it should not be the case that higher courts are kept occupied by the person with money or power, as is the case today.

16. The appeal is allowed. The appellant is acquitted. DECEMBER 02, 2010 SHIV NARAYAN DHINGRA, J. acm

Crl. Appeal No. 93 of 2004 Page 8 of 8