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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 23rd May, 2019

+ Crl. Appeal no. 674/2002

AMBAR SINGH Appellant
Through: Mr. M.L. Yadav, Adv.

versus

STATE OF DELHI Respondent
Through: Mr. Sanjeev Sabharwal, APP
for the State with SI Amit
Kumar, PS Kalyanpuri.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT(ORAL)

1. Manjeet Kaur (the victim) was about 20 year old woman, married to the appellant for about three years, she being at the house of her brother Ranjeet Singh (PW-2) in Jhuggi no. 22, near Central Market, near park of block nos. 11-12 of Kalyan Puri on 28.08.2000 (the day of *Raksha Bandhan* festival) when sometime around 5.30 p.m. she suffered burn injuries. The indisputable evidence on record would show that she was taken to Jai Prakash Narain Hospital ("hospital") by her said brother Ranjeet Singh (PW-2), she being accompanied by her sister Babli Kaur (PW-1), and her husband (the appellant), all travelling in a three wheeler scooter (TSR). She succumbed to the burn injuries and died in the hospital, unable to

make any formal statement to the police or sub-divisional magistrate (SDM). On the allegations made subsequently by her siblings and mother, Prem Kaur (PW-3) in their statements to the SDM, however, first information report (FIR) no.269/2000 was registered by police station Kalyanpuri. The investigation culminated in report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) being submitted and, on the basis of evidence presented therewith, the appellant was summoned and sent up for trial in the court of sessions (in sessions case no. 10/2001).

2. The trial proceeded, on the basis of charges which were framed for offences under Sections 498A/304B/302 of Indian Penal Code, 1860 (IPC). It may be mentioned here that the accusations against the appellant were that he had intentionally set Manjeet Kaur on fire in the *jhuggi* which was residence of her brother (PW-2), the consequent burn injuries having brought about her death, the case, thus, being one of culpable homicide amounting to murder. At the same time, it was also the gravamen of the charges against the appellant that prior to the said incident wherein Manjeet Kaur suffered burn injuries, she was being harassed by the appellant so as to coerce her to bring Rs.1,00,000/- (Rupees one lakh) along with a scooter from her father, this constituting a case of cruelty to the married woman and dowry death, presumption under Section 113-B of Indian Evidence Act, 1872 being invoked for such purposes.

3. The additional sessions judge accepted the prosecution case in the context of charges under Section 498A/304 B and convicted the appellant by judgment dated 26.07.2002. The trial court, however, was

not satisfied with the evidence on the charge of murder under Section 302 IPC. Though the judgment does not expressly say so, it is clear from the conclusions recorded therein that the charge under Section 302 IPC failed and, thus, the appellant stood acquitted on that score. By subsequent order dated 19.08.2002, the trial judge awarded rigorous imprisonment for three years and seven years for offences under Sections 498A and 304 B IPC respectively, fine of Rs. 1,000/- also having been added on the first count.

4. The appeal at hand was brought to assail the judgment and order on sentence, the appellant pleading innocence and false implication. The appellant was released on bail, by order dated 08.07.2004, the substantive sentences having been suspended pending adjudication on the appeal.

5. The trial court record had been requisitioned by the registry and added to the file of the appeal. It is reported that the said record went missing from the registry. It may be mentioned here that similar loss of record in more than one hundred criminal appeals had been reported by the registry, such loss having been subjected to inquiries made but with no one being held accountable or responsible. Pursuant to the directions which were obtained by the registry from the Chief Justice, endeavour was made to re-construct the missing record. The said record has been partially re-constructed and has been placed before the Court. The appeal thus has come up for consideration before this Court along with partially re-constructed record, it being conceded by both sides that the contentions have to be examined

primarily on its basis of the summary of evidence which has been set out in the impugned judgment.

6. Having heard the counsel for the appellant and the additional public prosecutor for the State and having gone through the record to the extent available with their respective assistance, this Court is of the view that benefit of doubts will have to be extended to the appellant and, thus, the impugned judgment and order on sentence are liable to be set aside. The reasons may be set out hereinafter.

7. As indicated earlier, the prime charge brought against the appellant was that of murder punishable under Section 302 IPC. The evidence presented in this regard primarily was the testimony of PW-2, the brother at whose residence the burning incident took place. It may be mentioned here that Manjeet Kaur was earlier married to one Raju. It is the case of the parental family and not disputed by the appellant, that the marriage of Manjeet Kaur with said Raju was not happy one. On account of harassment at his hands, Manjeet Kaur had walked out of the said marriage. Though it is claimed by the members of the parental family that the marriage with Raju was dissolved on account of divorce, there is no formal divorce decree produced. Be that as it may, Manjeet Kaur had had some differences with the appellant as well. She had come to the place of her brother (PW-2) on the occasion of *Raksha Bandhan*. She was, however, accompanied by her husband (the appellant) on the said visit. The evidence shows that her father was working for gain during those days in Dubai. Her mother (PW-3), however, was living with the rest of the family. Her married sister Babli Kaur (PW-1) would live in another *jhuggi* in

adjoining block no. 11 of Kalyan Puri, with her family that included daughter Sonu.

8. The allegations constituting the charge of murder essentially were that while PW-2 was outside the *jhuggi*, he saw the appellant come in with a bottle containing some substance and entering the *jhuggi* at about 5.30 p.m. According to his version, Manjeet Kaur was inside the *jhuggi* at that point of time, the appellant having entered the *jhuggi* had bolted the door from inside. According to PW-2, smoke had started emanating sometime thereafter from the *jhuggi*, whereupon he (PW-2) had rushed towards it. However, he was unable to open the door which, according to him, was bolted from inside. He claims to have gained entry into the *jhuggi* by removing the thatch roof only to find Manjeet Kaur in a badly burnt state, the appellant being present there in a drunken state at that point of time. The prosecution relied on corroborative testimony of a neighbour Nizamuddin (PW-6) with regard to this sequence of events. PW-1, the sister, statedly had learnt about the burning incident from her daughter Sonu and had reached the place of her mother's residence only to find Manjeet Kaur lying in a burnt state. It is thereafter that the victim was taken by her in the TSR, they being accompanied by PW-2 and the appellant. The mother (PW-3) was not present at the time of the incident, her deposition only pertaining to the alleged harassment for dowry to which one shall advert later.

9. The evidence presented by the prosecution also included MLC (Ex.PW-5/A), in which the incident was attributed to be an accident involving a stove inside the *jhuggi* over which some cooking was

being done at the relevant point of time. Besides this, the death summary (Ex.PW-17/A) of the medical officer who had attended on the victim during the course of her treatment was also part of the material which was gathered during investigation. This death summary, in contrast, indicated the deceased to have confided in the medical doctor that she had committed suicide by pouring kerosene over herself.

10. The trial Judge was not convinced with the allegations of murder. He found the evidence of PW-2 on this score incredible. He, therefore, rejected the oral testimony of PW-2. Similar statement had also been given by PW-1, on the basis of what she would say to be the information received by her from Manjeet Kaur on the way to the hospital in the TSR. The theory that the appellant was inside the *jhuggi*, having bolted the door, presumably so as not to let Manjeet Kaur escape, is based on the sole word of PW-2. His testimony in this regard is seriously contradicted by the neighbor (PW-6), who spoke about the door being forced open and no one except the victim being found inside at that point of time. The two contradictory versions coming in the prosecution evidence lead to a situation where the court has to prefer one over the other. Given the neutral position of PW-6 (the neighbour), nothing having been brought out to prove that he had been won over, or was intentionally stating facts contrary to the truth, there is no reason why his word should be treated as incredible so as to accept the version of PW-2.

11. It is against the above backdrop that the trial judge refused to accept the charge under Section 302 IPC. The State has not brought

any appeal to assail the said finding, or conclusion, rejecting the charge of murder. Thus, the said conclusion, which even otherwise is borne out from the record to be correct, has attained finality.

12. Having rejected the evidence of PW-2, with regard to the charge of murder, the trial Judge accepted the evidence of same very witness, so as to conclude that the appellant had subjected the victim to cruelty for dowry in the matrimonial home, his word about demand of Rupees one lakh and the scooter having been believed. In the considered view of this Court, the fact that PW-1 and PW-2 have not been found reliable as to their accusations of murder, their evidence cannot be accepted on its face value. It instead requires closer scrutiny.

13. Undoubtedly, the deceased had been married to the appellant for about three years. Without doubt, her death did not occur due to natural causes. But then, it also is to be borne in mind that in her version to the attending medical officer, the deceased had not stated anything even remotely about harassment on account of illicit demands for valuable gifts including cash or scooter. On the contrary, she had indicated that her husband was angry with her as she was refusing to go back with him to the matrimonial home and since he was reprimanding her, she had chosen to pour kerosene oil on herself to commit suicide.

14. In the three years of marriage, no report was lodged with any authority about ill-treatment or illicit demands for valuable gifts. Manjeet Kaur had a past unhappy experience of marriage with Raju. It is not a case where she was a person who was not aware of her rights. She had not tolerated the harassment by the first husband and

had chosen to walk out on him. She had preferred divorce over continuance to suffer ill-treatment at his hands. It is doubtful that if she had been subjected to similar harassment by the second husband (the appellant), she would have meekly suffered the same rather than reporting to some authority. The statements of PW-1 (sister), PW-2 (brother), PW-3 (mother) coming after the death, in the above facts and circumstances, do not inspire confidence.

15. For the foregoing reasons, the impugned judgment and order on sentence are set aside. Benefit of doubts is given to the appellant. He is acquitted. The appeal is disposed of accordingly.

R.K.GAUBA, J.

MAY 23, 2019

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