

Delhi High Court

State Of Nct Of Delhi vs Mohd. Rafiq & Ors on 12 May, 2011

Author: S.Ravindra Bhat

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON: 09.05.2011
PRONOUNCED ON: 12.05.2011

+ CRL.L.P. 257/2008

STATE OF NCT OF DELHI

..... Petitioner

Through: Mr. Ranjit Kapoor, APP with Mr. Asim,
Advocate.

versus

MOHD. RAFIQ & ORS

..... Respondents

Through: Mr. Abhinav Bajaj, Advocate.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE G. P. MITTAL

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

MR. JUSTICE S.RAVINDRA BHAT

% The State seeks leave to appeal against the judgment and order of the learned

Additional Sessions Judge dated 23.05.2008 in SC No.57/2004 whereby the respondents were acquitted of the charge for having committed offences punishable 498A/34, 406/34 and 506/34 IPC. One of the respondent, i.e., accused Mohd. Rafiq was acquitted additionally of the charges for having committed offences under Sections 506/34, 376 (1) and 384/34 IPC.

2. The prosecution alleged that Suriya, the complainant (hereafter referred to as CRL.L.P. 257/2008 Page 1 PW-1) married Rafiq on 25.11.1995 and used to reside with him in the matrimonial home. She alleged about maltreatment by Rafiq who insisted that she should get ` 50,000/- from her father since he wanted to purchase a thread making machine. PW-1 alleged that her father had spent ` 4,50,000/- towards jewellery and dowry in the marriage and, therefore, was unable to pay more,

upon which, Rafiq got enraged and took away all the jewellery. When she tried to object, he pushed her down and kicked her. PW-1 also alleged that when she remonstrated, her father-in-law and other relatives threatened, beat and silenced her with dire consequences in the event she disclosed their actions to her parents. She alleged that Rafiq told her later about having sold the jewellery since she did not get ` 50,000/- and that he had used that amount to start the thread making unit in a rented shop. She also stated that Rafiq sold a scooter given during marriage and invested the money in the shop and when the business failed, he again pressed her to get money from her father.

3. PW-1 further stated that at this stage she went to her father and reported the previous events, whereupon, he agreed to arrange the money within 3-4 days and later gave it through her brother. She stated that the money was handed over to her husband and In-Laws which was kept in an almirah. Two days later, Rafiq took it out and left the house. On being questioned, Rafiq threatened her. PW-1 alleged that her parents-in-law as well as sister-in-law used to taunt, ill-treat and even beat her. She stated that Rafiq asked her to get ` 25,000/- as a condition for being permitted to attend her brother's marriage. When she refused to do so, he threatened her. PW-1 alleged that on 30.09.2003, her husband after giving threats and beating, took her to Patiala House Court and got her signatures on a piece of paper in the presence of two unknown persons and CRL.L.P. 257/2008 Page 2 gave the triple "talak". She further stated that Rafiq later took her to a house where he had locked her. She pleaded with him to release her since she was divorced but he did not agree. PW-1 alleged being illegally confined in a room for the period 30.09.2003 to 13.12.2003 during which time, Rafiq had forcible sexual relations with her. It was alleged that on 14.12.2003, she was sent home along with Chand Bhai to her parents where she disclosed having been treated with cruelty and also about having been divorced.

4. After conclusion of investigation, police filed the chargesheet; the respondents denied the charges and claimed trial.

5. The prosecution relied on the testimonies of PW-1, the complainant, her father PW-3 Asgar Ali, PW-6 and PW-7 who allegedly had helped her to return home on 14.12.2003.

6. After considering the depositions of all the relevant witnesses and the materials on record, the Trial Court held that the prosecution was unable to prove the charges beyond reasonable doubt and accordingly by the impugned judgment acquitted all the respondents/accused.

7. It was argued that the trial Court fell into error in not considering the material evidence with regard to the illegal confinement of PW-1 and her rape by the respondent Rafiq. It was argued that by all accounts, the divorce which took place on 30.09.2003 was not a voluntary one and tainted by coercion. Learned APP urged that the Court ignored the material parts of the evidence of PW-1&3 and focused on minor contradictions. Had these minor contradictions and discrepancies not weighed with the Court, the accused would have been convicted. It was further submitted that to establish CRL.L.P. 257/2008 Page 3 the charge of rape, it was sufficient for the Court to rely upon the evidence of prosecutrix without any need for corroboration.

8. In the impugned judgment, the Trial Court noticed that PW-1's testimony conflicted with that of PW-3 on certain crucial aspects. The Court noticed that in her previous police statement, PW-1 did not record that the accused expected more dowry or that Rafiq reportedly got married with her to secure financial help. Crucially, in the cross examination, PW-1 had stated that a thread manufacturing machine was installed 4/5 months after her marriage. It was further noticed that PW-1's depositions about her not being allowed to attend her brother's marriage was contrary to PW-3's testimony; he admitted that both Rafiq and PW-1 were present and was able to identify a photograph. The Trial Court held that the allegations regarding demand for dowry and harassment on that score were not trustworthy enough to convict the respondents and observed as follows:

"Further the allegations leveled are vague in nature. Neither any date of demand of money has been given nor any date of giving the money has been given. No specific incident of taunting or beating has been given nor any taunting specified. Only general allegations of threat and taunting have been mentioned. PW-3 was unable to tell date, month or year of making of demand of Rs.50,000/- or even to tell specific date or even approximately regarding making of complaints by her daughter to him regarding harassment by the accused persons. As regards demand of Rs.25,000/- for joining the marriage of brother of Suriya and that she was not allowed to attend the marriage, is concerned, same is also contradicted in cross-examination of PW-3 Asgar Ali. He has admitted as per their customs at the time of marriage bride covered their face in veil and not on the occasion of reception of marriage. He stated that photograph mark B showing photograph of accused Mohd. Rafiq and Suriya might have been a photograph taken in the reception of his son Akhbar Ali. This clearly shows that Suriya had attended the marriage and reception party along with her husband. The complainant and his father have failed to prove the articles given in the marriage and no documentary evidence was produced on record. PW-3 Asgar Ali has stated that kacha receipts were prepared, CRL.L.P. 257/2008 Page 4 even those receipts were not placed on the record. He has admitted that Rs.30,000/- were received at the time of granting bail to the accused persons in court by the complainant. In cross-examination he was not even able to give the number of pages of list of articles. Hence, in these circumstances prosecution has failed to prove beyond reasonable doubt the articles given in the marriage and have not been returned by the accused persons. Even otherwise at the time of divorce Ex.PW 1/DA it was agreed between the parties that in para 6 & 7 that second party has received amount of Mehar at the time of first night after marriage and second party shall not claim any maintenance or any dowry including other articles or money in any manner from any forum. Even otherwise, the alleged demand for running business does not fall within the ambit and scope of harassment for dowry. Hence in these circumstances when vague allegations have been made without giving date, month or year of demand of dowry, harassment and the list of articles has not been corroborated by any documentary evidence being purchased and given in dowry no case for dowry demand, harassment for dowry or entrust of dowry articles is made out against the accused persons."

9. The prosecution relied upon the depositions of PW-6& PW-7 to establish that the divorce between Rafiq & PW-1 was not voluntary. PW-6 was aware of the marriage between Rafiq and PW-1; he deposed that PW-3 and the complainant PW-1 went to his house on 30.09.2003 and informed him about the divorce. They also asked him to do something to resolve the crises. He deposed having met the respondent Rafiq after few days who told him that the complainant had divorced him. PW-6 further deposed that he was asked by PW-3 to go to the police station and report that he had brought PW-1 from Rafiq's house to save his (PW-3's) reputation. What is apparent, therefore, from PW-6's testimony is that both father and daughter (PW-1& PW-3) were together after the divorce and he was asked to intercede and resolve the crises.

10. PW-7, on the other hand, is a direct witness to the divorce of the couple on 30.09.2003. He testified that the talaknama between the husband and wife was prepared by an Advocate and signed by them after which PW-1 left to her parental home. He also CRL.L.P. 257/2008 Page 5 stated that when PW-1 went to the Court, she was carrying a briefcase and wearing valuable jewellery in her ears, hand and neck.

11. On the other charges, the trial Court found as follows: -

"25. The version of the complainant that accused persons sold their house and kept her in village Bhayta, District Gaziabad, UP, there she was not allowed to speak to the neighbours and she was told to divorce peacefully otherwise he will divorce her and obtained her signatures on a paper under threat and accused Rafiq also signed the same is an improvement to complainant Ex.PW 1/A where there is no mention about the selling of house by the accused and taking her to their village. She has also made improvement that accused took her forcibly on the motor cycle to his house and confined her in a room there accused persons did not allow her to go anywhere and all of them keeping watch on her very strictly and that she was kept confined continuously for three month. In the complainant Ex.PW 1/A she had stated only about the accused Mohd. Rafiq as the person who kept her confined after the divorce but while appearing in the court she has stated that accused persons did not allow her to go anywhere and all of them were keeping watch on her and she was confined continuously for three months. Mentioning of confining in village is also an improvement. This is one aspect of the improvement while appearing in examination in chief.

26. In her cross-examination also she has admitted that divorce paper Ex.PW1/DA is signed by her and having her signatures and it is the same paper which was prepared regarding divorce. That document of divorce is dated 30.09.2003. She also admitted that her signatures were obtained in court before the Notary who attested the document and obtained her signatures. She also admitted that two persons had signed the divorce paper as witness. She denied having received Rs.30,000/- in court but her father PW-3 Asgar Ali has admitted that this sum was given in court at the time of granting bail. PW-3 Asgar Ali in his cross-examination has stated that his statement was recorded on 30.9.2003 when the daughter was brought by Mr. Chand.

Mr. Chand has also appeared in the witness box as PW-6 and deposed that on 30.9.2003 Asgar Ali, his wife and Suriya came to his house with some papers and Asgar Ali asked to compromise the matter and to assist to resolve the crises. He stated that Asgar Ali and his family went to their house and after few days of incident he asked Rafiq who stated that he did not divorce Sriya but Suriya herself divorced him. HE was declared hostile and he did not support the case of prosecution and statement under Section 161 Cr.P.C. given before police.

27. Apart from the above mentioned facts, the accused produced DW-1 CRL.L.P. 257/2008 Page 6 Allaudin who deposed that no complainant was ever made by the complainant or her father with regard to dowry. Complainant herself took divorce in Sept. 2003 and he does not know whereabouts of complainant Suriya but her father is residing on the same address. He stated that he knows that complainant has married now. Thereafter, Suriya was not seen. This all shows that testimony of prosecutrix regarding divorce by threat and taking her back by the accused to matrimonial home and committing rape by confining her there appears to be doubtful and does not inspire any confidence. Even Suriya in her cross-examination specifically stated that she was subjected to intercourse in the month of July or August where as in this case divorce had taken place on 30.9.2003."

12. This Court has considered the submissions as well as the trial Court's records. If any legal doctrine has remained constant for over a century in this country, it is that in all criminal cases, the prosecution has to establish the guilt and complicity of the accused beyond reasonable doubt and through unimpeachable evidence. Equally, the Code of Criminal Procedure permits an appeal against convictions and otherwise in a very restricted category of cases. That category does not include an appeal against acquittal. The Courts have uniformly construed this to mean that while considering petitions for grant of leave by the State - against acquittal of accused, there ought to be substantial and compelling reasons, apparent from the record. These compelling reasons may include mis-appreciation of evidence, wrong application of law and glaring omissions on the record.

13. In this case, what is apparent, is that the complainant had alleged ill-treatment which amounted to cruelty under Section-498A and also alleged commission of offences under Sections-406, 506 and 376 (1) of the IPC by the accused. The trial Court found that the materials on the record and the evidence were vague and lacking in particulars both as to the time as well as the other relevant aspects to be rendered unsafe to return conviction against the accused. So far as the question of rape or forced sexual relations after the CRL.L.P. 257/2008 Page 7 divorce between PW-1 and the accused Rafiq was concerned, the Court noted that the evidence of PW-6 belied the coercive nature of the divorce; it also pointed to the complainant living with her parents immediately after the event. PW-7's depositions established that the divorce was not proved to be a result of force or coercion. The testimonies of these two witnesses were primarily relied upon to establish that the complainant had been illegally confined after her divorce. Yet they did not corroborate the prosecution's version in any material particular. Resultantly, all the accused were acquitted of the charges, for having committed various offences for which they were made to stand trial.

14. Having regard to the nature of the evidence including the testimonies of eye witnesses, this Court is not persuaded by the State's argument that the findings contained in the impugned judgment require a second look in an appeal. There are no substantial or compelling reasons why leave ought to be granted in this case.

15. For the above reasons, the petition has to fail and the same is accordingly dismissed.

S. RAVINDRA BHAT (JUDGE) G. P. MITTAL (JUDGE) MAY 12, 2011 /vks/ CRL.L.P. 257/2008

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