

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 03.03.2014

+ CRL.A. 360 of 2010

VINEET VATS Appellant

Through: Mr. Raman Sahney, Adv.

versus

STATE OF NCT OF DELHI Respondent

Through: Mr. Feroz Khan Ghazi, APP.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

In the night intervening 6/7.2.2000, deceased Vimmi was brought by the appellant, who is her husband, to Sodhi Nursing Home, she having consumed insecticide. Vimmi died in the aforesaid nursing home. Since, Vimmi died within seven (7) years of marriage, the concerned SDM was informed, who reached the spot and recorded the statement of Shri Ram Kumar Sharma, father of the deceased. In the aforesaid statement, Shri Ram Kumar Sharma *inter alia* stated that his daughter Vimmi @ Vimla was married to the appellant Vineet Vats on 9.11.1995. He further stated that on being informed by his son-in-law at about 5:00 a.m., he reached Sodhi Nursing Home where his daughter

was found dead. He alleged that Vimmi had been murdered by her father-in-law, Gyan Chand; mother-in-law, Kamla; and brother-in-law, Sunit @ Kalu. He also alleged that earlier the aforesaid three persons used to beat his daughter and harass her in connection with dowry. He desired legal action against the aforesaid three persons as well as against the appellant Vineet though there was no allegation of cruelty or maltreatment against him.

2. On 8.2.2000, the SDM recorded the statement of Smt. Santosh Sharma, mother of the deceased. In the aforesaid statement she *inter alia* stated that after April, 1997, her daughter and son-in-law were turned out of the matrimonial home of her daughter, by her in-laws, who asked them to bring Rs.3.00 lakh from the parents of Vimmi. Thereafter, both of them came to her and she got them a house on rent in Ashok Vihar. The *pagri* (premium) for taking the aforesaid house on rent was paid by her. She alleged that even thereafter the brother, etc. of her son-in-law used to beat her daughter. She claimed that they kept on paying money to her son-in-law who thereafter said that he needed a car for his business, whereupon they spent Rs.2.00 lakh for purchase of a car for him. She further stated that her son-in-law then sold the car and deposited the sale proceeds in FDR. She thereafter got them another

premises on rent in Guru Harkishan Nagar, Pashchim Vihar. She also alleged that they used to meet the expenditure of her daughter and son-in-law.

3. Smt. Santosh Sharma alleged that her younger daughter Usha got married on 9.12.1999, seeing which the appellant complained that lesser expenditure had been incurred on his marriage and wanted a similar amount to be given to him. She further alleged that Vimmi came to meet her on 13.12.1999, and she gave Rs.20,000/- to her, promising to pay the rest of the amount at a later date. She further alleged that on 6.2.2000, she received a telephone call from Vimmi, informing her that they were going to change the house. On 07.02.2000 at 5:00 a.m. they received a telephone call from the appellant who started weeping on the telephone and called them. When they reached the nursing home they came to know that Vimmi had already expired. She also alleged that when they reached the hospital, the appellant confessed that he had poisoned Vimmi and expressed willingness to be punished for his act. She also alleged that the appellant had apologized to the dead body of Vimmi. She specifically alleged that Vimmi had been poisoned by her son-in-law and his friends.

4. On 9.2.2000, the learned SDM recorded the statement of Shri Radhey Shyam, brother of deceased Vimmi. In his statement to the SDM, he *inter alia* stated that while agreeing to live separately from his parents, the appellant had put forward a condition that his entire expenditure would be incurred by his in-laws and for the future of his sister they had accepted the said condition, till the time the appellant was able to earn of his own. He also alleged that Kalu @ Sunit, brother-in-law of Vimmi had one day, poured petrol in their house and set it on fire and the matter was reported to the police and thereafter also he continued to threaten them. He claimed that on 13.12.1999, Vimmi came alone to their house and informed her mother that Vineet wanted that much money as was spent on the wedding of Usha. His mother gave Rs.20,000/- to Vimmi. Even thereafter Vimmi came to them a number of times and complained that the appellant was asking for money to be arranged and was not willing to give more time for this purpose. He also claimed that when they reached hospital on 7.2.2000, the appellant Vineet confession to having poisoned Vimmi.

5. On completion of investigation charge sheet under Section 498A and 304B of IPC was filed against as many as seven (7) persons including the appellant Vineet. However, other accused were

discharged by the learned trial court vide order dated 2.12.2000. The learned counsel for the appellant submits that the order discharging the other accused persons was challenged before this Court but the challenge did not succeed.

6. Smt. Santosh Sharma, mother of the deceased came in the witness box as PW2 and *inter alia* stated that mother-in-law and father-in-law of Vimmi had asked the appellant to bring Rs.3.00 lakh from his in-laws and had turned her daughter and son-in-law out of the house. She then arranged a rented accommodation in Ashok Vihar and paid Rs.25,000/- as *pagri*. She further alleged that the brother-in-law of Vimmi and other relatives continued to harass her even at the rented house in Ashok Vihar by beating her and insisting that she should bring more money. She also alleged that they used to receive telephone calls from the father-in-law and mother-in-law of the deceased who alleged that Vimmi and her husband had taken away Rs.25.00 lakh from their house.

The witness claimed that the appellant told them that he cannot pull without a car and thereupon they gave Rs.2.00 lakh to him for purchasing a car, which he actually purchased. However, after 2-3 months the car was sold by him and they were informed that the sale proceeds had been invested in an FDR.

She further stated that on 9.12.1999, her younger daughter Usha got married and they spent more money in that marriage compared to the money that was spent in the marriage of Vimmi. Thereafter the appellant Vineet started harassing her daughter and asked her to bring equal amount from her parents. Vimmi came weeping and told them of this demand whereupon she gave Rs.20,000/- to her, promising to give the rest of the money later on.

7. It would, thus, be seen that according to this witness, the appellant did not harass the deceased in any manner and did not subject her to cruelty prior to the wedding of her younger daughter. Though, it has come in her deposition that the appellant had demanded a car and the demand was satisfied by giving Rs.2.00 lakh to him, she does not claim that her daughter Vimmi was subjected to any kind of cruelty or harassment by the appellant in connection with the demand of a car. Mere demand of a car, without subjecting the deceased to any cruelty or without harassing her in any manner in connection with the said demand does not constitute cruelty within the meaning of Section 498A of IPC particularly when it was not linked to the marriage and was sought for the purpose of convenience alone though it may possibly constitute an offence under the Dowry Prohibition Act, 1961.

8. The main allegation against the appellant is that noticing the expenditure on the wedding of the younger sister of Vimmi, he wanted an equal amount to be given to him. The aforesaid demand, according to the witness, was conveyed through her daughter. However, there is no allegation of the appellant having subjected the deceased Vimmi to any kind of cruelty or harassment in connection with the aforesaid demand of money. As noted earlier mere demand of money unless it is coupled by some kind of cruelty or harassment of the deceased would not constitute the cruelty as defined in Section 498A of the Indian Penal Code. The complainant when she came in the witness box alleged that Vineet started harassing Vimmi and asked her to bring money equivalent to the money spent on the marriage of Usha, but she did not specify in what manner Vimmi was harassed by the appellant. In her statement to the SDM this witness did not claim any kind of harassment by the appellant in connection with the demand of cash equivalent to the expenditure incurred by them in the wedding of Usha, though she did allege the aforesaid demand. Therefore, the vague allegation of harassment during her deposition in the court, without indicating in what manner Vimmi was harassed, coupled with her having not made any such allegation in the statement to the SDM, would indicate that the

aforesaid allegation of general nature is only an afterthought. In fact, the entire focus of the allegations made before the SDM was that the deceased had been murdered by the appellant by administering poison to her and when they reached the hospital, the appellant confessed to the aforesaid crime. However, neither the appellant was charged under Section 302 of IPC nor is there any evidence which would show that it was he who had administered insecticide to the deceased.

9. The father of the deceased Vimmi came in the witness box as PW3. During his deposition in the court he only alleged that her daughter used to tell him that her in-laws used to harass her, raise demand of dowry and beat her. He specifically named the father-in-law, mother-in-law, husband and younger brother of the appellant alleging demand of dowry and harassment of the deceased by them. However, he did not specify when and in what manner, deceased Vimmi was harassed by the appellant. It would be appropriate to note here that in his statement before the SDM Ex.PW3/A this witness had not made any allegation whatsoever of any demand of dowry or harassment of the deceased at the hand of the appellant Vineet. In the aforesaid statement he had blamed only the father-in-law, mother-in-law and brother-in-law of the deceased and had alleged that the aforesaid persons used to harass

her and had killed her pursuant to a pre-planning. Though he wanted legal action against the appellant as well not a single allegation constituting cruelty with or without harassment of Vimmi was made by him against the appellant.

10. The brother of the deceased, Shri Radhey Shyam came in the witness box as PW5. He *inter alia* stated that on 13.12.1999, Vimmi came to their house alone and informed her mother that the appellant Vineet wanted money equal to the expenditure incurred by them on the wedding of Usha and that a sum of Rs.20,000/- was paid by his mother to the appellant with an assurance to pay more. He further alleged that after the aforesaid incident Vimmi visited them several times and wanted money as desired by the appellant Vineet. Thus, according to this witness, there was repeated demand of cash by the appellant, after 5.12.1999.

11. The sister-in-law of the deceased, namely Meenu Sharma, came in the witness box as PW4. She *inter alia* stated that Vineet and coaxed her (deceased) for a Maruti Car from his in-laws, which they purchased and gave to Vineet. She further stated that after shifting to Guru Harkishan Nagar house, Vimmi used to come to them and tell them that her in-laws, and her husband used to assemble at the said house and

threat/harass her and pressurize her to bring Rs.3.00 lakh and withdraw the criminal cases which Vimmi had lodged against them. She further stated that in the last week of November, 1999, Vimmi came to their house and told her that the previous night her parents-in-law, brother-in-law, maternal uncle of Vineet, his aunt, Satyawati and Purender had come to their house in Guru Harkishan Nagar tortured her, and given her beatings so that she would bring Rs.3.00 lakh and withdraw the criminal cases. However, the aforesaid allegations do not find any mention in the depositions of the parents or the brother of the deceased. The aforesaid part of the deposition of this witness, to my mind, cannot be believed for the reason that it finds no corroboration from the parents and brother of the deceased. Had Vimmi made such a complaint to this witness, she would have immediately brought it to the notice of her mother-in-law and her husband. It would be difficult to accept that the aforesaid witness would not bring such a serious incident involving her sister-in-law to the notice of the parents and brother of the aggrieved person. The aforesaid witness was examined by the Investigating Officer on 13.2.2000, i.e., six (6) days after her death, and there is no explanation from the prosecution for not examining her soon after she had died. In any case, I am not inclined to accept that the witness would not have

brought the incident to the notice of her parents and brother even after the death of Vimmi. Had she done that her parents and brother would have stated so in their statement to the SDM as well as during their deposition in the court.

12. The following allegations against the appellant primarily emerge from a careful analysis of the testimony of the witnesses as discussed hereinbefore:

a. The appellant demanded a car from his in-laws and they either gave Rs.2.00 lakh in cash to him for the purpose or they purchased a car and gave it to him.

b. Seeing the expenditure incurred in the wedding of his sister-in-law, Usha, the appellant demanded an amount equal to the expenditure incurred in the wedding of Usha and the said demand was conveyed to the in-laws through deceased Vimmi.

c. According to PW5 Radhey Shyam, the aforesaid demand of cash equivalent to the expenditure incurred in the wedding of Usha was not only made once but repeatedly.

13. As regards purchase of car, the case of the appellant is that it was an old car which he had purchased through a car dealer. The said car dealer has been examined as DW7. In his deposition DW7 Satish

Chander *inter alia* stated that in the year 1997, the appellant Vineet purchased a Maruti car from him through delivery receipt Ex.DW7/A for a consideration of Rs.1.25 lakh. He also stated that Vineet had paid Rs.45,000/- to Rs.50,000/- by way of a cheque and rest of the amount was financed through V.K. Mohan Leasing & Finance, Karol Bagh, a finance company which has since closed. He also stated that most probably the cheque was paid by the appellant from his own account. On the other hand, the prosecution has not given any documentary proof of either the car having been purchased by the parents of the deceased or a sum of Rs.2.00 lakh having been paid to the appellant for the purpose. The father of the deceased Shri Ram Kumar stated in his deposition that his salary in the year 2000 was Rs.15,500/- per month. He also claimed that he was earning about Rs.1.00 lakh to Rs.1.25 lakh per annum from the agricultural land he had in the village. Thus, the total income of this witness at the relevant time would not be more than about Rs.25,000/- per month even if his statement in this regard is taken as wholly correct. It is difficult to accept that a sum of Rs.2.00 lakh would be available in cash with a person of such limited means in the year 2000. This was not the case of the witness that the aforesaid amount of Rs.2.00 lakh was withdrawn by him from some bank account nor has the prosecution

produced any documentary evidence of the father of the deceased having that much money with him in cash. A salaried person having limited means such as PW3 Ram Kumar Sharma would not like to keep a huge amount of Rs.2.00 lakh in the year 2000 in his house. He would rather prefer to invest the said amount either by keeping it in a bank or some other financial instrument so that money does not remain idle and he is able to get some return on it by depositing it in a bank or investing in some other financial instrument. Considering the deposition of DW7, coupled with the above-referred facts & circumstances, it would be difficult to say that the prosecution has been able to prove beyond reasonable doubt that a sum of Rs.2.00 lakh was paid to the appellant for purchasing a vehicle. As noted earlier according to one of the witnesses Smt. Meenu Sharma the car was purchased by them and given to the appellant. However, the name of the seller of the car has not been given by any of the witnesses nor has the seller been examined. In these circumstances, it would be difficult to accept that the in-laws of the appellant purchased the car and handed it over to the appellant.

14. Coming to the alleged demand of cash, equivalent to the expenditure incurred by the parents of the deceased on the wedding of her younger sister, Usha, it would be seen from Ex.PW3/A the statement

made by Shri Ram Kumar Sharma, father of the deceased to the SDM on 7.2.2000, that no such demand was alleged in the aforesaid statement. The aforesaid demand surfaced only in the statement of Smt. Santosh Sharma recorded by the SDM on the next day. However, none of the witnesses told the court as to how much was the expenditure incurred in the wedding of Usha or how much precisely was the money demanded by the appellant. This is not the case of the prosecution that the aforesaid demand was not in the knowledge of the father of the deceased. Therefore, had there been any such demand, Shri Ram Kumar Sharma would certainly have stated in his statement to the SDM recorded on 7.2.2000. Even in his deposition in the Court, Shri Ram Kumar Sharma, father of the deceased did not refer to the alleged demand of money equivalent to the expenditure incurred by him on the wedding of his younger daughter. Considering that no such allegation was made by Shri Ram Kumar Sharma to the SDM, it would not be safe to rely upon the deposition of other witnesses in this regard because primarily it is the father of the deceased who could have arranged the money alleged to have been demanded by the appellant and, therefore, he could not have been unaware of any such demand.

15. It is an admitted case of the prosecution that the appellant attempted to commit suicide on 9.2.2000 and a case under Section 309 of IPC was registered against him. PW8 Constable Sunder Lal has admitted this in his deposition when he stated that the appellant was in hospital because of case under Section 309 of IPC. The aforesaid conduct of the appellant is also an indicator of his being innocent, the inference being that finding false accusations against him in the statement of his mother-in-law and brother-in-law, he attempted to take his own life by committing suicide.

16. A perusal of the seizure memo Ex.PW6/B would show that when the Investigating Officer went to the spot he found amongst other articles a piece of newspaper which was burnt from corners and a saree which had been partially burnt. The case of the appellant, as spelt out in his statement under Section 313 of Cr.P.C. is that in the night intervening 6/7.2.2000, deceased Vimmi was pressurizing him to change the house by the very next day and when he expressed his inability to do so she, in a fit of anger put fire on the articles lying in the room, whereupon he left the house saying that he would prefer to live on footpath and when he returned, he found Vimmi lying on the bed and having consumed insecticide. It has also come in evidence that Vimmi

had told her parents in the night of 6.2.2000, that they would be shifting to a new house. The explanation given by the appellant, therefore, finds some support from the recovery of the burnt piece of newspaper and burnt saree from the spot and the information which the deceased had given to her parents in the night of 6.2.2000.

17. Admittedly, the criminal case, which the deceased had got registered was against her in-laws, and the present appellant, was in fact a witness of prosecution in that case.

18. For the reasons stated hereinabove, the appellant, who otherwise has spent about six years in custody is given benefit of doubt and is acquitted.

The appeal stands disposed of accordingly.

One copy of the order be sent to the concerned Jail Superintendent for information and necessary action.

The LCR be sent back forthwith with a copy of this order.

MARCH 03, 2014
b'nesh

V.K. JAIN, J.