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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 6th February, 2019

+ CRL.A. 734/2002

KIRTI ABROL

..... Appellant

Through: Mr. R.D. Mehra, Advocate with
Ms. Sweety Singh,
Mr. Girish Chandra, &
Ms. Archana Kumari,
Advocates with appellant in
person.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP
for the State with ASI Mukesh
Kumar, PS Sarojini Nagar.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Bindu, then about 24 years old, her parents having passed away, she being the fifth amongst five siblings, was under the care of her elder brother Madan Mohan Khanna (PW-2). She was married to Kirti Abrol (the appellant) on 12.08.1986, the marriage having been solemnized in Hotel Claridges, New Delhi. Kirti Abrol was living with his parents and other members of the family in property described as B-2/200, Safdarjung Enclave, a 2½ storeyed structure wherein there is evidence to show that a tenant was occupying the second floor, the rest of the portion being in use of the family that included his elder brother Atul Abrol, his wife and children. The

appellant and other members of the family were earning their livelihood from a shop run in the name and style of Sarojini Wool Shop in Sarojini Nagar market area, a locality some distance away from Safdarjung Enclave. On 23.12.1987, Bindu gave birth to a son who was named Karan. On 23.12.1988, the first birth day of the aid child Karan was celebrated by the family in Hotel Claridges, New Delhi. On 01.01.1989 at about 4:30 p.m. Bindu was found having committed suicide, hanging by neck in the matrimonial home. There is unimpeachable evidence to show that at that point of time the other family members, including her husband Kirti Abrol, were not present at the scene. It is stated that the appellant, upon learning about the suicide of his wife, rushed home and brought her down to take her to Safdarjung hospital, where she was brought at 6:00 p.m., only to be examined and declared "*brought dead*". The medico-legal certificate (Ex.PW-9/A) duly proved confirmed these facts.

2. Though in the first information report (FIR) No.5/1989 registered on 05.01.1989 at Police Station Vinay Nagar, some suspicion was expressed by Madan Mohan Khanna (PW-2), the elder brother of deceased Bindu, that she may have been intentionally done to death, it is fairly conceded now on both sides that there is no evidence of the cause of death being anything but suicide. This is confirmed even by the autopsy report (Ex.PW-4/A), proved by autopsy doctor A.K. Sharma (PW-4), it indicating asphyxia due to hanging to be the reason leading to her unnatural death.

3. In the FIR (Ex.PW-2/A), registered on the complaint of Madan Mohan Khanna (PW-2), allegations were made about the deceased having been subjected to cruelty on account of illicit demands for dowry and precious gifts by the matrimonial family and, thus, the case was investigated from the prespective of offences punishable under Sections 498-A/304-B of Indian Penal Code, 1860 (IPC). On conclusion of the investigation, report (“charge sheet”) under Section 173 Cr.P.C. was submitted for trial for the said offences against Kirti Abrol (A1), his elder brother Atul Abrol (A2), his mother Pushpa (A3), his sister-in-law (*Bhabhi*), Manju, wife of Atul Abrol (A4) and his father Chander Prakash Abrol (A5). All the said five persons were summoned by the Metropolitan Magistrate, who took cognizance and eventually brought them to trial in the court of sessions (in Sessions Case No.129/1995).

4. During the trial, the prosecution examined eighteen witnesses, they including, Insp. Davinder Singh (PW-1), the draftsman who prepared the side plan Ex.PW-1/A; Madan Mohan Khanna (PW-2), elder brother of the deceased; ASI Augustin Tirkey (PW-3), duty officer who recorded the FIR; Dr. A.K. Sharma (PW-4), Chief Medical Officer of Safdarjung Hospital who conducted post-mortem examination on the dead body of the deceased; Paras Ram (PW-5), who had made a call at phone number 100 about the incident; Constable Bijendra Singh (PW-6); ASI Ramzan Ali (PW-7); SI Chhabil Dass (PW-8), who recorded DD No.129; J.P. Bhardwaj (PW-9) who proved MLC of the deceased Bindu (Ex.PW-9/A); Iqbal Singh Cheena (PW-10), retired SDM who had conducted inquest

proceedings (Ex.PW-10/A) at Safdarjung Hospital; Head Constable Raj Kumar (PW-11), duty constable at Safdarjung Hospital; Reema (PW-12), sister of deceased Bindu; Kamlesh Sehgal (PW-13), cousin of deceased Bindu who had arranged the marriage of the deceased Bindu with appellant; Asha Kapoor (PW-14), another sister of the deceased; Ashok Kapoor (PW-15), husband of Asha Kapoor (sister of deceased); Inspector Sube Singh (PW-16), who had handed over investigation to SI Shiv Prasad; Sub-Inspector Shiv Prasad (PW-17), the initial investigation officer of the case; and Inspector Veermati (PW-18), also investigating officer who recorded supplementary statement of witnesses.

5. On conclusion of the prosecution evidence, the statements under Section 313 Cr.P.C. of the accused persons were recorded wherein they denied the allegations of complicity on their part in subjecting Bindu to cruelty much less in connection with demands for dowry or precious gifts. The defence led evidence wherein the appellant herein, having taken prior approval of the trial court, examined himself as his own witness in defence (DW-1), reliance also being placed on the evidence of a neighbor J.M. Thukral (DW-2), the evidence of the latter being essentially with the objective of bringing on record some material to show that the deceased was leading a happy life in the matrimonial home.

6. Upon consideration of the evidence which was adduced by both sides, the additional sessions judge presiding over the trial rendered her judgment dated 07.09.2002. Noticeably, she found the case

against the accused persons, other than Kirti Abrol, to be not believable and, thus, gave them benefit of doubt acquitting them. She, however, found evidence incriminating the appellant thereby holding him guilty for the offences, as charged. By subsequent order dated 18.09.2002, the trial Judge awarded rigorous imprisonment of ten years for offence under Section 304-B IPC and rigorous imprisonment of one year with fine of Rs.3,000/- for offence under Section 498-A IPC.

7. Feeling aggrieved, the convicted husband Kirti Abrol filed the present appeal which was entertained on 23.09.2002. The sentence of the appellant was suspended and he was released on bail, pending hearing on the appeal, by order dated 08.10.2002. By the said order, the appeal was admitted and put in the category of regulars. Unfortunately, as is seen in a number of other such matters, the appeal could not come up for hearing over the last more than a decade and a half. So much for the expectations of the litigants for expeditious conclusion of criminal cases of such grave nature.

8. The evidence has brought out some facts which are beyond reproach or dispute. The same may be taken note of at this stage. The fact that the marriage was organized and arranged by the elder brother (PW-2) in a five star hotel in Delhi on 12.08.1986 is admitted. It is also conceded that the said brother (PW-2) and his family, which included his wife Reema (PW-12), live in Surat (Gujarat). The deceased Bindu, as said before, was fifth amongst the five siblings (the junior most), the other three being Mridula Verma, Usha Chopra

and Asha Kapoor (PW-14). The elder sister Mridula Verma is a resident of USA and assumably would have no knowledge of any of relevant facts and, thus, was not examined either during investigation or at trial. Same appears to be the position of Usha Chopra, whose husband Ramesh Chopra works for gain in Jalgaon (Maharashtra), both wife and husband having kept away from the controversy. The third sister Asha Kapoor, evidence showing she to be a few year's elder to the deceased, has been married to Ashok Kapoor (PW-15), the said couple with their children living in Punjabi Bagh, a locality of Delhi. As per the evidence, the deceased was in constant touch with Asha Kapoor, they visiting each other, at least once in two-three months, and being consistently on telephonic contact. The evidence also includes the word of Kamlesh Sehgal (PW-13), a cousin of the deceased, she being described as the person whose initiative had led to the marriage of Bindu being solemnized with the appellant.

9. Reliance was placed by the prosecution on the evidence of Kamlesh Sehgal (PW-13) and Ashok Kapoor (PW-15). The testimony of both the said witnesses, however, is of no consequence, the latter though repeating allegations about ill-treatment making it clear that he has no personal knowledge, his information being sourced from what he had heard from his wife Asha Kapoor (PW-14). The evidence of PW-15 has to be kept aside as hearsay. While PW-13 was categorical that she had not heard of any such ill-treatment, she having been declared hostile to the prosecution case, her cross-examination by the public prosecutor did not bring out any material on which conclusions against the appellant could be drawn.

10. Before taking up the evidence of PW-2 Madan Mohan Khanna (elder brother), his wife (PW-12) and of the sister (PW-14) for consideration, it is essential to take note of certain other relevant facts.

11. It has come to be admitted during the course of evidence by all material witnesses, particularly PW-2, that the deceased had visited her brother in Surat on more than one occasion during the short period of about of 28 months or so of her life after marriage on 12.08.1986 and during such visits to Surat she had carried her toddler son Karan along. It has also come out as undisputed that at least on one occasion the appellant had gone to bring her back from Surat. It is also shown by the evidence unmistakably that the appellant had opened a saving bank account in her name with Indian Overseas Bank at its branch in Safdarjung Enclave, it bearing saving bank account No.7605, wherein credit to the extent of Rs.2,97,856/- had accumulated over the period, the withdrawal of Rs.1 lakh having been made by the deceased on 30.12.1988. Clearly, the deceased was not working for gain and the amount which would have been credited over the period into her saving bank account would have been sourced from she would have received from her near relatives, the claim of the appellant that he was making such deposits not being refuted. It is also shown by the evidence, in fact unchallenged testimony of DW1, that a locker was also operated in the name of the deceased wherein her jewellery would be kept for safety.

12. The evidence further shows, and the material witnesses admitted that some letters which were posted and some yet unposted

had been found, after the suicide, in the matrimonial home, they having been penned by the deceased with the intention of putting them in postal transit, they including letters addressed to Ramesh Chopra in Jalgaon, the father-in-law in Delhi, some letters having been sent from Surat and, besides this some letters sent by the deceased during her stay in Surat away from the matrimonial home, addressed to the husband, *i.e.*, the appellant. This documentary proof was adduced upon admission as to the authorship being that of the deceased, during the testimony of PW-2, they being referred to as Ex.PW-2/C to PW-2/G.

13. All the aforesaid letters have been carefully perused and they bring out nothing lurking in the mind of the deceased as to be indicative of her grievance vis-à-vis the husband or any members of his family. On the contrary, the letters show she to be deep in love with and full of affection for the husband, she craving to return home from Surat at the earliest so as to be in his company, So much so, she would express at some places her desire that she hoped to bask in the warmth of his love for long time in future. For the record, it must also be added that in one of the letters addressed from Surat the deceased had reported to the husband that she had received cash in gift from the father-in-law (A5) protesting as to why there was a need for him to send such amount of money. Some of these letters, noticeably, were sent after the celebration of the first birth day of her son Karan, though there being no date borne on such communications, the contents making this clear, and her brother (PW-2) admitting as much, such letters only communicating to her brother (PW-2) and to Ramesh

Chopra (husband of the other sister in Jalgaon) that the function was well attended by over one hundred guests, it having been enjoyed by all members of the family, her only lament being that her brother and his wife had been unable to join. As for the reason why the elder brother (PW-2) and his family could not join the celebrations of the first birth day of the child on 23.12.1988 at New Delhi, PW-2 and his wife are on record, by their respective testimonies, to explain that they could not do so owing to their other pre-occupations.

14. Aside from the above material, one document (Ex.PW-2D/A) which cannot be wished away is a statement made by PW-2 on 02.01.1989 after his arrival from Surat in the wake of information about the suicidal death of his sister in New Delhi. It is conceded by all the material witnesses mentioned above that the information about the suicidal death of Bindu was conveyed to Surat and on that account PW-2 and his wife had rushed by air to New Delhi, they having reached on 02.01.1989. It is also admitted that the last rites (cremation) of Bindu were performed by the husband (the appellant), it being followed by certain religious rites leading upto 04.01.1989, the parental side relatives including the said brother also joining the same in the household of the appellant, he having undertaken to make all the necessary arrangements. It is also clear that during this period PW-2 was in constant touch with his sister (junior one) Asha Kapoor (PW-14) who had been all along living in Delhi and was in regular contact with the deceased. PW-2 made a statement (Ex.PW-2D/A) informing the police that the deceased was living happily in the matrimonial home and had never made any complaint of any kind

against her in-laws. He was rather completely at a loss at that point of time to understand as to why she had taken such an extreme step, his suspicion being that she had been killed for some reason or the other, there being nothing in the said statement raising any suspicion against the husband or any other specific individual.

15. Having made such a statement on 02.01.1989, PW-2 took an about turn on 05.01.1989 when he made another statement (Ex.PW-2/A) wherein allegations were made that the deceased was being subjected to harassment for dowry in the matrimonial home. In the said statement, he sought to clarify his previous version given on 02.01.1989 by claiming that he had been able to gather facts over the period.

16. It is against the above backdrop that PW-2 testified at the trial affirming that the deceased was subjected to ill-treatment on account of dissatisfaction of the in-laws with the dowry given, his word being reiterated by his wife (PW-12) and his sister (PW-14).

17. The learned additional sessions judge found the evidence of above mentioned witnesses unworthy of reliance in so far as the case was directed against the parents or the brother or brother's wife. It found at the same time, the same very evidence worthy of reliance so as to pin down the responsibility against the husband, and on that basis, drawing an inference, with aid of presumption clause under Section 113-B of the Indian Evidence Act, 1872.

18. It is apposite to quote verbatim the conclusions reached by the trial court as to complicity of the persons prosecuted and the gist of the reasons leading to the same, it reading thus:-

“Though, there is reference of demand by the in laws but no specific demand has been given, no specific dates have been given as to what was the demand and when it was made. It has come in the statement that she was being harassed but what harassment was done by the in laws, has not been specified. There is reference of ‘taunts’ and talking of dowry by the in laws but what words were used by them has not come on record. Hence, I find the prosecution has not been able to prove their case under Section 304 B/498A IPC against accused persons, namely, Atul Abrol, Pushpa Abrol, Manju Abrol and Chander Parkash Abrol, hence, they all are acquitted of the offence and they are on bail, their bail bonds cancelled, surety discharged.

But so far as, accused Kirti Abrol is concerned, it has come on record that death has taken place within seven years of marriage in unnatural circumstances. There is evidence of dowry demand, harassment, taunts regarding dowry articles. Admittedly, Bindu was residing with her husband Kirti Abrol, hence keeping in view the provisions of Section 113 B of the Evidence Act and the evidence on record as discussed above, I find the prosecution has been able to prove their case against the accused. Simply because of the initial statement given by the brother Madan Mohan, it cannot be said that later in just to falsely implicate the accused, the brother of the deceased improved his initial statement for which there is no reason or motive. Moreover, the witness Madan Mohan has given reasons in the Court for not telling the entire facts on the same day as he was under state of shock.”

19. PW-2 testified that the deceased had come to Surat after six months of her marriage and had complained about harassment at the

hand of accused persons. He added that the complaint was against the mother-in-law, father-in-law and *Jethani* (sister-in-law) (A-4), the grouse being that the said persons would talk about dowry given being incompatible with the status. He also added that he was told that on the occasion of the birth of the child the gifts given were deficient. His wife (PW-12), on the other hand, stated that the deceased had disclosed, after about a year of the marriage, that she was not happy, the ground explained to be that the mother-in-law would not find her “*beautiful*”, she (the deceased) not being given “*proper food*”, she being “*afraid*” of the husband (the appellant). She added that the deceased had told her that the husband (the appellant) wanted Rs.5 lakhs to start a business and besides this there were some petty issues which the witness would not recall.

20. The sister (PW-14), on the other hand, deposed that the husband, father-in-law and other members of the family “*used to harass*” the deceased “*on small matters*” and that “*there was demand for money*”. She spoke about what had happened on 31.12.1988 when, according to her, the deceased had “*wept bitterly*” because the elder brother had not come and this was a cause of grouse for the appellant and other members of the matrimonial family, it being added that the “*the brother*” should have “*spent sufficient amount*” on such occasion.

21. To say the least, all the above assertions of PW-2, PW-12 and PW-14 are incredible. It is inconceivable that if the deceased had conveyed to PW-12 as to how she was being ill-treated in the

matrimonial home, this during her visits to Surat, the brother would not be privy to the same. If he had been known to such background facts, he would not have made the statement (Ex.PW-2/DA) referred to above on 02.01.1989. He is categorical in explaining that till 02.01.1989 he was not aware of any such facts, such ill-treatment having come to his knowledge only later. As noted earlier, he was in Delhi from 02.01.1989 onwards and was in close communication with the rest of the family that included PW-14, the other sister, who would have been more clear about the facts, if there had been any such ill-treatment. The narration by the three witnesses of the ill-treatment does not match with each other. The demand of money for setting up a business as mentioned by PW-12 is not even spoken of by PW-2 or PW-14. The reasons for harassment at the hands of the parents-in-law and *jethani* are not indicated by PW-2 or PW-14. The evidence of PW-14 as to the grouse of the deceased against the matrimonial family on 31.12.1988 does not come out in the un-posted letters which the deceased had written, during the interregnum, before her death. On the contrary, she was quite understanding of the reasons and was only communicating as to how the function had gone well and that everyone including junior members of the family had enjoyed.

22. It was unfair on the part of the trial court to act upon the evidence of the above mentioned witnesses against the appellant even while the same had been rejected qua the other accused. The judgment is vitiated by inherently contradictory approach. The statement (Ex. PW-2/DA) made on 02.01.1989 was apparently the purest input that had come in the first instance. It revealed all. The parental family had

no reason to accuse the matrimonial family of having subjected the deceased to cruelty. The evidence about the jewellery in the locker and the money in her personal account, coupled with her letters full of endearments and indicative of her satisfaction and happiness in the matrimonial home run contrary to the case built up by the prosecution on a version which had come four days after the unfortunate suicide, quite apparently a product of an afterthought.

23. In the above facts and circumstances, while other ingredients of the offence under Section 304-B IPC are made out (the marriage being less than seven years old and the death of the married woman being for unnatural causes), credible evidence providing link as to she being subjected to ill-treatment, leave alone connection with demand or expectation of dowry, are missing.

24. It is indeed a mystery as to why Bindu in such happy state in the matrimonial home, which had all the luxuries of life with a decent income, a house in a good locality of Delhi, a child having come in her life, she having celebrated the first birth day of the son only a few days before, would commit suicide. But then, there is a long journey from suspicion to conclusion in a criminal trial. The prosecution has failed to cover the said distance.

25. For the foregoing reasons, this court finds it difficult to uphold the impugned judgment and order on sentence. The same are set aside. The appellant is acquitted.

26. The appeal stands disposed of accordingly.

R.K.GAUBA, J.

FEBRUARY 06, 2019

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HIGH COURT OF DELHI



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