

2

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

Date of Hearing & Decision: 29th July, 2011

+ CRL.L.P. 221/2011

STATE NCT OF DELHI

..... Petitioner

Through: Mr. Sunil Sharma, APP for the State.

versus

PANKAJ RAJ & ORS.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE G.P. MITTAL

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

Yes.

J U D G M E N T

S. RAVINDRA BHAT, J (OPEN COURT)

Crl. M.A. No.5448/2011 (Exemption) in Crl.L.P. No.221/2011

Exemption allowed, subject to just exceptions. The appellant is permitted to file certified copies of the annexures within six weeks.

Crl. M.A. No.5447/2011 & Crl. M.A. No.5449/2011 (Both under Section 5 of the Limitation Act) and Crl.L.P. No.221/2011

1. The State seeks leave to appeal against the judgment and order dated 16.10.2010 of the learned Addl. Sessions Judge in SC No.591/2006. The Respondents/accused were charged for having committed the offences punishable under

Crl.L.P. No.221/2011

Page 1 of 6

Signature Not Verified

Signing Date: 03.09.2024 16:59:12
Certify that the digital and physical file have been compared and the digital data is as per the physical file and no page is missing.

Sections 498A, 304B and 34 IPC. The facts necessary for the purpose of this judgment are, the first accused Pankaj Raj got married to a Ritu on 09.12.2005. In less than 5 months after marriage the wife Ritu committed suicide by hanging. Based on the statement of the deceased's mother PW-3 Smt. Shashi and her brother Satyam Bhambri (PW-1) as well as her father PW-6 Subhash Chand, the Police charged the accused i.e. husband, his sister and his father of the offences, for which they ultimately stood trial. After conclusion of the investigation, charges were framed to which the accused entered the plea of not guilty and claimed trial. After considering the evidence led on behalf of the prosecution in the form of testimony of 14 witnesses as well as statement of the accused and the evidence led on their behalf through 6 witnesses, the Trial Court acquitted the accused.

2. Having regard to the errors apparent from the impugned judgment, it is urged by the learned APP for the State that one factor overlooked is that soon before the death of Ritu a demand for money in order to purchase an Air Conditioner and T.V. had been made by the accused, which stood proved. This means that the initial onus to invoke Section 113B of the India Evidence Act had been distorted. Consequently the presumption of the Respondent's guilt had to be shaken by them; they were under onus to explain the circumstances of Ritu's death. Learned APP submits that Trial Court gave undue advantage to the discrepancies between the offence of PW-1, the deceased's brother and PW-3 on the one hand and also that of PW-6 the deceased's father. It was submitted that in addition, Trial Court fell into error in placing its conclusions speculatively on the footing that Respondents are affluent enough to purchase these goods and the demands were non-existent.
3. We have considered the submissions and also gone through the Trial Court judgment. The Trial Court notices that the prosecution witnesses principally PW-1 the deceased's brother and PW-3 her mother admitted during the course of their testimonies that the deceased used to work and was earning well. In fact, it has

4

transpired that deceased had even financed PW-1's a motorcycle. The Trial Court also concluded that PW-1 was unemployed and the deceased used to be concerned for him and there was some talk that the first Respondent would assist him in securing employment. The Trial Court further noticed that soon after their marriage they went for their honeymoon to Sikkim; the expenses of which were entirely borne by the accused. Further more, husband's sister was working as a Professor in the United States and father was a retired government servant. Accused himself used to deal with Gems and prosecution did not deny that on two occasions accused husband had presented diamond ornaments to the deceased. On the question of dowry demands, the Trial Court found as follows: -

"It is evident that both PW-1 and PW-3 have admitted that no demand of dowry was made by the accused persons at the time of negotiation and also at the time of marriage. One of the allegation is that the Barat had reached late that is at 4:00 pm instead of 1:30 pm but this in itself is not sufficient for inferring any demand of dowry and there is nothing on record to show that this delay was on account of any demand raised by the accused. The statements of PW-1 and PW-3 to the extent of demand of dowry and demand of TV & AC also do not inspire confidence of the court in view of the fact that PW-6 Subhash Chand Sehgal who was allegedly known to the deceased from her childhood being the father of her father, has specifically deposed before this court that the father of the deceased had given to the accused sufficient dowry articles like TV, Fridge, etc. If this be so, then where is the question of making a fresh demand of TV and AC. The testimonies of PW-1, PW-3 and PW-6 also do not inspire confidence of the court since the material on record conclusively shows that the accused No.2 Surender Kumar Vij is a retired government officer which aspect is not disputed. He has placed on record the statement of his bank account (which has gone unrebutted) which shows that even at the time of solemnization of marriage he had a huge bank balance. Further, it is evidence from the testimony of PW-2 that on the date of death of the deceased accused No.1 Pankaj Raj and accused No.2 Surender Kumar Vij had gone to the property dealer (PW-2) in connection with the purchase of a new house at Janak Puri which deal incidentally could not be finalized. This proves that the financial position of the accused being much more sound than that of the paternal family of the deceased. The question of the accused making the demand of dowry articles like TV and AC, etc. does not appear to be plausible"

4. Similarly, as to the probabilities of accused/ Respondents being involved in the case, the court held as follows: -

"Ninthly it is evident from the record that the accused No.1 Pankaj Raj and the deceased Ritu had gone to Sikkim and Darjeeling for their Honeymoon by air and the accused Pankaj Raj had also gifted her expensive gifts like diamond pendent on her birthday and diamond earrings on the eve of new year, which aspect has gone un rebutted. This being so, the allegations of the deceased being harassed for bringing insufficient dowry appear to be incorrect.

Tenthly it is further evident that PW-1 Satyam Bhambri was unemployed and it was specifically suggested to Satyam Bhambri that before her death his sister was worried about him and had spoken about him to accused Pankaj Raj who had promised to get him employed somewhere, which suggestion he had denied, though he admits that the accused Pankaj Raj had promised to arrange for him a job at Naraina but according to him, the accused did not give any contact number or details of the employer to him.

Eleventhly it has been admitted by PW-1 Satyam Bhambri brother of the deceased and PW-3 Smt. Shashi mother of the deceased, that the deceased and accused Pankaj Raj used to come to their house together. Even PW-6 Subhash Chand Sehgal has admitted that both the deceased and the accused no.1 Pankaj Raj had visited his house together on two occasions during investigations. Not only that it has also been admitted by the mother and brother of the deceased that the accused Pankaj Raj used to drop the deceased to her office and pick her up either from her office or from other convenient place. If this is correct, then there is no question of harassment being caused to the deceased who was rather being taken care of well by the accused persons.

Twelvethly it is evident that the father of the deceased and her uncle/ Chacha and aunty/ Chachi have not been cited as witnesses nor examined in the court. In case if there were any problem in the matrimonial life of the deceased, her father and other members including uncle/ aunty who all are residing in the same house would have known, which is not the case. No other person from the paternal family of the deceased has been examined to corroborate the allegations made by the mother and the brother of the deceased.

Lastly it has also come on record that prior to her marriage with the accused Pankaj Raj, there was a marriage proposal between the deceased Ritu and one Hemant a fact which has been admitted by both the mother of the deceased Smt. Shashi

6

(PW-3) and the brother of the deceased Satyam Bhambri (PW-1), though they have denied that deceased Ritu could not reconcile with her relationship with the present accused on account of her previous affair with Hemant.

Not every case of unnatural death within seven years of marriage can be categorized as dowry death. The most essential condition for the application of Section 304-B Indian Penal Code is that it must be shown that the woman before her death, had been subjected to cruelty or harassment by her husband or any other relative of her husband for or in connection with the demand of dowry.

The death of the deceased in the present case occurred within approximately 5 months of her marriage as she had committed suicide by hanging herself on the ceiling fan. Mere evidence of cruelty and harassment is not sufficient to bring in the application of Section 304-B IPC and it has been shown in addition that such cruelty or harassment was for or in connection with the demand of dowry.

It is clear from the evidence of the prosecution witnesses that the deceased has committed suicide but it cannot be related to any dowry related harassment by the accused persons as apparently there is no proximity or link between her death and the alleged misconduct by the accused persons.

It is clear from the record, especially the evidence of the prosecution witnesses that there was neither any demand by the accused persons for dowry at the time of the marriage of the deceased with accused Pankaj Raj nor there was any demand for dowry subsequently. There is no harassment or cruelty by the accused persons in connection with the demand of dowry. Although the deceased has died in unnatural circumstances by hanging but it is apparently not due to any harassment for dowry or cruelty by the accused persons. This case is neither covered by Section 498A IPC nor Section 304B IPC and not even Section 306 IPC."

5. It has been reiterated time and again by the High Court while considering appeal by State wherein accused having circumspect leave is to be granted, where the court is satisfied of the compelling reasons existing this substantial and appealing reasons would include errors that are not minor, but that would bound the misproposition of facts; gross mis-application of the law and taking an approach that would lead to miscarriage of justice. Having regard to the facts of this case, we held that the finding arrived at by the Trial Court are unexceptional in view of

7

the evidence presented. This case does not call for leave sought by the State. The petition being unmerited is, therefore, dismissed.


S. RAVINDRA BHAT, J


G. P. MITTAL, J

JULY 29, 2011
hs