

(2013) 05 DEL CK 0453

Delhi High Court

Case No: Criminal Appeal No. 317 of 2013

Shyam Lal Gupta

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision: May 27, 2013**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 279, 304A, 304B, 337, 34

Citation: (2013) 137 DRJ 141**Hon'ble Judges:** V.P. Vaish, J; Sanjiv Khanna, J**Bench:** Division Bench**Advocate:** V.K. Sharma, for the Appellant; Sanjay Lao, APP, for the Respondent**Final Decision:** Dismissed

Judgement

Ved Prakash Vaish, J.

The appellant Shyam Lal Gupta, father of the deceased Geeta Gupta has preferred two appeals against the common judgment dated 20th November, 2012 whereby all the accused persons have been acquitted for the offence under Sections 498A/ 304B/ 34 IPC. However, Rajesh Gupta was convicted u/s 279/ 304A IPC and vide order of sentence dated 23rd November, 2012 in Sessions case No. 23/01/09 arising out of FIR No. 716/99, P.S. Paschim Vihar, he has been sentenced to undergo six months simple imprisonment u/s 279 IPC and two years simple imprisonment u/s 304A IPC. The compensation to the tune of Rs. 7 lakhs was also imposed upon Rajesh Gupta, payable to the complainant. Succinctly stated, Geeta Gupta (deceased) was married with Rajesh Gupta on 17th July, 1999. On 15th August, 1999 at about 10.40 p.m., both were going in a car and met with an accident. HC Raj Kumar (PW-11) and other police officials were present near the place of the incident. DD No. 30 was recorded. Geeta Gupta was declared brought dead in the hospital. FIR No. 716/99 under Sections 279/ 337/ 304A IPC was registered. Thereafter, Sections 498A/ 304B/ 34 IPC were added and charge-sheet was filed against accused Rajesh

Gupta, Rajiv Gupta, Pushpa Gupta, Dhajja Ram Gupta, Jwala Prasad, Satpal Gupta, Bimla Gupta and Suman Gupta. Charges were framed against all. However, during the trial, accused Jwala Prasad and Dhajja Ram expired and proceedings against Dhajja Ram abated on 16th January, 2008. Charges against Bimla Gupta, Suman Gupta and Satpal Gupta were set aside in Crl. Rev. No. 373/2000 vide order dated 9th July, 2007 and thereafter, trial continued against Rajiv Gupta and Pushpa Gupta (respondent Nos. 2 and 3) and Rajesh Gupta (Respondent No. 2 in criminal appeal No. 318/2013). After recording evidence of the prosecution, as noticed above vide impugned judgment dated 20th November, 2012, all the accused persons were acquitted u/s 498A/ 304B/ 34 IPC. However, accused Rajesh Gupta (husband of the deceased) was convicted under Sections 279/ 304A and he was sentenced accordingly.

2. We have heard learned counsel for the appellant and perused the trial Court record.

3. Learned counsel for the appellant contended that Geeta expired on 15th August, 1999 i.e. only after 28 days of the marriage, she was harassed by respondent Nos. 2 and 3 and other in-laws on account of dowry and subjected to cruelty during her marital period and the incidence was not an accident. He pointed out that at the time of marriage, new Maruti Zen car was given but Rajesh Gupta (husband) intentionally took his old Maruti 800 car which shows mala fide intention to kill the deceased. On 15th August, 1999 at about 8/8.30 p.m., both of them left the house of the appellant, and suit case/attaichi was put in the dickey of the car which was later on taken out from there and was kept by the husband of the deceased behind the seat where Geeta was sitting so that her seat could not recline at the time of accident. The appellant after reaching the spot saw that back seat of driver side had tilted and side seat where the deceased was sitting had not reclined as suit case/attaichi was lying on the back seat. Contention is that if the seat had reclined, the deceased may have survived. Thus the accident was deliberate and planned to kill the deceased.

4. Counsel for the appellant also urged that 8-10 days after marriage, Geeta (deceased) came to the house of the appellant and told her mother that her in-laws were demanding Rs. 10 lakhs for purchasing a shop for Rajesh Gupta as the existing shop was to be given to his younger brother Rajiv Gupta. She requested her mother not to disclose the said demand to the appellant (father of the deceased) as he was not well. It is lastly contended that when the appellant tried to meet Rajesh Gupta at the Hospital after the incident he was not allowed to do so. Even after Rajesh recovered from injuries no one from his family had visited their home. The appellant could not go to Rajesh Gupta's home because they were time and again threatened by them.

5. At the outset, it may be mentioned that the appellant has preferred two appeals against common judgment dated 20th November, 2012 and order on sentence

dated 23rd November, 2012. In CrI. A. No. 317/2013, there are two memo of parties, in one memo of parties, Rajesh Gupta has been added as respondent No. 2 and in the second memo of parties, Rajiv Gupta and Pushpa Gupta has been arrayed as respondent Nos. 2 and 3. In CrI. A. No. 318/2013, only Rajesh Gupta has been impleaded as respondent No. 2. Two appeals from the common judgment are not maintainable and therefore, we treat both the appeals as one appeal.

6. A perusal of the evidence on record shows that HC Raj Kumar (PW-11), HC Harish Kumar (PW-13) and HC Krishan Kumar (PW-14) have deposed that on 15th August, 1999 at about 10.40 p.m., they were present near the spot. They heard noise of collision of two vehicles. Thereafter, they reached at petrol pump near Peera Garhi Chowk and found that a tanker No. UP 13A-2877 was parked there and one Maruti Car No. DL 2CK-5026, underneath the back portion of the tanker. The car was pushed by them. After opening the door of the Maruti car, they removed one male and a female out of the car and got them admitted in Sparsh Nursing Home. The female became unconscious. The injured male disclosed his name as Rajesh Gupta and told that the said lady was his wife, he gave contact number of his house on which PW-11 informed the family members of the injured. PW-11 got DD No. 30 recorded regarding the incident. The tanker was standing near pavement and road was three lane on one side. Moreover, Hari Krishan (PW-15) and Rakesh Pahwa (PW-17) who were employees of Gautam Filling Station, Rohtak Road near the place of incident have also deposed that on 15th August, 1999 at 10.30 p.m., they heard noise of collision of vehicles, they reached at the spot and saw one tanker was standing in front of petrol pump facing towards Nangloi and one Maruti 800 car hit the tanker from the behind. One male was sitting on driver seat and female was sitting on the rear side of driver in the said car, both sustained injuries. PW-15 along with police officials removed both the injured to Sparsh Hospital. Nature and how the accident occurred and damage caused, clearly indicate that this was not a case u/s 304B IPC as contended and submitted by the appellant. The appellant while appearing in the trial Court as PW-4 has stated that whenever Rajesh and his daughter (deceased) came to his house, they used to come in old car as Rajesh was not very comfortable in driving the new car. The trial Court has elaborately analyzed the evidence and rightly it is held that it is not a case u/s 304B/ 498A IPC.

7. We have noted that on the next day i.e. 16th August, 1999, the appellant made statement to SDM (Ex. PW9/A) and in his statement he has stated that it was an accident only and he did not raise any suspicion. He did not disclose about harassment or demand of dowry of Rs. 10 lakhs or cruelty to his daughter. Even if it is assumed that the appellant was under the shock of death of his daughter or that appellant came to know about demand of Rs. 10 lakhs after cremation of his daughter, as alleged by him in his statement in the Court, he should have made statement immediately or within one or two days thereafter or should have given some complaint in writing to the police or SDM. It is only for the first time on 22nd September, 1999 (after about 37 days of incident) that the appellant and his wife

Suman Gupta made statement to SDM and made allegations regarding harassment and demand of dowry.

8. Further, the appellant has not alleged that any demand was made from him rather Suman Gupta (PW-12) has deposed that Satpal, uncle of Rajesh Gupta, his mother Pushpa Devi and Suman (sister-in-law) used to demand dowry from the deceased Geeta. PW-12 has deposed that after three days of marriage, her daughter came to her house and disclosed that she was being harassed and money was being demanded. It is pertinent to note that no specific allegations are made against the respondents or any other relatives of the husband and the allegations are general in nature and an attempt to implicate all the members of the family of the husband. Even if that be the case, this witness also did not lodge any complaint in this regard. The allegation is made belatedly and after the death of Geeta. It is apparent after cremation of Geeta, differences for some reason had cropped up. It is also relevant to note that no complaint regarding harassment, cruelty or demand of dowry was lodged by the deceased Geeta during her marital life or shortly thereafter.

9. It is also pertinent to note that at no point in time, in his statement before the SDM on 22th September, 1999 exhibited as Ex. PW9/B and his statement u/s 161 Cr.P.C. recorded on 15th October, 1999, the appellant had stated the factum that the husband of the deceased had kept the suitcase/attaichi behind the seat of the deceased and only in his statement u/s 161 Cr.P.C. recorded on 13th January, 2000, approximately 41/2 months after the date of accident, he had mentioned that husband of deceased had deliberately removed the said suit case from the dicky and kept it behind the deceased"s seat as a result of which the seat did not recline at the time of the accident. This allegation of the appellant is an afterthought and cannot be taken as a valid ground to impute any deliberate intention on Rajesh Gupta to cause the death of the deceased. The trial Court after elaborate analysis of the testimonies has reached a considered conclusion that the deceased Geeta lost her life in a car accident and it is not a case u/s 304B IPC. The contention of the appellant is farfetched and a mere hunch.

10. In Crl. A. No. 318/2013, the appellant has also prayed for enhancement of punishment. In this regard, it is sufficient to mention that respondent Nos. 2 and 3 have not been convicted for any offence. Only Rajesh Gupta has been convicted under Sections 279/ 304A IPC and has been sentenced to undergo six months simple imprisonment u/s 279 IPC and two years simple imprisonment u/s 304A IPC. The maximum punishment as prescribed u/s 279/ 304A has been awarded to him. Moreover, compensation of Rs. 7 lakhs has also been awarded to the complainant. Hence, there is no question of enhancement of sentence. We clarify that observations made in this order will not influence the decision of the appeal against conviction and sentence filed by Rakesh Gupta.

11. In view of the above, we are not inclined to issue notice to the respondents. Both the appeals are, therefore, dismissed.