

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on 12.02.2007

Date of Decision: March 07, 2007

Crl.Appeal No.161 of 1999

07.03.2007

Surender Kumar and Another Appellants

Through:Mr. J.B.Dhanda with Mr. Vineet Dhanda Advocates

versus

The State(NCT of Delhi) Respondent

Through:Ms. Richa Kapoor with Ms. Sukriti Bhardwaj, Advocates

CORAM:

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?

Yes

2.To be referred to the Reporter or not? Yes.

3.Whether the judgment should be reported in the Digest? Yes.

: SHIV NARAYAN DHINGRA, J

1. By this appeal the appellants have assailed the judgment dated 18.3.1999 passed by learned Addl. Sessions Judge whereby the appellants Surender Kumar and Ashwani Kumar were convicted under Section 308 read with Section 34 of Indian Penal Code and Surender Kumar was convicted under Section 498A IPC as well and against the order on sentence dated 23.3.1999 whereby the appellant Surender Kumar was sentenced to undergo RI for two years and fine of Rs.1000/- under Section 498A IPC and the two appellants were sentenced to RI for five years and fine of Rs.1000 under Section 308 read with Section 34 of IPC.

2. The case was registered against four persons on the statement of complainant Mamta who, in her complaint dated 9.3.1992, stated that she was living with her family at House No.86/14, Sector-I, Pushp Vihar, New Delhi. She was married to appellant Surender Kumar on 2.2.1992. Her parents used to live at Sarojini Nagar. A day before the incident, her husband had taken her to her parents house and then brought her back to her matrimonial home at 4 pm. On the night intervening 8th and 9th March, 1992, she was beaten up by her husband and to suppress her cries from outsiders, a tape recorder was played. Daily she used to be told that she had brought less dowry and she should bring more dowry. On the morning of 9.3.1992, she telephoned her father and called him. Her father and brother came to her matrimonial home to take her to her parents' house. When they (she, her father and brother) had come downstairs for going to parental house, her husband called her upstairs to open the lock of Almirah. On her going upstairs, her husband and her Dewar Ashwani Kumar, bolted the door from inside and thereafter both of them picked her up and threw her down from balcony, due to which she received injuries on her body. She further stated

that her mother-in-law, brother-in-law Braham Prakash(elder brother of husband), her husband, her other brother-in-law Ashwani Kumar should be prosecuted as per law. A case under Section 498A/308/34 IPC was registered against all the four persons namely Surender Kumar, Braham Prakash, Ashwani Kumar and Parmeshwari

Devi. All the four were charged under Section 498A read with Section 34 of IPC while appellant Surender Kumar and Ashwani Kumar were also charged with section 308 read with section 34 of the IPC.

3. Mrs. Mamta appeared as PW-1 before the Trial Court and in her testimony before the Court she did not restrict herself to the statement given by her initially to the police and made a lot of improvements in that. Before the Court, she stated that all the accused persons harassed her and tortured her for not bringing sufficient dowry. Accused Surender used to tell her that she would meet the same fate as wife of Narender. Accused Braham Prakash also used to say same thing and they used to say that her parents were supposed to pay huge amount of dowry. Regarding 8.3.1992, she deposed that on that day she had gone to her parents house as she was told by her husband that she should bring Rs.25,000/- from her parents as he was to purchase a scooter. Her husband Surender left her at her parents' house. She told her parents to give her Rs.25,000/- but her parents had no money to give her. She brought certain certificates along with her from her parents' house since she was to clear SSC Examination. Accused Surender had also told her and threatened her to return from her house within 15 minutes otherwise he would kill her. She was then taken to her matrimonial house at Preet Vihar and there her mother-in-law asked her if she had brought Rs.25,000/- from her parents house. She told her mother-in-law that she had not brought money as her parents were not in a position to pay the amount. On this, her husband Surender switched on a tape recorder on high pitch and gave her beatings and told that she would be given more beatings when Ashwani would come. On 9.3.1992, on her making a telephone call, her father and brother came to her in-laws' house at about 8 am and she told them that she was beaten and should be taken away from the house. The accused persons told her father and brother that she would be sent in the evening or on the next day. However, she was not prepared to remain in the house of her husband as she feared for her life as earlier her husband Surender had told her that acid would be thrown on her person and he had brought acid for that purpose. When she tried to pack her clothes, accused persons did not allow her to do so. However, she came downstairs despite resistance of accused persons. They used to live at 3rd Floor. Accused Ashwani and Surender (appellants in this case) came downstairs and told that their mother was calling her and wanted to know where the keys of almirah were kept. She, therefore, went upstairs. On her reaching upstairs in the room, Surender bolted the door from inside. Accused Ashwani, Surender and Parmeshwari Devi were in the room. Her mother-in-law Parmeshwari Devi did not allow her to go to her parents' house but she requested her to allow her to go to her parents' house. On this, she was given beatings with fists and slaps. She was not allowed to escape from there and then accused persons told her that she would be allowed to go from different passage. She was then dragged to the balcony and accused Surender, Ashwani and her mother-in-law physically lifted her and thrown her on the ground floor from 3rd floor. She sustained injuries

on her legs, her back bone and other parts of body. She lost consciousness but regained it in the hospital. She was removed to Modi Hospital. From there she was removed to Safdarjung Hospital on 10.3.1992 where she remained admitted up to 1.5.1992.

4. During cross examination, she admitted that after 3 days of her marriage her husband had taken her to her parents' house and both of them came back on the same day. She admitted that thereafter she and her husband had gone to Nainital for honeymoon. They stayed in hotel 'Madhuban' at Nainital for five days. She admitted that both of them enjoyed their honeymoon and they had prepared photographs of the tour. After they came from honeymoon, her brother came to her in-laws' house to take her but her husband and mother-in-law did not send her with her brother. She admitted that there were four flats at each storey but stated that none of the family came to her rescue. The reasons for not coming to her rescue by neighbours as given by her is that the appellant

Surender had beaten up all the neighbours and all the neighbours were afraid of him. There was no telephone connection either at the house of her parents or at the house of her in-laws. She further admitted that she was going out for shopping from her matrimonial home right from the day one of her marriage. She used to be sent for purchasing vegetables daily. She did not give any telephone message to her parents regarding beatings by accused prior to 9.3.1992. She went to her parents house after 5/7 days of coming from Nainital and she told her father about the beatings but her father neither told this fact to any other relative nor reported the matter to the police. Next day at around 12 am, her husband Surender came to her parents' house with her and talked to her parents. He threw bedsheets on them saying that same was of sub-standard quality. Her parents told her not to go back with her husband but since she wanted to settle herself in husband's family, she went along with her husband against the advice of her parents. However, on the same night she was beaten up by accused Surender and Ashwani and she became unconscious. Again she improved herself and stated that she had not become unconscious. She used to be beaten till the accused persons got tired. During these beating sessions, she sustained injuries on her head and blood came out. However, she did not go to hospital or doctor or did not undergo any dressing. She admitted that she had been going to learn typing and shorthand from her matrimonial home and in her class there were 50 students in the batch. She did not tell any of her colleagues about the ill-treatment meted out to her. She stated that police had not recorded her statement ever, so she had not told about demand of Rs.25,000/-. She had not told her father about the demand of Rs.25,000/- or that her husband would kill her. She told that she was afraid of telling these things to her father as her husband always used to keep revolver with him. She telephoned her father in the morning of 9.3.1992 at about 6.45 am when she went to take milk from the milk booth. She had telephoned at the house of a neighbour of her parents house. Though she was apprehending danger to her life but she made no effort to go to her parents house despite having opportunity to go to her parents house from the milk booth directly. She further stated that her mother and father had reached her 'in-laws' house at 8 am and they sat in the drawing room. Ashwani and Surender were in the drawing room and they all talked in her presence. In the presence of her father, the

accused persons talked nicely as if they were having lovely relations with her. The talks continued till 12.30 pm and it was only at 12.30 pm when she told that she was going with her father and mother, accused persons told her that they were not willing to send her with her parents but if she wanted to go, she may go. She denied that suggestion that her husband had made a complaint to her parents that she was having illicit relations with somebody who used to come to meet her in his absence when he was in the office. She denied that when her husband made this complaint, she ran speedily and fell down from stairs and received injuries on her person. She admitted that she had decided not to live at her in-laws' house after sustaining injuries. She admitted that accused persons used to visit her in the hospital but stated that they used to visit to torture her.

5. Her father appeared as PW-5 and in his testimony he admitted that before marriage the accused persons had told him that he should not spend a single paisa on marriage. He admitted that after marriage Surender and Mamta had gone for honeymoon to Nainital and they had come back happily. He admitted that his statement was recorded by the police at the hospital and he did not state to police that on 9.3.1992 her daughter told him on phone that she was beaten up on previous night by her in laws. He admitted that in his statement to the police, he had got recorded that the accused persons had agreed to send Mamta with him after exchange of hot words. In cross examination, he further admitted that Mamta and Surender were living in a separate house and rest of the accused persons were living in a separate house with their family. He, however, stated that mother-in-law of Mamta was living with Mamta and Surender. Accused Ashwani

was a constable in Delhi Police. He denied that Ashwani was not present on the place of occurrence on 9.3.1992. He admitted that the accused Surender was in the hospital when he reached there after admission of Mamta. Other accused persons had also come to the hospital. He stated that after seeing her daughter in injured condition, he decided not to send her to her in-laws house. He denied the suggestion that appellant Surender had told him that one boy used to come to visit his daughter in his absence.

6. Brother of Mamta who was allegedly present at the time of this occurrence has not been examined on the ground that he was not in India. Prosecutrix Mamta stated that she became unconscious after she fell and she regained consciousness only in the hospital. Same is the statement of father of the prosecutrix that he became unconscious on hearing his daughter fell from the 3rd floor and he regained consciousness after sometime. Thus, neither PW1 nor PW5 are the witnesses as to who took Mamta to hospital. Their testimony that Ashok, brother of Mamta, took her to hospital is baseless. On the contrary, DD No.8 was recorded on 9.3.1992 at about 1.30 pm by the Duty Officer wherein it is stated that doctor of Modi Hospital through telephone gave information at about 1.30 pm that Mamta wife of Surender r/o 86/14, Sector-I, Pushp Vihar was admitted to the hospital by her husband Surender since she had injured herself by falling from the stairs and somebody should be sent. From this DD, it is obvious that it was husband of Mamta who got her admitted in the hospital. It has come in the testimony of PW-5 that Surender was present in the hospital when he reached the hospital. I consider that there was no reason that doctor at the

hospital had any motive to give false information to police that Mamta was brought to hospital by Surrender, her husband.

7. It is admitted by PW-5 that before marriage of Mamta, Surrender, appellant, and his relatives had told him that he need not spend even a single paise on the marriage. If the appellants, or any of their relations were dowry seekers, they would not have told this to the father of the complainant. They would have rather welcomed if dowry was given. Appellants specifically telling the father of the complainant that he need not spent a single paise on the marriage, proves that they were not dowry-seekers. A list of articles of dowry received back by the complainant show the articles as kitchen utensils, one sewing machine, one double bed, one steel almirah, one wrist watch, ladies personal articles, one sofa and a central table. This would show that the parties to the marriage belonged to middle class family. Both of them were not having telephone at their houses and they were living a lower middle class standard.

8. The marriage took place on 2.2.1992. It is obvious that she would have reached her matrimonial home on 3.2.1992. She went to her parents house after 3 days of marriage. Surrender accompanied her and in the evening they come back. After a day or so they proceeded for honeymoon to Nainital. They stayed at Nainital in a hotel for five days. There was no problem between them and they come back happily. She went to her parents' house after 5-7 days of honeymoon and stayed there over night. She makes no complaint to her parents either of beatings or dowry demand. Her allegations that she used to be beaten after every three days, black and blue till the accused persons got tired of beating her, does not find support from circumstances and her own conduct. She used to go every morning for bringing milk and vegetables from the milk booth. She also used to go for shopping. She daily used to go for learning typing and shorthand. Obviously her traveling had to be by bus. She went to her parents house after 5/7 days of coming from honeymoon and then on 8.3.1992. Her husband accompanied her on both occasions. If she had been beaten black and blue as told by her , there was no reason for her to come back to her matrimonial home. She could have refused to accompany her husband from her parents house and reported the matter to police. Her testimony that her husband was keeping revolver with him and had brought acid and in order to suppress her cries he played the tape

recorder, are not supported by any of the recoveries made from the house. She did not tell all these facts to the police in her complaint. No recovery of tape recorder, acid or revolver is made from the house of appellant. There was no tape recorder in her own dowry articles.

9. The total stay of the prosecutrix at her matrimonial home is hardly 35 days. Out of these 35 days, first 10 days, she stated, she lived very happily, rest 25 days she was going to learn typing and shorthand almost daily. She was going to market to bring vegetables, milk etc. She visited her parents' house minimum twice and stayed there overnight once. Her husband accompanied her to her parents' house both the times. In her complaint to the police, no specific instance of dowry demand is stated by her and the only allegation made by her is that she used to be told that she had been given less dowry. She did not state anything about throwing of bed sheet complaining that the bed sheet was of poor

quality or of demand of Rs.25,000/- for scooter. In her statement to the police, she made allegations only against her husband about taunts. She made no allegation against any other person about dowry demand but asked for action against her Dewar, Jeth and mother in law as well, apart from her husband. In her statement before Court she even implicated Braham Prakash who was living separately with his family. Even her mother-in-law Parmeshwari Devi was not living with them. She was also living separately. Her father, in her testimony, admitted that Parmeshwari Devi and Braham Prakash were living in separate houses. In her complaint to the police, she did not mention that Parmeshwari Devi was present on 9.3.92 at the house. She only stated that her husband and Ashwani had lifted her up and thrown her from balcony. Her entire testimony shows that she had not deposed truthfully.

10. The real cause of dispute between husband and wife was something else. If her husband had been demanding more dowry, he would have readily agreed to send her back to her parents house and told her that she would not come back till she brings dowry. But her statement is that her husband was resisting her going to her parents house. Her father does not say a word as to what transpired between him and her husband from 8 am till 12.30 pm when both talked. He remained in the house of appellants from 8 am to 12.30 pm. He had come there with his wife or son and kept on discussing something in the presence of her daughter. What was the topic of discussion is not disclosed to the Court. It is not his case that during these four hours any demand of dowry was made or he was counseling to her daughter to adjust or to her in laws not to be greedy or he had made any proposal. It is admitted by prosecutrix that during this period her husband has been talking nicely as if he was having lovely relations with her. His statement that his daughter was beaten earlier also due to dowry demand and despite that he did not make any complaint to any one and allowed his daughter to go to her matrimonial home does not inspire confidence being contradictory to his statement to police. The statement of prosecutrix that she was beaten after every 2/3 days black and blue to the extent that she got injuries on her body and to the extent that she became unconscious or accused persons got tired of beating her is unbelievable in view of the fact that she used to go to learn typing and shorthand everyday and used to go for purchasing vegetables and milk in the morning and had an opportunity to go to her parents house at any time or to the police station at any time. Her this statement is also contradictory to her earlier version. It is apparent that something else was going on between the couple which culminated into some altercation on the night of 8th and 9th March,1992 with the result that she called her parents either to settle it down or to take her back. Since truth is not disclosed to the Court, something is amiss and Court cannot imagine what was the real cause but certainly dowry was not the cause. Neither the testimony of prosecutrix about beatings is trustworthy.

11. Now I come to incident of 9.3.1992. She stated in the complaint to the police that when she was going with her brother and father, her husband

called her to open the Almirah and she went up stairs. This itself shows that even when she was going with her parents, she was not going after a quarrel. If she had come down after a quarrel, she would not have gone upstairs at 3rd Floor

simply to open an alimrah. After she goes up, she submits in her complaint and that her husband and Dewar picked her up and threw her down the balcony. There is no talk of her Dewar being in the house prior to this. In the complaint she does not say that her Dewar had done anything prior to that. Or he had talked with her parents. While in her statement before the police, she named husband and Devar, in the Court she added one more name and stated that her husband, Dewar and mother-in-law; all three picked her up and threw down from balcony. The presence of mother-in-law, for the first time, is shown in the house only during the testimony in the Court. In the complaint, there is no talk of mother-in-law being present there. Even in the statement under Section 161 Cr.P.C. made by father of Mamta, he does not say that Parmeshwari Devi was in the house. He simply submits that he and his son Ashok Kumar came downstairs and thereafter her son-in-law called her daughter for giving keys of almirah. So her son and daughter both went upstairs and after some time, he heard a sound of ?Thud? and her son raised a cry that Mamta had been thrown down. In his testimony before the court, he states that he and his son remained standing on the ground floor and only Mamta had gone up and thereafter he sent her son to find out what was the matter and then his son heard some shouts from inside the house. When attention of witness to contradictions between statement made to the police and made in the Court was drawn, he simply stated that he had not made any statement to the police. Testimony of Mamta giving account of what happened when she again went upstairs is full of falsehood. She stated her mother-in-law told her not to go to her parents' house. Once she was told that she could go to her parents' house if she wanted, why would she be again told not to go there by her mother-in-law who was not even present in the house as per her earlier complaint to police. No reason has been given why her going to her parents' house was being resisted by the appellants. If her story of dowry is to be believed, the appellants would have readily told her to go to her parents' house and bring dowry. Non examination of Ashok Kumar as a witness in the court, raises serious doubts about her story. It is to be noted that despite the fact that Ashok Kumar was with Mamta when she went upstairs, and when she fell on ground from 3rd floor, he did not get her sister admitted to hospital and then he did not appear before the court to support the story of her sister. It seems he was privy to facts different from what was being sought to be projected and he kept himself away deliberately.

12. Investigating Officer in this case reached the hospital after DD No.8 was marked to him. He found Mamta conscious in the hospital and made an application Ex.PW9/A to the CMO for recording statement of Mamta. The application reads as under:

?It is requested that Smt. Mamta wife of Surender Singh resident of H.No. 86/14, Sector-I, Pushp Vihar has been admitted in hospital in injured condition after she jumped from Balcony of the house. Permission be granted to record her statement.

Sd/-

13. The Investigating Officer testified that after reaching hospital he found Mamta conscious and after talking to her made application for recording her statement. It is obvious that initially he was told by her that she jumped from balcony. Her husband's stand constantly had been that she fell from stairs.

14. After recording statement of Mamta, he visited the spot and made enquiries from neighbours about the truth but he did not place on record statements of any of the neighbours. He did not find brother of Mamta in hospital. Mother of complainant is not produced in Court as a witness although she is also stated to have accompanied her husband to appellants' house. It has

come in appellants' testimony that from 8 am till 12.30 pm her parents were at her in-laws' house and talks were normal and husband and in-laws talked as if they had lovely relations with her. There seemed to be no acrimony even thereafter since on the calling of her husband, she went three stories upstairs just to open an Almirah. Considering entire sequence and facts, a grave doubt arises on her version that suddenly she was picked up and thrown down the balcony. The version of the incident given by complainant seems to be an afterthought and incredible. The version given by accused persons and by one defence witness that complainant rushed out of the door and she entangled in the railing also does not seem to be true.

15. From the entire evidence and circumstances, two views are possible (i) that despite the cordial atmosphere which was there from 8 am to 12.30 pm and the complainant was told that though appellants were not in favour of her going to her parents' house but she if wanted could go to her parents house, the appellants suddenly lost balance of mind and became mad and picked her up and threw her from the balcony. The other view which is possible is that the complainant had called her parents because of some allegations regarding her character by the appellants and when allegations were made, even before her parents, she decided to go to her parents house along with her parents. She then went upstairs to open the almirah and there again some exchange of allegations took place and she in a huff jumped from the balcony.

16. The efforts of the criminal courts had to be to find out the truth, but this is not always easy, especially when parties develop vindictive attitude. Where there is a reasonable doubt and when two incredible versions confront the Court, the Court should give benefit of the doubt to the accused and it is not safe to sustain conviction (AIR 2005 SC 97 State of Maharashtra v. Sanjay). The proof which the Court of criminal justice has to require must be proof which affirms moral certainty to the judge. The Courts must give advantage to the accused if, after considering the entire evidence and the entire circumstances, a Judge conscientiously and reasonably entertains a grave doubt regarding guilt of the accused. In the instant case, although the complainant received injuries but the entire story put forward by the complainant leading to the entire episode does not inspire confidence and does not seem credible. I have serious doubts about the prosecution version that the appellants picked up the complainant and threw her down from the 3rd floor from balcony. I, therefore, consider that appellants are entitled to benefit of doubt under Section 308 of the IPC.

17. In view of my foregoing discussion, the appeal is allowed. The conviction under Section 498A/308/34 is hereby set aside. The appellants are set free. Their bail bonds are cancelled and sureties discharged.

SHIV NARAYAN DHINGRA,J

March 07, 2007
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