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Judgment reserved on : March 31, 2009

Judgment delivered on : April 13, 2009

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Sanjay Kumar

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Appellant

Through: Mr. Dharambir Singh, Advocate

versus

The State

■ ■ ■

Respondent

Through: Mr. Amit Sharma, Additional
Public Prosecutor for State

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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

SUNIL GAUR, J.

1. The legality of conviction of Appellant – husband of the deceased for the offence of '*dowry death*' is under challenge in this appeal.
2. Appellant- Sanjay Kumar S/o Sh. Prem Nath was married with Premwati in the year 1994. On 6th October, 1998, Premwati died un-natural death in her matrimonial house by hanging herself with the help of a ligature and the appellant was accused of causing "dowry death" in this case.

3. On being informed of this incident, mother of the deceased- Premwati, made a statement before the SDM, Seema Puri, Delhi, alleging that her daughter's husband, i.e., appellant/accused herein, used to demand dowry from her daughter. On her aforesaid statement, FIR No. 633 of 1998, for the offence under Section 498-A and 304-B of the Indian Penal Code, was registered at Police Station Nand Nagri, Delhi. Investigation of the case was entrusted to Sub-Inspector Narinder Singh. Appellant/accused was arrested and dead body of deceased- Premwati was sent for post-mortem examination.

4. After completion of investigation of this case, appellant-accused was charged for committing offence under Section 304-B and under Section 498-A of the IPC and he had claimed trial. Twelve witnesses have deposed in this case and the material evidence is of mother Panna Devi (PW-11) and brother Slekh Ram (PW-1) of the deceased. Sub-Inspector Narender Singh (PW-12) is the Investigating officer of this case. The medical evidence is of Dr. K.K. Banerjee (PW-10) who has opined that the *cause the death of the deceased was due to asphyxia, as a result of ante-mortem constriction on the neck by a ligature.*

5. Appellant- Sanjay Kumar in his statement under Section 313 Cr.P.C. before the trial court had claimed that since his wife had gone to the house of her sister to recover the money which she had lend to her and when she could not get back the amount,

being frustrated, she committed suicide while he was away from home. He also claimed that he is innocent and alleged his false implication in this case. However, no witness was got examined by the appellant/accused in his defence.

6. After the trial, appellant has been convicted by the trial court for committing offences under Section 304-B and under Section 498-A of the Indian Penal Code and he is sentenced to undergo Rigorous Imprisonment for ten years for the offence under Section 304-B of the IPC and to Rigorous Imprisonment for three years and a fine of Rupees one thousand for the offence under Section 498-A of the IPC and in default, further rigorous imprisonment for four months. Trial Court has ordered both these substantive sentences to run concurrently. Hence this appeal.

7. I have heard the arguments advanced by learned Counsel representing the appellant and Public Prosecutor for the State and have also gone through the record of this case.

8. For securing conviction for the offence of dowry death, prosecution has to establish that the deceased had died unnatural death within seven years of her marriage with the accused and that '*soon before her death*' she has been subjected to cruelty and harassment by the accused. After scanning through the evidence on record, I do find that the prosecution has succeeded in establishing that the deceased had died unnatural death in her matrimonial house within seven years of her marriage with the

Appellant/accused. In fact, the marriage was four years old and two children were born out of the wedlock of the deceased with the Appellant/accused.

9. The crucial ingredient of the offence of dowry death, is that the prosecution must conclusively establish that '*soon before her death*' the deceased was subjected to cruelty at the hands of the accused. Then only, the statutory presumption under Section 113-B of the Evidence Act of committing dowry death would arise against the accused. The evidence on record has been scrutinised with a view to find out as to whether aforesaid crucial ingredient of the offence of dowry death is established by the prosecution in this case. The law was set into motion by Panna Devi (PW-11) who happens to be the mother of the deceased. There is evidence of Slekh Chand (PW-1), brother of the deceased also, which has been heavily relied upon by the trial court to convict the Appellant/accused for the offence of '*dowry death*' in this case.

10. First of all, I would advert to the evidence of the most material witness of this case, who is Panna Devi (PW-11), mother of the deceased. The material portion of her deposition needs to be highlighted and the same is as follows:-

"My daughter Prem Wati was married to the accused present before the court. My daughter was married to the accused about 7-8 years ago. At the time of marriage there was no demand from the side of the bridegroom party. Accused was not keeping my

daughter decently. He used to harass her, since he was not an earning hand. The accused used to consume liquor and gamble. There was nothing to eat in the kitchen of the accused. On that account, my daughter used to feel frustrated. The accused used to beat my daughter, in order to force her to bring money from her parental home. There were two children born out of this wedlock. My daughter had conceived again. I used to advise the accused, but in vain. Whenever my daughter used to go to her matrimonial home, we used to pay money to her. Despite this fact, there was no peace in the matrimonial home of my daughter.”

11. The rest of the deposition of this witness (PW-11) does not disclose that the deceased was subjected to cruelty by the Appellant/accused *‘soon before her death’*. It has come in the cross-examination of this witness (PW-11) by the defence that she had one son (PW-1) only and she used to tell him about the ill treatment and harassment of the deceased. Trial Judge has mainly relied upon the evidence of the only son (PW-1) of the star witness (PW-11) and this son-Slekh Chand (PW-1) is the brother of the deceased and after scrutinising his deposition, it is found out that he had made material improvements in his evidence to bring this case within the ambit of section 306 of the Indian Penal Code, but still, it does not fall within the parameters of section 304-B of the Indian Penal Code, as even the improved version of brother (PW-1) of the deceased does not disclose that *‘soon before her death’*, the deceased was subjected to any kind of cruelty.

12. The counter version of this incident from the side of the appellant/accused, as finds mention in the statement under Section 313 of Cr. P.C., of the appellant/accused is as under:-

“I am innocent. My wife had gone to demand money from her sister. A sum of Rs.10,000/- had borrowed by my sister-in-law from my wife. My wife had gone to her sister to recover the amount. My sister-in-law and her husband had quarrelled with my wife. My wife returned from the house of her sister. She was frustrated a lot. I had gone for my job. At my back my wife had committed suicide on account of her frustration which she had developed when her sister had not returned her money.”

13. Aforesaid counter version is clearly an afterthought as it has not been so suggested to the mother (PW-11) or brother (PW-1) of the deceased. What has been suggested to the mother of the deceased by the defence is that the deceased had deposited a sum of Rs.10,000/- with her brother, who had refused to return it and therefore, the deceased had committed suicide. In fact, the stand taken by the appellant/accused in his statement under Section 313 Cr. P.C. is that the money was given by the deceased to her sister-in-law. In any case, no such suggestion has been given by the defence to the brother of the deceased and the so called sister-in-law of the deceased has not been got examined in defence. Therefore, the defence of the appellant/accused is not at all plausible and it deserves to be discarded. Anyhow, conviction of the appellant/accused cannot be justified by pointing out that the

defence is not plausible. First, the prosecution case has to be seen and once the prosecution establishes its case, then only, the plausibility of the defence has to be considered. So, let us revert to the prosecution version.

14. During the course of the arguments in this appeal, learned counsel for appellant had pointed out that the impugned judgment is all rhetoric and it lacks substance. After going through the impugned judgment, I find that learned counsel for appellant is right in his submission. Trial judge has jumped to a conclusion that the greed of the Appellant/accused had made him a beast. Unfortunately, the evidence on record does not support the aforesaid conclusion of the trial judge. In serious offences, like the present one, trial judges have to exercise restraint and are not expected to be carried away with emotional upswing. The evidence on record has to be read as it is and not in between the lines and no inferences are to be drawn by reading the evidence selectively. This court is constrained to observe that the trial judge has committed a grave error in doing so.

15. Be that as it may. This court has to independently assess the evidence on record. Although, the chief examination of brother (PW-1) of the deceased makes an impressive reading, regarding deceased being subjected to cruelty at the hands of the Appellant/accused, but in the cross-examination by the defence, he admits that he had not mentioned the fact of harassment or

beating of the deceased by the Appellant/accused in his statement before the SDM because he was not told these facts by his mother. On this aspect, brother (PW-1) of the deceased stands contradicted by his mother (PW-11) who has categorically stated in her evidence that she had told about Appellant/accused beating the deceased, in order to force her to bring money from her parental house. After dispassionately scrutinising the evidence of brother (PW-1) of the deceased, I find that his evidence is materially improved version and is an afterthought and the same cannot be relied upon to convict the Appellant/accused for the offence of '*dowry death*' and the trial judge has gravely erred in doing so. Therefore, the evidence of brother (PW-1) of the deceased has not to be taken into consideration while determining as to whether the offence under Section 306 of Indian Penal Code which is lesser offence than of '*dowry death*', is made out or not. For this purpose, the evidence of mother (PW-11) of the deceased has to be analysed. Upon doing so, it is found that from deposition of the mother (PW-11) of the deceased, the offence under Section 498-A of the Indian Penal Code is clearly made out.

16. The cruelty, as envisaged under Section 498-A of Indian Penal Code, has to be of such a magnitude that it impels or compels such a lady to commit suicide. No doubt, mother (PW-11) of the deceased has stated in her evidence that Appellant/accused used to beat her daughter (since deceased), in order to force her to bring money from her parental home. This is the most

incriminating evidence in the deposition of mother (PW-11) of the deceased. She does not elaborate in her evidence as to what amount was demanded by Appellant/accused and when and for what purpose. Rather, it has come in the evidence of mother (PW-11) of the deceased that at the time of marriage in question, there was no demand of dowry from the side of the Appellant/accused. In fact, this witness (PW-11) has clearly stated in her evidence that her daughter (since deceased) had committed suicide because she was frustrated as there was nothing in the kitchen to eat. It does not make any sense, when this witness (PW-11) states in her evidence that Appellant/accused used to harass the deceased, since he was not an earning hand.

17. It is true that it emerges from evidence on record that Appellant/accused used to consume liquor and used to gamble, but it does not aggravate the offence of cruelty committed by the Appellant/accused, for the reason that the evidence is lacking regarding Appellant/accused subjecting the deceased to cruelty to bring money and to give it to him for buying liquor or for the purpose of gambling. Trial court has gravely erred in inferring so. For convicting an accused for a serious offence, the evidence has to be unambiguous and clinching and it is not permissible to draw inferences to project that the deceased was subjected to cruelty of such magnitude to bring the offence within the ambit of section 304-B of the Indian Penal Code or within the sweep of section 306 of Indian Penal Code.

18. It is the mandate of law that making of a demand for money by the accused, by itself, is not sufficient to rope him in for a serious offence of 'dowry death' or abetment of suicide, until and unless, it is shown that non-fulfilment of such a demand had resulted in inflicting of cruel treatment of such a nature, which would impel or compel any prudent lady to put an end to her life.

19. A three Judge Bench of the Apex Court in the case of '*Ramesh Kumar v. State of Chhattisgarh*', **2001 (4) RCR Criminal 537**, has mandated that merely because accused is found guilty for the offence under Section 498-A of Indian Penal Code, it does not follow that on the same evidence, he must be held guilty for abetting commission of suicide by a woman and it has been so said, in the following words:-

“Sections 498-A and 306 of Indian Penal Code are independent and constitute different offences. Though depending upon the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498-A and may also, if course of the conduct amounting to cruelty is established, leaving no other option for the woman except to commit suicide, would amount to abetment to commit suicide. However, merely because an accused has been held liable to be punished under Section 498-A of the Indian Penal Code, it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned.”

20. In the instant case, the evidence on record does not satisfy the aforesaid mandate of law. The evidence on record does not indicate that the deceased was mercilessly beaten by the Appellant/accused in the few months prior to this incident or soon before this incident or that this incident was preceded by any such event, which would impel or compel the deceased to commit suicide, because of the conduct of the Appellant/accused. Mother (PW-11) of the deceased in her evidence has stated in general terms that whenever her daughter (since deceased) used to go to matrimonial home, money used to be given to her and still there was no peace in the matrimonial home of the deceased. She does not clarify as to how much money she used to give to the deceased and why there used to be no peace in the matrimonial home of the deceased. These are the grey areas, which persuade this court to give benefit of doubt to the appellant/accused for the offence of '*dowry death*' or '*abetment of suicide*'.

21. An objective evaluation of the evidence on record clearly brings out the fact that the frustration of the deceased was because of poverty as there was nothing to eat and because appellant/accused used to drink and gamble. However, the evidence on record does not indicate that the beating of the deceased at the hands of the appellant/accused was a regular feature, to establish that the continuing cruelty was infact the reason for the deceased to commit suicide. From the evidence on record, it cannot be made out that there were repeated complaints

from the side of the deceased regarding the deceased being subjected to persistent cruelty at the hands of the appellant/accused. Thus, I am of the considered opinion that the evidence on record falls short of bringing the offence in question, either within the ambit of offence of '*dowry death*' or within the range of the offence of '*abetment of suicide*'.

22. The totality of the circumstances of this case, does not permit this court to sustain the conviction of the appellant/accused for the offence under Section 304-B of the Indian Penal Code or to alter it to a lesser offence under Section 306 of Indian Penal Code. Therefore, unhesitatingly, the conviction of the Appellant for the offence under Section 304-B of Indian Penal Code is hereby set aside as being contrary to the evidence on record. However, the conviction of the appellant/accused by the trial court, for the offence under Section 498-A of the Indian Penal Code deserves to be sustained and is accordingly upheld.

23. The sentence imposed upon the appellant/accused by the trial court, for the offence under Section 498-A of Indian Penal Code is of rigorous imprisonment for three years with fine of Rs.1,000/-. On this aspect, it has been submitted on behalf of the appellant/accused that the two children of the deceased are being brought up by the appellant/accused and this fact already stands admitted by the mother of the deceased in her evidence. It is pointed out that the appellant/accused has faced the agony of trial

and appeal proceedings in this case for more than a decade and that as per the nominal roll on record, appellant/accused has already suffered substantive sentence of one and half years and it is evident from the record that the appellant/accused is on bail for the last eight years or so and it is pointed out that appellant is upbringing the minor children of the deceased.

24. The offence under Section 498-A of the Indian Penal Code does not carry any minimum sentence. In the peculiar circumstances of this case, the substantive sentence of the appellant/accused for this offence stands reduced to one year and six months, i.e., the period already undergone by him. However, the sentence of fine is enhanced from Rs.1,000/- to Rs.10,000/- and the appellant/accused is granted four weeks time to deposit the enhanced fine, failing which, he shall have to undergo simple imprisonment for a period of three months.

25. This appeal is allowed to the extent indicated above. Trial court be apprised of this order, to ensure its compliance.

26. Accordingly, this appeal stands disposed of.

SUNIL GAUR, J.

April 13, 2009

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