

R-86 & 87

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

% Date of Decision: 2nd September, 2009

+ **CRL.A. 450/2001**

HARI CHAND & ORS. Appellants
Through: Mr. Mohit Mathur, Advocate

versus

STATE Respondent
Through: Mr. M.N.Dudeja, Advocate

CRL.A. 600/2001

NATHI DEVI Appellant
Through: Mr. Mohit Mathur, Advocate

versus

STATE Respondent
Through: Mr. M.N.Dudeja, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

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

PRADEEP NANDRAJOG, J. (ORAL)

1. Vide impugned judgment and order dated 19.5.2001 appellant Nathi Devi has been convicted for the offence punishable under Section 302 IPC as also for the

offence punishable under Section 498A IPC. Appellants Hari Chand and Kishan Lal who are the sons of Nathi Devi have been convicted for the offence punishable under Section 498A IPC.

2. For the offence of murder, Nathi Devi has been sentenced to undergo imprisonment for life and pay a fine in sum of Rs.500/-, in default to undergo simple imprisonment for two months. For the offence punishable under Section 498A IPC, all appellants have been directed to undergo RI for three months and pay a fine in sum of Rs.500/-, in default of payment of fine to undergo imprisonment for one month.

3. Needless to state, sentences imposed upon Nathi Devi have been directed to run concurrently.

4. Nathi Devi has been convicted for having poured kerosene oil on the person of her daughter-in-law, Ms.Neetu, and having set her on fire thereafter on 5.4.1997. Needless to state the conviction of the appellants for the offence punishable under Section 498A IPC is based on the finding that the appellants used to treat Neetu with cruelty on account of dowry demands.

5. Neetu was married to Jagdish, the third son of Nathi Devi; Hari Chand and Kishan Lal are her eldest and the second born sons. The marriage was solemnized on 1.5.1996.

6. Neetu suffered burn injuries on 5.4.1997 at around 1:30 PM. The place where she suffered the burns was her matrimonial house No.B-426, J.J.Colony, Inder Puri. Information pertaining to Neetu being burnt was received at PS Inder Puri and noted in the daily diary register vide DD No.13A, Ex.PW-15/A at 13:32 hours.

7. SI Joginder PW-20 was entrusted the job of investigating the matter. He left the police station in the company of Const.Har Prashad PW-11. On reaching house No.B-426, J.J.Colony, Inder Puri, SI Joginder Singh learnt that the lady who had suffered burn injuries had been removed to RML Hospital and thus he proceeded to said hospital where he found Neetu admitted in the burns ward. He obtained the MLC Ex.PW-5/A of Neetu but could not record her statement as she was unfit for statement. He recorded the statement of Bhanwar Lal PW-2, father of Neetu and made an endorsement Ex.PW-20/A therein. The rukka was dispatched and the FIR Ex.PW-16/A was registered.

8. Returning to the spot, SI Joginder Singh summoned a photographer who took photographs Ex.PW-20/C1 to Ex.PW-20/C5 of the place of the occurrence. He seized burnt pieces of cloth and various other articles from the spot as recorded in the seizure memo Ex.PW-20/E.

9. On the same day i.e. 5.4.1997 SI Joginder Singh went back to RML Hospital in late evening and found that the patient i.e. Neetu was fit for statement. Dr.Bibha Prasad PW-21 was on duty and at 8:00 PM recorded a certification, Ex.PW-21/A, on the MLC Ex.PW-5/A of Neetu to the effect that the patient was fit for statement. He immediately contacted the Sub-Divisional Magistrate of the concerned area namely Sharad Chauhan PW-23 who immediately reached the hospital.

10. The Sub-Divisional Magistrate obtained another endorsement under the signatures of Dr.Preeti Batra, being Ex.PW-21/B, on the MLC Ex.PW-5/A of Neetu, certifying at 10:00 PM that the patient is fit for statement. Thereafter the SDM recorded the statement Ex.PW-23/A of Neetu.

11. We may note at this stage that Dr.Bibha Prasad PW-21 has proved the certification Ex.PW-21/B under signatures of Dr.Preeti Batra and has deposed that Dr.Preeti Batra has left

the hospital and that she could identify the signatures and the handwriting of Dr.Preeti Batra.

12. It is apparent that the certification Ex.PW-21/A was recorded when the investigating officer reached the hospital and obtained a certification by the doctor that the patient was fit for statement. The Sub-Divisional Magistrate reached the hospital later and since there was a time interval vis-à-vis the time when the certification was obtained and when he commenced recording the statement of Neetu, the Sub-Divisional Magistrate took precaution to obtain fresh certification pertaining to the continued evidence of Neetu to make a statement.

13. Briefly noted, the statement Ex.PW-23/A of Neetu records the time being 10:00 PM and the date being 5.4.1997. As per the statement, in her matrimonial house besides her husband and her parents-in-law, her jeths and jethanis were also residing. After marriage, she was troubled on account of dowry and sometimes used to be beaten. Her mother-in-law Nathi Devi and her Jeth Hari Chand used to beat her and the Jeth Kishan Lal used to abuse her. She stated that her father-in-law and her husband were always good to her. Pertaining to the circumstances of her receiving burn injuries she stated that she was cleaning rice and all of a sudden her mother-in-

law poured kerosene oil on her and lit a matchstick as a result whereof she caught fire. Her husband who had gone to effect purchases returned at that moment and on hearing her cries doused the flames and brought her to the hospital. She clarified that only her mother-in-law set her on fire and no one else was present with her.

14. Neetu's brother Narender deposed as PW-1. Her father Bhanwar Lal deposed as PW-2. Her mother Mooli Devi appeared as PW-3.

15. Two uncles of Neetu namely Jagdish and Mam Chand have deposed as PW-4 and PW-7. As per the testimony of Narender and Mooli Devi, i.e. brother and mother of the deceased, after 2-3 months of the marriage Neetu complained that her mother-in-law and her two brothers-in-law (Jeth) used to beat her on account of insufficient dowry brought by her. We note that both of them have not disclosed any particulars pertaining to the nature of dowry demand, the day, the week or even the month on which dowry was demanded. Bald statements have been made by the two that Neetu told them of being beaten on account of dowry by her mother-in-law and her brothers-in-law.

16. Bhanwar Lal PW-2 gave a clean chit to the in-laws of his daughter with respect to the demand of dowry. He stated that his daughter never complained to him pertaining to any kind of harassment relatable to the dowry which he gave at the time of the marriage but stated that his daughter had told him of having a matrimonial problem with her mother-in-law pertaining to house hold work.

17. Jagdish PW-4 reiterated the language of the mother and brother of Neetu by generally stating that Neetu used to complain of harassment on account of inadequate dowry. He made an addition by stating that demand in sum of Rs.20,000/- was made so that a separate room for Neetu could be constructed on the second floor of the house.

18. PW-7 Mam Chand, the uncle of Neetu parroted the testimony of the brother and mother of Neetu by stating that Neetu complained of harassment on account of dowry at the hands of her mother-in-law and the two brothers-in-law.

19. The learned Trial Judge has convicted the appellants for the offence punishable under Section 498A IPC on the basis of the testimony of PW-1, PW-3, PW-4 and PW-7 ignoring the fact that the father of the deceased has categorically stated that his daughter never complained

harassment on account of dowry. As per him, the complaint of the daughter was of being harassed on the issue of domestic work. That apart, the learned Trial Judge has ignored the fact that the testimony of PW-1, PW-3, PW-4 and PW-7 is most uninspiring vis-à-vis the dowry demand. Save and except PW-4 who has talked of one incident with respect to the particulars of the dowry demand, the other witnesses have disclosed nothing.

20. Who would be required to satisfy the dowry demand? Obviously, father or may be the brother of Neetu. Their knowledge would be better than the knowledge of other relatives of Neetu. Neither the brother nor the father of Neetu have spoken of Rs.20,000/- being demanded to enable the in-laws of Neetu to construct a separate room on the second floor of their house in which Neetu and her husband could reside.

21. Under the circumstances, we concur with the submission made by learned counsel for the appellants that the evidence on record is of a very weak kind and is insufficient to prove the commission of an offence punishable under Section 498A IPC.

22. We may note that even in her dying declaration Neetu has referred in very vague language to harassment on

account of dowry. She has alleged that her mother-in-law and her Jeth Hari Chand used to beat her and Kishan Lal used to abuse her. Even she has not disclosed any particulars of the dowry demand.

23. Pertaining to the offence punishable under Section 302 IPC, the law pertaining to dying declaration is clear.

24. In the case of bride burning, where the young bride makes a dying declaration and there is no evidence of her being tutored or being motivated to tell lies and there being no infirmity found in the dying declaration, it would be safe to sustain a conviction on a dying declaration without it being corroborated.

25. Nothing has been shown to us during argument of the appeal wherefrom it can be inferred that relatives of Neetu influenced her to make a false statement. No motive on the part of Neetu to falsely implicate her mother-in-law has been shown to us. The truthfulness of the statement of Neetu is deeply embedded in her statement. Having disclosed that she was troubled by her mother-in-law and her Jeth Hari Chand who even used to beat her and having disclosed verbal abuses at the hands of her other Jeth Kishan Lal; having a golden opportunity to ensnare her two brothers-in-law and have them

in the clutches of the law, Neetu has shown nothing of that sort. She has only inculpated her mother-in-law. This fact itself lays an assurance and credibility to the truthfulness of the statement of Neetu.

26. We note that Neetu died on 10.4.1997 as a result of the burn injuries suffered by her. The post-mortem report Ex.PW-6/A shows that 90% of the body of Neetu was burnt, a fact which if not conclusive but certainly determinative and indicative of the fact that in all probability Neetu could not have suffered accidental burns.

27. Be that as it may, the dying declaration of Neetu is without any blemish and the guilt of Nathi Devi can be inferred therefrom.

28. Crl.A.No.600/2001 is partially allowed in that her conviction for the offence punishable under Section 498A IPC is set aside. Her conviction for the offence of murder is sustained. Crl.A.No.450/2001 filed by Hari Chand and Kishan Lal is allowed. They are acquitted of the offence punishable under Section 498A IPC.

29. All appellants are on bail. The bail bonds and surety bonds furnished by Hari Chand and Kishan Lal are discharged in view of the fact that they have been acquitted.

The bail bond and surety bond furnished by Nathi Devi are cancelled. She is directed to surrender and suffer the remaining sentence.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

SEPTEMBER 02, 2009
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