

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

% *Judgment Reserved on: 9th October, 2009*
Judgment Delivered on: 21st October, 2009

+ **CRL.R.P.339/2001**

RAJ KUMAR BANSAL AND ORS. Petitioners
Through: Mr.J. Buthar, Advocate.

versus

STATE AND ANR. Respondents
Through: Mr. Manoj Ohri with Ms. Fizani
Husain, APP.

CORAM:
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

INDERMEET KAUR, J.

1. Parvesh Kumari had been married to Raj Kumar Bansal on 16.11.1984 at New Delhi. Kanta Devi Bansal is the mother-in-law of Parvesh Kumari and Neelam Bansal was her married sister-in-law. Matrimonial home of the parties was at E-348, Greater Kailash-I, New Delhi.

2. On the occasion of the Rokna ceremony and thereafter again on the occasion of the 'Shagun' ceremony, C.L. Aggarwal the father of the Parvesh Kumari had paid a sum of Rs.10,000/-. Two days before the date of marriage Raj Kumar Bansal and his mother Kanta Devi Bansal demanded Rs.31,000/- in cash failing

which they would not solemnize the marriage. Since the preparations for the marriage had almost culminated, PW-3 succumbed to this pressure and agreed to make the payment of the aforestated amount of Rs.31,000/- which was accordingly paid. At the time of marriage a double bed with beddings, dressing table, washing machine, sewing machine, radio, two wrist watches, pressure cooker, 21 sarees, two sets of gold and four bangles weighing 15 tolas were also given.

3. The married couple, however, did not pull along amicably. Soon after the marriage Parvesh Kumari noticed that the attitude of her husband, mother-in-law, sister-in-law was changed towards her. They started taunting and abusing her. They called her with contemptuous names like 'kanjar', 'chandaal', 'bhutani'. She i.e. Parvesh Kumari was tortured and harassed on small counts; whether it be for the filling of water in the bucket or the use of soap. Parvesh Kumari was told by her in-laws that if her parents agreed to give a scooter, cooler, T.V. her harassment would come to an end; and since these articles had not been given by her parents, at the time of time of marriage this demand was made upon the complainant and her family. The cruelty on the victim continued and increased day by day.

4. On the occasion of Janmasthanmi, Parvesh Kumari was severely beaten, so much so that blood started oozing out. Demand for the dowry articles was reiterated by her in-laws. Her

sister-in-law also pushed and beat her. She was pressurized to do dirty jobs including cleaning of the toilet and sweeping the floor.

5. On the occasion of Teej her brother Vijender Kumar PW-4 had come to visit her but her in-laws imposed a condition that he could meet her only if the petitioner's demands are met.

6. On 11.11.1985 Ms.Jasbir Kaur, PW-6, a friend of the complainant had come on the occasion of Deewali. In her presence the victim was harassed and abused by her in-laws.

7. On 17.11.1985 the parents and brother of Parvesh Kumari had come to see her but they were not allowed to meet her.

8. On 23.11.1985 Mrs.Brijesh Jindal PW-12 and her husband S.K.Jindal PW-11 i.e. her sister and brother-in-law had come to meet her but they were also not allowed access to the complainant. Demand for dowry was again reiterated by her in-laws.

9. On 25.11.1985 the parents of the victim came to her house; a police officer H.C. Hukum Chand PW-8 was also summoned from the police post Greater Kailash; in his presence the complainant Parvesh Kumari left her matrimonial home as she could no longer bear the torture being inflicted upon her. She was medically examined on the following day i.e. 26.11.1985.

10. This was the complaint Ex.PW-2/A which had been lodged by Parvesh Kumari before Anti Dowry Cell, pursuant where to FIR under Section 498A/406 of the IPC has been registered against Raj

Kumar Bansal, the present petitioner, his mother Kanta Devi Bansal and his sister Neelam Bansal.

11. Before the learned Metropolitan Magistrate, the prosecution examined 12 witnesses of whom the complainant Parvesh Kumari was examined as PW-2. She reiterated her version as given by her in her complaint Ex.PW-2/A. Her father C.L.Aggarwal was examined as PW-3 and he corroborated the testimony of his daughter. The brother of the victim Vijender Kumar Aggarwal was examined as PW-4. Two neighbours living in the vicinity namely Dheeraj Gulati PW-1 and Sanjay Jawa PW-5 were also examined but both these witnesses were disbelieved by the trial Court. The friend of the victim Jasbir Kaur who had come to visit Parvesh Kumari on the occasion of Deewali on 11.11.1985 had been examined as PW-6. Since the sister and the brother-in-law of the victim i.e. Brijesh Jindal and S.K.Jindal i.e. PW-12 and PW-11 did not come out with the entire truth, their testimony was disregarded. The testimony of Raj Kumar Aggarwal PW-7 the brother of Pravesh Bansal had also been ignored. ASI Hukum Chand PW-8 was the person in whose presence the victim had finally left the matrimonial home on 25.11.1985. Investigation was initially carried out by Inspector Anjani Kumar PW-9; challan was thereafter filed by SI Dayal Singh PW-10.

12. The trial judge had convicted all the accused persons under Sections 498A/406 of the IPC. Smt.Kanta Dev and Ms.Neelam

have been sentenced to undergo probation and were also directed to pay a fine of Rs.4000/- each which amount stood deposited. The said persons did not challenge the judgment. The petitioner Raj Kumar Bansal had been sentenced to undergo RI for three years and directed to pay a fine of Rs.3000/- in default of payment of fine RI for a period of one year for the offence under Section 498A of the IPC; for the offence under Section 406 of the IPC he has been directed to pay fine of Rs.5000/- in default of payment of fine RI for one and half years. The fine stood deposited.

13. Raj Kumar Bansal had challenged this judgment in appeal. Vide the judgment of the learned Additional Sessions Judge dated 04.4.2001 the conviction of the petitioner was maintained under Sections 498A/406 of the IPC; no modification was also made of the sentence imposed upon him. It is this judgment which in the subject matter of this criminal revision petition.

14. On behalf of the petitioner, it has been urged :-

I. There are inherent contradictions in the testimony of Parvesh Kumari PW-2 and her father C.L.Aggarwal PW-3. Qua the incident of 17.11.1985 PW-2 had stated that her parents and brother were allowed to meet her but this has been denied by PW-3 who had stated that when he had gone to meet to his daughter on 17.11.1985 he was denied access to her.

II. PW-2 had recited that on 11.11.1985 her friend Jasbir Kaur PW-6 had come to visit her but there is no mention about the said fact in the petition which she had filed under Section 9 of Hindu Marriage Act seeking restitution of conjugal rights. There is no such mention by PW-3 either thus clearly establishing that PW-6 had in fact never visited PW-2 on 11.11.1985.

III. PW-2 had stated that her brother PW-4 had come to visit her on the occasion of Teej but this did not find mention in the testimony of PW-4 again discrediting the version of PW-2.

IV. PW-3 had stated that their neighbours were present on 25.11.1985 when his daughter accompanied him from the matrimonial home; who were those neighbours and why they have not been examined is not answered by the prosecution.

V. PW-8 had proved the DD entry Ex.PW-8/A which was to the effect that on 25.11.1985 the victim Parvesh Kumari wished to leave the matrimonial home with her parents as her husband used to beat her because of domestic disputes. It is submitted that this document has categorically recited that there was no demand for dowry and the disputes did not relate to dowry; this document has wrongly been ignored by the Courts below.

VI. PW-3 has admitted that the marriage between his daughter and his son-in-law had been arranged pursuant to an advertisement; he has deposed that the husband was a divorcee; this fact was well known to the family of the victim at the time of marriage but had been denied by PW-2 who had on oath stated that this factum of her husband having been divorced earlier was not known to her; in her petition under Section 9 of Hindu Marriage Act she had stated that it was 'soon' after the marriage that she came to know from her neighbour that her husband was a divorcee; all these conflicting stands throw out the credibility of both PW-2 and PW-3 who are the star witnesses of the prosecution.

VII. There is no evidence of any demand of dowry and the ingredients of Section 498A of the IPC are clearly missing.

VIII. Istridhan of Parvesh Kumari had been returned to her vide seizure memo Ex.PW-2/B. Ex.PW-2/C which is the list of unreturn istridhan were, in fact, all taken away by PW-2 on 25.11.1985 itself. Ingredients of Section 406 of the IPC are also missing.

15. Learned defence counsel had placed reliance on various judgments to support the aforesaid submissions :-

i. State of Haryana v. Ashok Kumar @ Billu, 2001(3) Crimes 179(SC)

- ii. Surjit Kaur Chopra v. State & Anr. 144(2007) Delhi Law Times 483
- iii. Desh Depak Kapoor vs. State (Delhi Administration) 134(2006) Delhi Law Times 246(DB)
- iv. Suraj Prakash v. State of Delhi 135(2006) Delhi Law Times 135
- v. Surender Kumar & Another v. The State(NCT of Delhi) 2007 III AD (Delhi) 175
- vi. Neera singh(Smt.) Vs. The State (Govt. Of NCT of Delhi) & Ors. 2007 III AD (Delhi) 508
- vii. Sanjeev Kumar Aggarwal v. State & Anr. 2007[4] JCC 3074
- viii. Balwant Singh & Ors. v. Sate of H.P. JT 2008(10) SC 589

16. The revisional powers of the High Court are limited; they should be exercised only in those cases where trial Court has no jurisdiction to try the case or where the appellate Court has wrongly shift out evidence which was admitted by the trial Court to be admissible or where material evidence has been overlooked either by the trial Court or the appellate Court or where the acquittal is based on the compounding of an offence, which is invalid under the law; or any other case of a similar nature. The object of this revisional jurisdiction is to confer upon the superior Criminal Courts a kinds of paternal or supervisory jurisdiction, in order to correct miscarriage of justice, arising from a misconception of law, irregularity of procedure and similar infirmities.

17. On the perusal of the record it is noted that the two Courts below have appreciated all these arguments which have now been addressed before this Court. Not only did the first court go into these arguments and deal with each one of them; the second appeal court i.e. the court of learned Additional Sessions Judge had also re-appreciated the evidence and drawn a conclusive finding that the versions of PW-2 and PW-3 suffer from no infirmity; apart from their corroborative versions being the victim and her father; her brother PW-4, her friend PW-6 have also fully supported the case of the prosecution; the ingredients of both the offences i.e. the offence under Section 498A & 406 of the IPC for which the petitioner has been convicted are clearly met out.

18. This court has re-examined the contradictions in the testimony of the aforesaid witnesses as pointed out by learned counsel for the petitioner. The investigation of this has been set into motion on the complaint of PW-2 Parvesh Kumari. In this first complaint she had detailed the incidents of cruelty as meted out to her during her matrimonial life. She had detailed that on the occasion of Teej her brother Vijender Kumar PW-4 had come to meet her but meeting with him was conditional only if the dowry demands were met; incident of 11.11.1985 when PW-6 had visited her; on 17.11.1985 her parents had come to see her but they were not allowed to meet her; on 24.11.1985 her sister and brother-in-law i.e. PW-13 and PW-11 were not allowed to meet her; she had

finally left the matrimonial home on 25.11.1985. Version of PW-2 on oath in Court has reiterated this entire version. She has deposed that prior to her marriage with Raj Kumar Bansal her father at the time of 'Rokna' ceremony and again on the 'Tika' had paid Rs.10,000/- to her husband and in-laws. Two days before the marriage a demand of Rs.31,000/- had been made which had been fulfilled. At the time of marriage furniture articles as also electrical items had been given. Soon after the marriage the attitude of her husband and in-laws changed. They started taunting and harassing her. She has on oath corroborated all the aforesaid averments as contained in her complaint and the same need not be reverted to as both the Courts below had gone into the same in deep depth and detail. In her cross-examination nothing has been elicited which could discredit her version. In fact, in her entire lengthy cross-examination nothing has been pointed out by the learned counsel for the petitioner which could assail her version.

19. The father of PW-2 examined as PW-3 has also fully corroborated the version of his daughter. He has admitted that the marriage between his daughter and son-in-law was pursuant to an advertisement in the newspaper; in his cross-examination, he has stated that he did not tell his daughter that she was to marry a divorcee as his conscience did not allow him to tell her this fact. In this context PW-2 has deposed that prior to the marriage it was not known to him that her husband was a divorcee. On this count

version of PW-3 is contrary and admittedly in the advertisement seeking matrimonial alliance, it had been disclosed that the petitioner was a divorcee; it is also difficult to believe that the father would not have told this crucial fact to his adult daughter; and on this count it can be said that PW-3 has not come out with the truth but this not being material to the controversy in issue both the Courts below had rightly ignored this argument.

20. Version of PW-2 that on 11.11.1985 i.e. on the day of Deewali her friend Jasbir Kaur visited has visited her is corroborated by the version of PW-6. She had deposed that she had gone to the matrimonial home of Parvesh Kumari to give her sweets; her sister-in-law and her mother-in-law came down stairs and started quarreling with Parvesh Kumari; they questioned her as to why she had not told them about her friend's visit; her husband also joined them and they all started abusing Parvesh Kumari and taunted her for not bringing cooler, fridge, T.V. and scooter; in her presence Raj Kumar Bansal also slept Parvesh Kumari. PW-4 has also corroborated the testimony of PW-2 that on 25.11.1985, PW-2 left the matrimonial home in the company of her father, mother and her brother.

21. PW-2 is the victim of the incident. It is true that PW-3, PW-4 and PW-6 are persons closely associated with the victim but merely because they are close associates of the victim is no ground to discredit their testimony;

their versions are clear, cogent, cohesive and inspire confidence; they are also the persons best in the knowhow of the circumstances in which Parvesh Kumari was leading her matrimonial life; PW-3 being her father, PW-4 being her brother and PW-6 being her childhood friend; it was natural for PW-2 to disclose her woes and confide in these close associates.

22. MLC of the victim shows that she was medically examined on 26.11.1985 at the AIIMS hospital i.e. the one day after she had left the matrimonial home. Her complaint as is evident from MLC has noted pain all over her body with allegations of having been beaten on the previous day i.e. on 25.11.1985; tenderness of the ribs had also been noted.

23. Ex.PW-8/A was the purported DD entry which had been recorded on 25.11.1985 by ASI Hukum Chand PW-8. A copy of the said document was placed on record; original having been destroyed wherein it had been stated that the dispute between the husband and wife was related to a domestic matter; husband had given beatings to his wife but there was no dispute regarding dowry. On this count the first appellate Court has discredited this document Ex.PW-8/A as admittedly original of the said document has not been placed on record. It had further been held that even if this document is disbelieved and presuming that the the disputes between the husband and wife were not arising out of a dowry demand; nevertheless the definition of cruelty as

encompassed in Section 498-A of the IPC also included cruelty which would be of such a nature which was likely to drive a woman to cause grave injury or danger to life. On this count the deposition of the aforestated witness has not been assailed.

24. For the offence under Section 498A of the IPC essential necessary ingredient is subjecting a woman to cruelty by either her husband or a relative of the husband. This section had been incorporated pursuant to an amendment in the Indian Penal Code by Criminal Law (Second Amendment) Act 1983 w.e.f. 25th December, 1983. The object of this provision was to prevent torture to a woman by her husband or by the relatives of her husband.

25. Necessary ingredients of this Section entail:-

- i. The woman must be married;
- ii. She must be subjected to cruelty or harassment;
- iii. Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.

26. The extended meaning of cruelty is contained in explanation (a) of Section 498A IPC. As per this definition cruelty means any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, etc. or harassment to coerce her or any other person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demands.

27. A new dimension had been given to the concept of cruelty. Concept of cruelty varies from individual to individual; depending upon the social and economic status to which such a person belongs. Cruelty under Section 498A need not be physical; even mental torture may amount to cruelty in a given case.

28. Section 406 of the IPC is the penal provision for a criminal breach of trust, which has been defined in Section 405 of the IPC. To make out a criminal breach of trust it is not sufficient to show that the money or the valuable security has been retained; it must also be shown that the accused disposed it of in some way other than that in which he was bound to apply it.

29. The evidence on record qua the said offence is the deposition of PW-2; her list of dowry articles which had been returned back to her have been proved vide seizure memo Ex.PW-2/B. Her list of unreturned articles is Ex.PW-2/C. Version of PW-2 is corroborated by the version of her father PW-3 on this count. Investigating SI Dayal Singh PW-10 had along with PW-2 and PW-3 on the pointing out of the complainant had got the articles recovered and seized vide memo Ex.PW-2/B. Accused had stated that the complainant had taken back all her dowry articles on 25.11.1985; on 30.12.1985 a statement has been made by accused Raj Kumar Bansal wherein he had stated that the articles lying with him as per the list Ex.PW-2/C had been tick marked and would be returned back by 02.1.1996. On the said date i.e. on

02.1.1996 further time had been sought and admittedly till the date of judgment of the first Court i.e. up to 27.8.1996 no such articles as contained in Ex.PW-2/C had been returned. Ingredients of Section 406 also stand established.

30. Conviction of the accused calls for no interference; there is perversity or illegality in the order under challenge.

31. The sentence inflicted upon the accused is RI for three years the offence under Section 498A of the IPC; fine under Section 406 of the IPC already stood deposited at the time of filing of the first appeal.

32. The offence relates to the year 1985; much water has flowed in the last almost more than a quarter of a century i.e. in this intervening period of 25 years. Both the parties stand divorced and they are leading their independent and separate lives. The petitioner has suffered a loss of service in terms of the punishment inflicted upon him. The nominal roll of the appellant shows that as on 29.10.2002 he had suffered sentence of almost more than two years and two months which was inclusive of the remissions earned by him.

33. In 2006 CrI.LJ 2141 SC Jaya Ram BT, in similar circumstances where the parties had been living separately for the last many years and the rancour between the parties having subsided; the period of substantive sentence was reduced to the period already

undergone. In this back ground the petitioner is sentenced to the period of the sentence already undergone by him.

34. Petition is disposed of in the above terms.

(INDERMEET KAUR)
JUDGE

21st October, 2009
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