

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

Judgment reserved on: February 01, 2010
Judgment delivered on : February 26, 2010

+ **CRIMINAL APPEAL NO.231/2000**

JAGDISH & ORS.

....APPELLANTS

Through: Mr. C.L. Gupta, Advocate

Versus

STATE

..... RESPONDENT

Through: Mr. Manoj Ohri, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE AJIT BHARIHOKE

- | | | |
|----|---|-----|
| 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 Digest ? | Yes |

AJIT BHARIHOKE, J.

1. This appeal is directed against the impugned judgment dated 18.02.2000 in Sessions Case No.178/97 arising out of FIR No.127/95 Police Station Mangol Puri, convicting the appellants Jagdish, Laxmi Narain (since deceased) and Ram Piary (since deceased) for the offences punishable under Sections 498A IPC and 302 IPC read with Section 34 IPC and consequent order on sentence dated 21.02.2000.

2. The appeal was jointly preferred by all three of them. However, during the pendency of the appeal, appellants Laxmi Narain and Ram Piary expired, as such, the appeal as regards them abated.

3. Briefly stated, case of the prosecution is that on 28.02.95 at about 7:05 pm, an information was received from PCR at P.S. Mangol Puri that one man has killed his wife at H-733, Mangol Puri, Delhi. The said information was recorded as DD No.18A and copy thereof was entrusted to SI Ishwar Singh (PW16) for verification, who proceeded for the spot of occurrence along with Constable Kartar Singh (PW7). On reaching the spot of occurrence, i.e., first floor of the house, SI Ishwar Singh found the dead body of the deceased Kamlesh @ Kamla lying there. No family member of the deceased was available at the spot but many neighbours were present. On inquiry, SI Ishwar Singh, PW16 found that the death of Kamlesh @ Kamla had occurred under suspicious circumstances, so he conveyed the information to the SHO, P.S. Mangol Puri and also tried to contact the SDM of the area, but could not make contact with him. He summoned a private photographer and got the spot of occurrence photographed from various angles. In the meanwhile, the SHO contacted the SDM, who directed him to remove the dead body to the dead house after marking the outlines of the dead body and also to preserve the scene of crime.

4. On the same night at around 12 O'clock, SI Ishwar Singh, PW16 reached at the residence of Sh. Virender Kumar (PW8), the then SDM,

Punjabi Bagh along with the relatives of the deceased and the SDM, Punjabi Bagh recorded the statement of PW5 Lali, the mother of the deceased, Ex.PW5/A and directed the police to register an FIR and investigate the case in accordance with law vide his endorsement Ex.PW8/A. SI Ishwar Singh sent said statement of PW5 Lali along with the endorsement of the SDM and his own endorsement Ex.PW16/A to the Police Station for the registration of the case. On the basis of the said statement, formal FIR was registered at P.S. Mangol Puri. The SDM also recorded statements of PW1 Bimla, sister of the deceased and PW2 Madan Lal, father of the deceased, in the morning of 01.03.95 at around 10:00 am.

5. On 01.03.95, SI Ishwar Singh, PW16 conducted the personal search of the dead body in presence of the mother of the deceased and the jewellery found on the person of the deceased was removed and taken into possession vide memo Ex.PW9/A. The dead body was sent to the dead house through Constable Kartar Singh and the room in which the dead body was found was locked and a Constable was left at the spot to preserve the scene of crime.

6. Dr. K. Goyal, PW6 conducted post mortem on the dead body. He found nine external injuries on the body. In the opinion of Dr. K. Goyal, PW6 all the injuries were ante mortem in nature, caused by blunt force during the process of strangulation. The Doctor opined that the cause of death was asphyxia consequent to strangulation and he fixed the

time of death as approximately twenty hours prior to the commencement of post mortem examination. The Investigating Officer also prepared the site plan of the spot, recorded the statements of the witnesses and on completion of the formalities of investigation, he submitted the challan against the appellants.

7. The appellants, after being heard, were charged for the offences punishable under Section 302 read with Section 34 IPC and Section 498A read with Section 34 IPC. All the three appellants pleaded innocence and claimed to be tried.

8. In order to prove the guilt of the appellants, prosecution examined 18 witnesses. The important witnesses however are PW1 Bimla, sister of the deceased; parents of the deceased namely, Madan Lal PW2 and Lali PW5; to some extent, the testimony of autopsy surgeon PW6 Dr. K.Goyal and PW8 Sh. Virender Kumar, the then SDM, as also the Investigating Officer SI Ishwar Singh is also relevant.

9. PW1 Bimla is claimed to be the eye witness to the occurrence. She is also a witness to establish the charge under Section 498-A IPC. She stated in the Court that she and her sister Kamlesh (deceased) were respectively married to two brothers Laxmi Narain (deceased convict) and the appellant Jagdish on 22.02.92. After marriage, they went to their matrimonial home and stayed there for about 4/5 days and, thereafter, returned back to their parental house. She deposed that during those 4/5 days, she was beaten by her husband for not

bringing sufficient dowry. Her husband as well as mother-in-law Ram Piyari (deceased convict) used to taunt that they were repenting their decision to marry Laxmi Narain and Jagdish in a poor family. She further stated that her father did not send them back to their matrimonial home for a period of 2 ½ years because of the aforesaid cruel treatment; however, on 17.06.94, both the sisters were sent to their matrimonial home after the *gauna*' ceremony. Even after *gauna* ceremony, Laxmi Narain (deceased convict) used to beat her and Jagdish, appellant, used to beat her sister Kamlesh and her mother-in-law Ram Piyari (deceased convict) also used to abuse them and instigated their respective husbands to torture them and they all used to complain that witness Bimla and her sister had not brought scooter and T.V. in dowry. Regarding the main occurrence resulting in death of the deceased, PW1 Bimla stated that on 28.02.95, her brother-in-law appellant Jagdish was beating the deceased and thereafter, he pulled her hair and dragged her from the ground floor to the first floor while beating her and when she tried to rescue her sister, the appellant Jagdish gave her 2/3 slaps on the face. Thereupon, her mother-in-law Ram Piyari(deceased convict) took her to an oil depot in Mangol Puri market and there she pretended that she had forgotten to bring ration card and went back home on the pretext of bringing ration card and told her to wait for her there. She did not return and after waiting for 30-45 minutes, she (witness) got suspicious and came back home. On reaching home at about 5:00 pm, she saw that her sister Kamlesh was

lying on the floor and Jagdish was pressing her down with his legs and also pressing her neck with his hands. Her mother-in-law was holding the legs of the deceased and her husband was holding the hands of the deceased. When she asked as to what they were doing, her husband caught hold of her and took her to another room and confined her there. Her husband also threatened that if she disclosed the incident to anyone else, she shall also meet the same fate and even her father and brother would be killed.

10. PW2 Madan Lal is the father of the deceased. He is mainly a witness to prove the charge under Section 498A IPC. He has stated that marriage of his daughters was solemnised with the appellant Jagdish and his brother Laxmi Narain (deceased convict) on 22.02.92. His daughters Bimla and deceased, after marriage stayed at their matrimonial homes for 7/8 days and, thereafter, came back and stayed with him till their *gauna* ceremony on 17.06.94. 4/5 days later, the appellant started abusing his daughters for not having brought anything in dowry. The appellant Jagdish and his co-accused Laxmi Narain used to beat his daughters and they used to demand scooter and T.V. from his daughters, failing which they threatened to kill them. He also stated that on 28.02.95 at round 5:00/5:30 pm, he was told by a young girl Jyoti that his daughter Bimla has been killed. On this, he along with his wife went to the house of the appellants and there they found that their daughter Kamlesh had died and not Bimla. In the cross examination, he was confronted with his earlier statement

Ex.PW2/DA recorded by the SDM on 01.03.95, where there is no mention of any demand for scooter or T.V. PW5 Smt.Lali, mother of the deceased stated that after the *gauna* ceremony, her daughters went to their matrimonial home and there, the appellant Jagdish and his mother Ram Piyari (deceased convict) used to taunt the deceased “*tere baap ne dahej mein kuch na diya*” and on this account Kamlesh was beaten regularly by both of them. She explained that aforesaid facts were told to her by the deceased herself. She also stated that about ½ month after the *gauna*, she and her husband talked to the father of the appellant, Pratap Singh, about the cruel treatment meted out to their daughter but he showed his helplessness by saying that he had no control over the affairs of the family. She further stated that Pratap Singh also told that his son had inflicted injury on the head of the deceased and when the deceased visited her 25 days prior to her death, there was head injury on her person and she told that it was caused by the appellant Jagdish for not bringing sufficient dowry. She also stated that she suspected that her daughter Kamlesh had been strangled to death by her husband Jagdish, as whenever he got angry, he used to catch hold and press the neck of the deceased.

11. PW6 Dr.K.Goyal is the Autopsy Surgeon. He conducted the post mortem on the dead body of the deceased. On examination, he found following injuries on the person of the deceased:

- “1. Small abrasion with bruising around over left side of upper lip of size 1 cm x 0.75 cm.

2. Abrasion 4.5 cm x 1.4 cm. over left side of front of neck joint lateral to midline about 2 cm below mandible transversely.
3. Diffuse bruising over front of neck between chin and thyroid cartilage about 5 cm x 4 cm area and small area of bruising over right side of thyroid cartilage.
4. Scratch abrasion about 7 cm x 0.25 cm placed transversally over left clavicular region.
5. Abrasion 1.5 cm x 1 cm over medial aspect of left fore-arms at upper part.
6. Three small abrasions about 1 cm to 1.5 cm apart each other of size 1.25 cm x 1 cm, 1 cm x 1 cm & 0.75 cm x 0.5 cm over left fore-arm at upper side & at posterior and postero-medial aspects.
7. Small abrasion 0.5 cm x 0.5 cm over left elbow posteriorly.
8. Small abrasion 1 cm x 0.25 cm over lower end of right arm posteriorly.
9. Bruise 2 cm x 1.25 cm over medial aspect of right arm at about junction of middle & lower third.

Internal:-

Head:- Scalp tissues and skull bones are intact. Meninges and brain matter intact and slightly congested.

Neck:- There are effusion of blood in neck layers on the left side below external injury(2) and above it and around thyroid cartilage and trachea. Clots also present into deeper layers on the sides of trachea.

Hyoid bone, thyroid cartilage, trachea cervical bones are intact. Tracheal mucosa slightly congested.”

12. In his opinion, all the injuries were ante mortem in nature, caused by blunt force application during the process of strangulation. He fixed the time of death as approximately 20 hours prior to the start of post mortem examination. He proved his report Ex.PW6/A.

13. The appellants in their statement under Section 313 Cr.P.C. denied the prosecution version. Their defence essentially is that the deceased Kamlesh had committed suicide by hanging herself with a Saree by tying its one end to the ceiling fan as she was depressed

because of the reason that even though both the sisters were married on the same day, her sister Bimla had conceived but she did not conceive.

14. The defence of the appellants did not find favour with the learned Trial Court and the learned trial Judge, relying upon the testimony of the prosecution witnesses, convicted all the three accused for the offences punishable under Section 302 IPC read with Section 34 IPC and Section 498A IPC.

15. Learned counsel for the appellant has submitted that the impugned judgment is based mainly upon the eye-witness account of the occurrence given by the purported eye-witness Bimla PW1. Her testimony is not reliable and her presence at the spot of occurrence is highly doubtful because of the following reasons:-

- (i) PW-16 IO S.I. Ishwar Singh, in his cross-examination has stated that Bimla, sister of the deceased, was not present when he reached. He had reached at 7.30 p.m. and as per the statement of Bimla, her parents had arrived at 6.00 p.m. He further stated that she was not available till the arrival of her parents, who, according to him arrived at 11 or 11.30 p.m.
- (ii) From 6.00 p.m. to midnight, she remained with her parents even then she neither disclosed this fact of killing to them nor to the police and thus withheld

this information, which shows that her statement was an afterthought and manipulated.

- (iii) Her statement was recorded on the next day i.e. 01.03.95 in the office of the SDM at Tis Hazari where Advocates in large number are available and it is also a fact that the complainant had obtained the service of a private counsel in the case.
- (iv) She was living separately with her husband at I-468, Mangolpuri whereas the occurrence took place at H-733, Mangolpuri, where the deceased was living with her husband. This fact is established by the statement of her husband u/s 313 Cr.P.C. as well as the statement of DW-3.

16. Learned counsel further submitted that once she is disbelieved, there is no evidence on record to support the charge under Section 302 IPC. As regards the charge under Section 498A IPC, it is submitted that the testimony of relevant witnesses PW1 Bimla, PW2 Madan Lal and PW5 Lali is vague and is devoid of specific instances of any demand or cruelty meted out to PW1 or the deceased Kamlesh. As regards the demand of T.V. and Scooter also, their testimony is inconsistent. Thus, the Trial Court has erred in concluding that the charge under Section 498-A IPC stood established beyond reasonable doubt.

17. Third contention of learned counsel for the appellant is that the learned Trial Court has fallen in error in rejecting the defence of the appellant that the deceased, because of depression, committed

suicide by hanging herself with a *Saree* tied with the ceiling fan. Expanding on the arguments, he submitted that the testimony of the Autopsy Surgeon Dr. K.Goyal PW6 does not rule out the possibility of a suicide. Dr. K.Goyal has opined that the death has resulted because of asphyxia consequent to strangulation and strangulation can be suicidal as well as homicidal. Thus, he has submitted that since two views are possible as per the testimony of Dr. K.Goyal, the learned Trial Judge ought to have given the benefit of doubt to the appellant because the possibility of suicide cannot be ruled out on the basis of the medical evidence.

18. Learned counsel for the State, on the other hand, has argued in support of impugned judgment. He submitted that PW1 Bimla Devi, PW2 Madan Lal and PW5 Lali have supported the case of the prosecution on all aspects and there is no reason to doubt their credibility. Thus, learned trial Judge has rightly found the appellant guilty.

19. On careful consideration of rival contentions, the first question which crops up for determination is whether the death of Kamlesh is the result of suicide or homicide. The defence taken by the appellant is that the deceased committed suicide because of depression by hanging herself from the ceiling fan with a *Saree*. If the aforesaid defence was true, then the dead body of the deceased

should have been found hanging from the ceiling fan. This, however is not the case. According to the Investigating Officer, when he reached at the spot, he found the dead body of Kamlesh lying on the floor and it is not anyone's case that someone untied the dead body from the ceiling fan and placed it on the floor. Learned counsel for the appellant submitted that a possibility cannot be ruled out that because of the weight of Kamlesh, the knot of *Saree* tied on the ceiling fan might have got untied and her body fell on the floor. This submission of learned counsel for the appellant is untenable, being in the nature of conjunctures and surmises. Otherwise also, if that had happened, then also the Investigating Officer should have found the *Saree* with its noose around the neck of the deceased. No such *Saree* was found at the spot of occurrence. Therefore, any possibility of suicide is ruled out. Thus, we are of the view that this is a clear case of homicide.

20. The next question for determination in this appeal is as to who caused the death of the deceased? To prove the charge of murder against the appellants, the prosecution is relying upon the testimony of PW1 Bimla, whose version, in our view, is unreliable because of the following reasons.

21. PW1 Bimla deposed that when she saw the appellant and his co-convicts trying to strangulate her deceased sister Kamlesh and tried to

intervene, her husband Laxmi Narain (deceased co-convict) took her to another room and confined her there. She also stated in her cross-examination that she remained confined in the room till 6:00 p.m. when her father opened the door of the room and rescued her from the confinement and on coming out of the room, she found the police there but neither did she give any statement to the police nor the police recorded her statement. Had this version been true, then under the natural course of circumstances, IO would have examined her, she being the member of the family of the deceased. Her aforesaid version, however is belied by PW16 SI Ishwar Singh who deposed that when he reached at the spot of occurrence, he did not find PW1 Bimla there. PW2 Madan Lal and PW5 Ms. Lali, the parents of the deceased have stated in their respective cross-examinations that they met their daughter Bimla in the police station at around midnight. If that was so, then, at the police station also, the Investigating Officer had an opportunity to examine and record the statement of PW1 Bimla but no such statement was recorded. PW16 SI Ishwar Singh also deposed that in the night intervening 28th of February, 1995 and 1st of March, 1995 at around 12:00 in the mid-night, he took the parents of the deceased and her relatives to the residence of the SDM. If that version is to be believed, then PW1 Bimla obviously must have accompanied the Investigating Officer to the house of the then SDM. It is strange that instead of recording the statement of eye-witness Bimla, the SDM preferred to record the statement of her mother-in-law PW5 Lali. As

per the then SDM Sh. Virender Kumar PW8, he recorded the statement of Bimla Ex.PW1/DA and that of Madan Lal Ex.PW2/DA in the next morning. There is no explanation on the record as to why despite of PW1 Bimla being available for making statement, her statement was not recorded earlier. The above circumstances raise strong possibility that PW1 Bimla is not an eye-witness and she has been introduced as a witness after deliberations during the night.

22. On careful perusal of the testimony of PW1 Bimla, the story put forth by her appears to be highly unnatural. She has stated that on 28th of February, 1995, even before the occurrence, she saw the appellant Jagdish beating her sister and when she protested, her mother-in-law Ram Piary (since deceased) took her to the market and asked her to wait near Oil Depot on the pretext that she was going back to the house for fetching the ration card which she had forgotten to bring and that the witness kept on waiting for her mother-in-law for 30-45 minutes and when she returned, she saw the appellant and his co-convicts strangulating the deceased. It does not appeal to reason that the appellant and his co-convicts, if they intended to kill the deceased, would have waited for 30-45 minutes for return of PW1 Bimla to create a witness against their unlawful act. We may note that as per the testimony of parents of the deceased, namely PW2 Madan Lal and PW5 Lali, the purported eye-witness PW1 Bimla met them in the police station on the fateful night. If their version is to be believed, then under the natural course of the circumstances, PW1

Bimla was expected to tell them about the role of the appellant and his co-convicts in the murder of the deceased. This, however, is not the case because PW5 Lali and PW2 Madan Lal in their statement Ex.PW5/A and Ex.PW2/DA respectively given to the then SDM only expressed their suspicion against the appellant, which is a clear indication that till the morning of 1st of March, 1995, PW1 Bimla had not told either the Investigation Officer or her parents that she had actually seen the occurrence. This by itself raises a strong doubt that PW1 Bimla is not an eye witness.

23. In view of the aforesaid inconsistencies and infirmities in the evidence of the prosecution, we do not find it safe to rely upon the uncorroborated testimony of PW1 Bimla, whose presence at the time of occurrence is highly doubtful. A possibility cannot be ruled out that as the parents of the deceased suspected the hand of the appellant Jagdish in killing of the deceased, they expected their son-in-law Laxmi Narain to make a statement against Jagdish and when Laxmi Narain refused to comply, they, after due deliberations introduced PW1 Bimla as a false witness to implicate the appellant. Thus, we find it difficult to sustain the conviction of the appellant under Section 302 IPC.

24. Charge under Section 498A IPC rests on the testimony of PW1 Bimla, sister of the deceased and the parents of the deceased, namely, PW2 Madan Lal, PW5 Lali. Learned counsel for the appellant has submitted that their testimony regarding dowry

demand and consequent cruel treatment to PW1 and her deceased sister Kamlesh is not reliable because it is too general and vague, without any reference to the specific instances. He has submitted that a careful perusal of the testimonies of PW1 Bimla and her parents would show that they have made material improvements in the testimony in Court as against their previous statements Ex.PW1/DA, PW2/DA and PW5/A made to the SDM. He has also submitted that if these witnesses can go to the extent of falsely implicating the appellants on the charge of murder, it is naturally expected of them to make the allegations of cruelty and dowry demand.

25. We find force in the above argument of learned counsel for the appellant. On careful perusal of the testimony of the above witnesses, it is apparent that they have generally made allegations of demand for dowry and beatings given to PW1 Bimla and her sister Kamlesh without detailing the specific instances with approximate dates and particulars. Admittedly, both the sisters were married to the appellant Jagdish and his brother respectively on 22.02.1992 and after a short stay at their matrimonial home, they returned to their parental home and stayed there till *gauna* ceremony on 17.06.1994. Kamlesh died on 28.02.1995. There is nothing on the record to suggest that during the intervening period, any complaint whatsoever was lodged either by PW1 Bimla or

Kamlesh or their parents with the police. PW2 Madan Lal has improved upon his earlier statement Ex.PW2/DA regarding the demand of TV and scooter and for that reason he was confronted with his statement Ex.PW2/DA. Further it is the case of the prosecution that after the occurrence, the statements of PW1 Bimla, PW2 Madan Lal and PW5 Lali were recorded by the SDM. All the three witnesses with regard to the demand for dowry and the cruel treatment meted out to PW1 Bimla and the deceased Kamlesh have made marked improvements in their testimony vis-a-vis their previous statements Ex.PW1/DA, Ex.PW2/DA and Ex.PW5/A recorded by the SDM. All of them were confronted with their statements but they did not come out with any cogent reason for the above inconsistency in their statement in the Court vis-a-vis their previous statements. Thus, we find it difficult to rely upon the testimony of above witnesses. In our view, a possibility cannot be ruled out that witnesses have made allegations regarding the dowry demand and cruelty because of the suspicion that Kamlesh has been killed by the appellants. Thus, we are of the view that the appellant is entitled to the benefit of doubt.

26. In view of the discussions above, we find it difficult to sustain the conviction of the appellant under Section 302 IPC read with Section 34 IPC and Section 498-A IPC. We, accordingly, set aside

the impugned judgment of conviction and acquit the appellant of the aforesaid charges, giving him the benefit of doubt.

27. The appellant Jagdish is in jail. He be released forthwith, if not required in any other case.

28. Appeal is disposed of accordingly.

AJIT BHARIHOKE, J.

FEBRUARY 26, 2010
akb

A.K. SIKRI, J.