

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

Judgment reserved on: October 06, 2010
Judgment delivered on: November 02, 2010

+ **CRIMINAL APPEAL NO.6/2005**

SMT. BISNO **....APPELLANT**

Through: Mr. R.S. Malik, Advocate with Dr. R.S.
Telhan, Advocate

Versus

STATE(GOVT. OF NCT OF DELHI) **.....RESPONDENT**

Through: Mr. Pawan K. Bahl, APP

WITH

CRIMINAL APPEAL NO.12/2005

SANJAY @ BABLOO **....APPELLANT**

Through: Mr. R.S. Malik, Advocate with Dr. R.S.
Telhan, Advocate

Versus

STATE(GOVT. OF NCT OF DELHI) **.....RESPONDENT**

Through: Mr. Pawan K. Bahl, APP

AND

CRIMINAL APPEAL NO.13/2005

MANOJ KUMAR **....APPELLANT**

Through: Mr. R.S. Malik, Advocate with Dr. R.S.
Telhan, Advocate

Versus

STATE(GOVT. OF NCT OF DELHI) **.....RESPONDENT**

Through: Mr. Pawan K. Bahl, APP

CORAM:
HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.

1. These appeals are directed against the judgment and the order on sentence in Sessions Case No.37/04 FIR No.163/95 P.S. Mangol Puri respectively dated 10.12.2004 and 15.12.2004 whereby the appellants have been convicted and sentenced for the offences punishable under Sections 498A and 304B IPC read with Section 34 IPC. Appellants, for the offence under Section 304B IPC have been sentenced to undergo RI for the period seven years, besides fine of ₹1,000/-, in default to undergo SI for the period of 30 days and for the offence under Section 498A to undergo RI for the period of one year, besides fine of ₹500/-, in default to undergo SI for the period of 15 days.

2. Briefly stated, case of the prosecution is that appellant Manoj was married to Sunita @ Sonu (hereinafter referred to as “deceased”) on 22.12.1991. After the marriage, the deceased Sunita started living with her husband and in-laws, namely, her father-in-law Mohinder Singh(since expired), mother-in-law Bisno and brother-in-law Sanjay at S-721, Mangol Puri, Delhi. The appellants were not happy with the deceased for bringing insufficient dowry and for that reason, they used

to taunt her and subject her to harassment and cruelty. They even raised demand for fridge and cooler and threatened to kill her due to non-fulfilment of their demand. On 14.03.1995 at about 8:30-9:00 am, the appellants allegedly quarrelled with the deceased in her matrimonial home on account of non-fulfilment of their demand for dowry and compelled her to set herself on fire. Under the pressure of the appellants, the deceased, after pouring kerosene oil on herself alighted herself and sustained burn injuries. She was removed to DDU Hospital at about 10:00 am, where her MLC was prepared. After the medical examination, she was referred to RML Hospital, where she ultimately breathed her last on 17.03.1995.

3. On 14.03.1995 at about 9:35 am, wireless operation, P.S. Mangol Puri informed the duty officer that Constable Ganesh of PCR has conveyed an information that one lady has died due to burn injuries at S-721, Mangol Puri near bus stand. This information was recorded as DD No.14A(Ex.PW6/A) and copy thereof was sent to ASI Om Prakash for verification. On the receipt of DD report, ASI Om Prakash along with Constable Umed Singh reached at House No.721, Mangol Puri. He found one blue colour plastic can lying in the front room of the side of the house, which was smelling of kerosene. There was kerosene oil on the floor and some burnt clothes were lying there. No eye witness was available at the spot and on inquiry, ASI Om Prakash found that the injured lady has been taken to some unknown hospital. In the meanwhile, information regarding the admission of the deceased in

burnt condition at DDU Hospital was received at the Police Station vide DD No.15A, which was also referred to ASI Om Prakash. On the receipt of said DD report, ASI Om Prakash reached at DDU Hospital and collected the MLC of injured Sunita. She was declared fit for statement by the Doctor. ASI Om Prakash recorded her statement Ex.PW6/C, wherein she stated that she was married to the appellant Manoj on 22.12.1991 and she had a son aged three years. She also stated that her mother was residing as a tenant in a house at Sultan Puri. Her husband Manoj, mother-in-law and father-in-law used to say that her mother was bad woman and they used to taunt her that she has not brought anything in her dowry and they also used to make demand for fridge and cooler from her. She further stated that on the previous night, her husband quarrelled with her and threatened to kill her and he did not allow her to leave the house. She claimed that on the fateful morning of 14.03.1995 at about 9:30-10:00 am when her mother-in-law and father-in-law had left for duty, her husband started quarrelling with her and he threatened to kill her by setting her on fire. On this, she poured kerosene oil on her and set herself on fire. Her husband Manoj did not try to put off the fire and kept on abusing her. She further claimed that she had set herself on fire because of harassment at the hands of her husband Manoj, mother-in-law Bisno and father-in-law Mohinder.

4. ASI Om Prakash is alleged to have informed SDM Punjabi Bagh about admission of the deceased in DDU Hospital in burnt condition.

The SDM, on the receipt of said information, visited the Hospital and recorded the statement of injured Sunita (Ex.PW3/B). In the said statement, Sunita claimed that she was married to the appellant Manoj three and a half years back. She further stated that her husband and mother-in-law used to taunt her for bring insufficient dowry. She also stated that in the morning of 14.03.1995, she was present in the house along with her husband, brother-in-law and mother-in-law, besides her child. In the morning, her husband, mother-in-law and brother-in-law pressurised her to pour kerosene oil over herself and set herself on fire and on this she set herself on fire.

5. After the registration of the FIR, ASI OM Prakash arrested the accused persons. On 17.03.1995, Sunita died in RML Hospital. SDM was informed about her death, who conducted inquest proceedings. Post mortem of the body of the deceased was got conducted and the report was obtained. On completion of investigation, the appellants and the deceased Mohinder were challaned and sent for trial.

6. The learned Additional Sessions Judge charged the appellants as well as late Mohinder Singh for the offences punishable under Section 498A and 304B IPC read with Section 34 IPC. The appellants as well as Mohinder Singh pleaded innocence and claimed to be tried.

7. In order to bring home the guilt of the appellants, prosecution examined eight witnesses in all. Though the prosecution had cited parents of the deceased Sunita, namely, Randhir Singh and Savitri Devi

as witnesses to prove the dowry demand and consequent harassment to the deceased, but both of them could not be examined as they had left the given address without any forwarding address.

8. The appellants as well as the other co-accused late Mohinder Singh were examined under Section 313 Cr.P.C. to explain the incriminating evidence appearing against them. They denied the prosecution evidence in totality and claimed that they had never harassed or tortured the deceased in connection with dowry demand and the deceased had suffered accidental burns while cooking food on the stove. No witness was examined in defence.

9. The learned Additional Sessions Judge, on consideration of the evidence, relying upon the dying declarations of the deceased i.e. Ex.PW5/A purportedly by recorded by Dr. Nabarun Moitra of DDU Hospital at the time of preparing the MLC, Ex.PW6/C recorded by the Investigating Officer, ASI Om Prakash and Ex.PW3/B recorded by the SDM PW3 Virender Kumar, found the appellants guilty of the offences punishable under Section 498A/34 IPC as well as Section 304B/34 IPC and convicted them on both the counts and sentenced them accordingly vide order dated 15.12.2004.

10. In order to bring home the guilt of the appellants under Section 304B IPC, the prosecution is essentially required to prove the following ingredients:

- (a) That the deceased was a married woman and she died within seven years of her marriage;
- (b) That her death occurred due to burns or bodily injury or otherwise than under normal circumstances;
- (c) That there was a demand for dowry and soon before her death, the deceased was subjected to cruelty or harassment; and
- (d) That such cruelty or harassment was caused by the husband or relatives of the husband of the deceased.

11. In order to establish the guilt of the appellants under Section 498A IPC, the prosecution is required to establish that the deceased was subjected to cruelty by her husband or the relative of the husband as defined in the Explanation to Section 498A IPC, which reads thus:

“498A. Husband or relative of husband of a woman subjecting her to cruelty.

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation-For the purpose of this section, "cruelty" means-

“(a) any wilful 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, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any 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 meet such demand”.

12. It is not disputed that the deceased was married to the appellant Manoj on 22.12.1991 and she died an unnatural death by burning within seven years of her marriage on 17.3.1995.

13. It is also not disputed that the other three appellants namely Mohinder Singh (since deceased), Bisno Devi and brother-in-law Sanjay @ Babloo are relatives of the husband of the deceased Manoj, being his parents and brother.

14. In order to establish that the deceased was subjected to harassment and cruelty by the appellants for and in connection with any demand for dowry, the prosecution is heavily relying upon the three purported dying declarations of the deceased. It may be noted that there is no other evidence on record to prove the necessary ingredients of the offences.

15. The first dying declaration as per the case of the prosecution is the statement of the deceased made to Dr. Nabarun Moitra at the time of preparation of her MLC Ex.PW5/A. The MLC has been proved by way of secondary evidence by Dr. N.Z.Farooqi (PW5), who has identified the hand-writing and signatures of Dr. Nabarun Moitra, wherein Dr. Nabarun Moitra has endorsed *"C/o Allegedly suicidal burns today. Pt. says she was compelled to immolate herself because of mental stress from her in-laws and husband as she had not brought adequate dowry"*.

16. The second dying declaration as per the prosecution was recorded by PW6 ASI Om Prakash in presence of Dr. Nabarun Moitra on 14.03.1995 itself, which statement is also the basis for registration of the case. In the said statement, it is recorded that the husband of the

deceased namely Manoj and her mother-in-law and father-in-law used to taunt her that she has not brought anything in her dowry and they used to pressurize her to bring a fridge and a cooler from her parents. On the night preceding the date of incident, her husband Manoj threatened to kill her and did not permit her to go out of the house. In the morning of 14.03.1995 at about 08.30-9.00 a.m. after her mother-in-law and father-in-law had left for duty, her husband started quarrelling with her and threatened to kill her by setting her on fire. On this, she poured kerosene over her and alighted herself. Her husband Manoj did not try to put off the fire and kept on abusing her. She also told the Investigating Officer that she had set herself on fire because of the harassment caused to her by her husband Manoj, mother-in-law Bisno and father-in-law Mohinder.

17. The third dying declaration is claimed to have been recorded by SDM PW3 Virender Kumar and it is proved as Ex.PW3/B wherein the deceased has purportedly stated that in the morning of the fateful day, she was present at her house. Her husband, brother-in-law and mother-in-law were also present, besides her child. Her husband and mother-in-law used to taunt her persistently for bringing insufficient dowry and used to say that what dowry could be expected from the people who were living in rented accommodation. She also stated that in the morning, her husband forced her to pour kerosene oil over her and alight herself and on being compelled by above three persons, she immolated herself. She clarified that apart from her husband and

mother-in-law, third person was her brother-in-law. When the SDM confronted her that she had told the doctor that she had immolated herself, she clarified that at that time, she was not under her complete senses, actually, she was forced by her husband that she should pour kerosene oil over her and alight herself and he had threatened "*Mai tere bhaiyon ko uthwa dunga*".

18. Learned Shri R.S. Malik, Advocate appearing on behalf of the appellants has submitted that the learned Additional Sessions Judge has committed a grave error in finding the appellants guilty of charges under Section 498A IPC and Section 304B IPC solely on the basis of the purported dying declarations of the deceased without seeking any independent corroboration. He contended that as per the case of the prosecution, there are four dying declarations, the first being in the form of the history given by the deceased to the Dr. Nabarun Moitra at the time of preparation of the MLC Ex.PW5/A, the second dying declaration being the statement of the deceased Ex.PW6/C made to the Investigating Officer in presence of Dr. Nabarun Moitra, third dying declaration being the statement of the deceased Ex.PW3/B recorded by the SDM on 14.03.1995 and the fourth dying declaration being the history recorded by the concerned Doctor in the death summary Ex.PW7/B of the deceased. Learned defence counsel contended that the learned trial court has failed to appreciate that aforesaid four dying declarations are inconsistent and at variance with each other. Therefore, it is not safe to place reliance upon the same without

independent corroboration, which is lacking in this case. Learned Shri R.S. Malik, Advocate further contended that the learned trial court also failed to take note of the fact that the deceased Sunita, as per the MLC, had sustained hundred per cent burns on her person and in that situation, she could not have been in a fit physical and mental state to make a clear and concise statement regarding the cause of her death. Learned counsel further submitted that the dying declarations are not reliable for the reason that though the deceased stated that she poured kerosene over her and alighted herself, yet neither as per the MLC Ex.PW5/A nor the post mortem report, smell and traces of kerosene were found on the body of the deceased, which circumstance makes the dying declaration doubtful, as such, possibility of deceased having accidentally suffered burns while working on stove cannot be ruled out, particularly when the stove was found at the spot. Thus, learned counsel for the appellants has strongly urged for acquittal of the appellants.

19. Learned APP, on the other hand argued in favour of the impugned judgment. He contended that the learned Trial Judge has rightly convicted the appellants on the charges under Section 498A and Section 304B IPC on the strength of the three dying declarations of the deceased which are consistent regarding the dowry demand and harassment of the deceased in connection with the dowry demand which compelled the deceased to immolate herself. Learned APP contended that non-production of the parents of the deceased as

witnesses during trial is of no consequence for the reason that they could not be produced during trial as they had left the given address without giving any forwarding address. Therefore, prosecution cannot be blamed for their non-production in the witness box.

20. The learned Additional Sessions Judge has dealt with the dying declarations of the deceased in Para 31 of the impugned judgment, which is reproduced thus:

“31. In the present case, the dying declarations referred to above, the deceased Sunita has consistently made a statement that she immolate herself as she was compelled to do so by her husband and her in-laws i.e. accused persons for non fulfilment of their illegal demand of dowry. While making the above dying declarations, her parents were not present with her and therefore, there is no possibility of her being tutored qua the accused persons by her parents before making the dying declarations under reference. These dying declarations were recorded by three different officers, first by a doctor, second by the Investigating Officer and last by the SDM and no enmity against any of these officers has been alleged or proved to have recorded a false and fictitious dying declaration. In other words, there is no iota of evidence on record to suggest that the above three dying declarations were not made voluntarily and truthfully. On this point, I am supported by a judgment of Supreme Court titled as Kanak Singh Raj Singh Vs State of Gujrat, 2003 Cri L.. Pg. 855.”

21. I am unable to agree with above finding of the learned Additional Sessions Judge. First dying declaration in the form of history of burn injury is claimed to have been made in presence of Dr. Nabarun Moitra. Prosecution has failed to examine Dr. Moitra to prove that said history was given by the patient herself. Therefore, in my view, purported dying declaration on MLC Ex.PW5/A is not proved. Otherwise also, failure of the prosecution to produce Dr. Nabarun Moitra as a witness has deprived the appellants of their valuable right to cross-examine

him and bring out the true facts on record, as such much reliance cannot be placed upon the purported dying declaration on the MLC Ex.PW5/A. Learned APP has contended that much significance cannot be attached to non-production of Dr. Moitra as a witness for the reason that he was not available as he had left the service. I find no merit in this contention because if the prosecution was really interested in producing Dr. Moitra as a witness, they could have checked the personal file of Dr. Moitra to find out his permanent address to locate him.

22. Thus, we are left with two dying declarations, one recorded in presence of the Investigating Officer ASI Om Prakash(Ex.PW6/C) and the other recorded in presence of the SDM, Shri Virender Kumar (Ex.PW3/B). On careful reading of the above dying declarations, it is apparent that the dying declarations are contradictory and inconsistent with each other. In the dying declaration Ex.PW6/C, the deceased had stated that her husband quarrelled with her on the previous night and threatened to kill her. In the morning also, her husband was quarrelling with her. She stated that by around 8:30-9:00 am, her mother-in-law and father-in-law had left the house for their duty and her husband quarrelled with her and threatened to kill her by burning and on this she poured kerosene on her and alighted herself. This version in the dying declaration Ex.PW6/C is at variance with the dying declaration Ex.PW3/B made by the deceased before the SDM wherein she had improved upon her earlier version and introduced the

presence of her mother-in-law, father-in-law and her brother-in-law in the house at the time of incident. Her version regarding the incident is also contradictory because in the dying declaration Ex.PW6/C, the deceased stated that her husband was quarrelling with her and threatened to kill her by burning and she reacted by pouring kerosene on her and alighted herself, whereas in the subsequent dying declaration made in presence of the SDM, the deceased changed her version and stated that in the morning, she was compelled by her husband, mother-in-law and brother-in-law to immolate herself. Above-noted variations in two dying declarations of the deceased are not reconcilable. Therefore, I do not find it safe to place reliance upon the dying declarations in absence of any other independent corroborative evidence. It is pertinent to note that as per the MLC Ex.PW5/A, the deceased was brought to the Hospital by her husband on 14.03.1995 at about 10:00 am i.e. within about an hour of the incident. This circumstance also goes in favour of the appellants because if they had intention to kill the deceased, the husband would not have immediately taken the deceased to Hospital for treatment.

23. No doubt, there is always a reason behind an act committed by a person. Committing of suicide by the deceased by immolating herself does raise a suspicion that the deceased was not happy with her matrimonial life. This suspicion, however, cannot be a substitute for the proof of the dowry demand or subjecting the deceased to harassment and cruelty i.e. the requisite ingredients which constitute

the offences under Section 498A and Section 304B IPC. Thus, under the circumstances, I find it difficult to sustain the conviction of the appellants on the aforesaid counts, based upon uncorroborated dying declarations of the deceased which are inconsistent with each other.

24. In view of the discussion above, I accept the appeals and set aside the impugned judgment and order on sentence. The appellants are acquitted of the charges under Section 498A and 304B IPC, giving them benefit of doubt.

25. The appellants are on bail. Their bail bonds and surety bonds stand discharged.

26. Appeals are disposed of accordingly.

(AJIT BHARIHOKE)
JUDGE

NOVEMBER 02, 2010

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