

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

Judgment reserved on: August 18, 2010
Judgment delivered on: October 26, 2010

+ **CRIMINAL APPEAL NO. 30/2005**

PYARE LAL

....APPELLANT

Through: Mr. Prag Chawla, Advocate

Versus

THE STATE (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. Pyare Lal, the appellant herein, has preferred this appeal against the impugned judgment and order on sentence respectively dated 18.11.2004 and 22.11.2004 in Sessions Case No.50/2002 FIR No.124/2002 under Section 498A, 304-B IPC read with Section 34 IPC P.S. Bara Hindu Rao, whereby the appellant has been convicted and sentenced accordingly for the offence punishable under Section 304B IPC and Section 498A IPC.

2. Briefly stated, case of the prosecution is that Ms. Suman (deceased) was married to the appellant Pyare Lal in the year 1998. Suman died an unnatural death on 15.05.2002. She was found hanging from the ceiling fan in her matrimonial house No.2685, Gali Shyamwali, Teliwara, Delhi. FIR in this case was registered on the basis of statement (Ex.PW4/A) made by Niranjana (PW4), brother of the deceased before the SDM on 15.05.2002. In the said statement, complainant Niranjana alleged that his sister Suman was married to the appellant Pyare Lal and sufficient dowry was given in her marriage. Appellant and his co-accused persons namely his father Kanwar Singh and brother Laxman were not satisfied with the dowry brought by Suman. Six months after the marriage, they started making the demand for money and in connection with said demand, they also started harassing and subjecting the deceased to cruelty and that the appellant used to beat the deceased after consuming liquor and also on occasions, used to snatch the child of the deceased from her. Complainant Niranjana expressed his suspicion that his sister was killed by the appellant, his father Kanwar Singh and brother Laxman. He also claimed that he was informed about the incident on telephone and that before that, Pyare Lal had also telephonically intimated at his house that Suman has committed suicide by hanging.

3. On completion of formalities of investigation, the appellant, his father Kanwar Singh and his brother Laxman were challaned and sent

for trial for the offences punishable under Section 498A and 304B IPC read with Section 34 IPC.

4. The learned Additional Sessions Judge charged the appellant, his father and his brother for the offences punishable under Section 498A/34 IPC and Section 304B/34 IPC. Appellant as well as his co-accused pleaded not guilty to the charge and claimed to be tried.

5. In order to bring home the guilt of the appellant and his co-accused persons, prosecution examined as many as 17 witnesses. Material witnesses, however, are PW1 Sri Kishan, a neighbour who has not supported the case of the prosecution and the relatives of the deceased, namely, her mother Sunhari Devi (PW3), her brothers Niranjana (PW4) and Deen Dayal (PW5) and her uncle Raju Singh (PW11).

6. The appellant Pyare Lal as well as his co-accused persons were examined under Section 313 Cr.P.C. to afford them an opportunity to explain incriminating evidence appearing against them. They denied the prosecution version in its entirety and claimed that they have been falsely implicated. The appellant and his co-accused persons examined Rakesh Bhardwaj, Section Officer, Indian Council for Agriculture Research, who deposed on the basis of the attendance register maintained at the office to prove the alibi of accused Laxman Singh.

7. Learned Additional Sessions Judge vide impugned judgment has found the appellant guilty of offences punishable under Section 498-A and Section 304-B IPC.

8. Before adverting to the submissions made on behalf of the appellant, it would be useful to have a look upon Section 304-B IPC and Section 498-A IPC, which read thus:

“[304B. Dowry death.---(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

*Explanation:---*For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]”

“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”.

9. On reading of Section 304-B IPC, it is clear that in order to succeed on this charge, the prosecution is 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.

10. Similarly, in order to succeed on the charge under Section 498-A IPC, the prosecution is required to establish that the deceased was married to the appellant and that she was subjected to cruelty as defined in the Explanation to Section 498-A IPC by the appellant.

11. It is not disputed by the appellant that the deceased was his wife and she died an unnatural death within seven years of her marriage. The appellant, however, denies that he demanded dowry from the deceased or her parental family or that he subjected the deceased to cruelty or harassment on account of non-fulfilment of his demand for dowry. Thus, only issue which is required to be determined in this appeal is whether the appellant demanded dowry and he subjected the deceased to cruelty or harassment on account of non-fulfilment of that demand.

12. Learned counsel for the appellant has submitted that the impugned judgment is based upon surmises and conjectures and it suffers from inherent contradictions. In support of this contention, learned counsel for the appellant took me through the impugned judgment and submitted that on one hand, learned Additional Sessions Judge has found the testimony of PW3, mother of the deceased, PW4 and PW5, brothers of the deceased contradictory and unworthy of credence, at the same time, the learned Additional Sessions Judge has held the appellant guilty of having demanded money and subjecting the deceased to cruelty or harassment due to non-fulfilment of demand on the basis of assumptions and presumptions. This finding, according to the learned counsel for the appellant, cannot be sustained. Learned counsel for the appellant submitted that once the court came to the conclusion that testimony of PW3, PW4 and PW5 was contradictory and unreliable, it ought to have held that the prosecution has failed to establish beyond doubt that the appellant demanded dowry and subjected the deceased to cruelty on account of non-fulfilment of demand. Thus, he urged the case of the prosecution must fail on both the counts i.e. charges under Section 498-A IPC and Section 304-B IPC.

13. Learned APP on the other hand, has argued in support of the impugned judgment. He contended that the submissions of learned counsel for the appellant are based upon wrong reading of the judgment. According to him, there is no contradiction in the impugned judgment. Learned Additional Sessions Judge has only found the

evidence of the prosecution regarding demand of ₹ 51,000/- unworthy of credence but it has come to the conclusion on the basis of other evidence that the appellant did demand dowry after the marriage and subjected the deceased to cruelty and harassment. Thus, according to the learned APP, the learned Trial Judge has rightly convicted the appellant for the offence under Section 498-A IPC and Section 304-B IPC.

14. Learned Additional Sessions Judge has discussed the evidence of PW3, PW4 and PW5, namely, the mother and brothers of the deceased in Para 11 to Para 16 of the impugned judgment, which is reproduced thus:

“11. PW-4 was the brother of the deceased. It was on his statement recorded before the SDM Ex. PW-4/A that this case was registered. He has stated that his sister was married to Pyare Lal and Laxman is her brother and Kanwar Singh is her father-in-Law. Marriage had been performed according to the capacity of the parents of Suman and for the first six months Suman was happy in the matrimonial home but thereafter demand of Rs.51000/- was made and since this unlawful and heavy demand could not be fulfilled by PW-4 and his family, the accused persons started beating and harassed her; they used to beat her almost daily. Suman's Dever Laxman had got a motor cycle in his marriage and the accused person insisted that Suman should also bring a motor cycle or in lieu thereof Rs.51,000/- should be paid to them. PW-4 has stated that about 3-4 months prior to death of his sister accused Pyare Lal and Laxman had come on a motor cycle in their village and made a demand of Rs.51,000/- and his mother Sunehari Devi had paid them a sum of Rs.2000/-. Pyare Lal and Laxman while leaving threatened that if demand of Rs.51,000/- is not fulfilled they would kill Suman. PW-4 deposed that on 15/05/02 he received a telephonic call from Pyare Lal & accused Laxman called his son Yogender wherein they informed them on the telephone that they had strangled and killed Suman. PCR was informed. PW-4's statement was thereafter recorded by the SDM.

12. In his cross examination PW-4 has stated that he is working in Delhi Police and on that day he was on duty from 8.00 a.m to 8.00 p.m with the Dy. Prime Minister Shri L.K.Advani. He has admitted that he has not mentioned about the demand of Rs.51,000/- to the SDM. He has also admitted that he has not mentioned in his statement to the SDM that 3 to 4 months prior to the death of his sister accused persons had come on a motor cycle to their village and made a demand of Rs.51,000/-. He has also admitted that in his statement to the SDM he had not told him that he had received a telephone call from Pyare Lal and Laxman that they had strangled his sister. He has admitted that his family lives in the village and he visits there once or twice in a month. He has admitted that Laxman has a house situated at Babu Nagar, Karawal Nagar, Delhi and Laxman resides there but he used to go to Teliwara which was the matrimonial home of his sister Suman and Pyare Lal. He has admitted that he had not gone to the house of his sister for the last 5-6 months. He has admitted that his sister had never disclosed to him about any harassment suffered by her and that is why no complaint had been lodged by him in the police station. He has admitted that this is a second marriage of Pyare Lal. In his cross examination PW-4 has further stated that a demand of Rs.51000/- was made by the accused for purchasing a plot and this was in the month of February,2002 when they had gone to the village on his motor cycle.

13. Sunehari Devi, mother of the deceased has been examined as PW-3. She has on oath stated that one month after the marriage Suman had told her that the accused persons were making a demand of Rs.51,000/- and on this count she was beaten and harassed by the accused persons. PW-3 has stated that on the “chuchak” ceremony when a son had been born to Suman, Rs.11,000/- in cash, clothes and other sweets had been given to the accused person but they were not satisfied and they persisted in harassing Suman and two months later she told her mother about this continuous harassment. PW-3 has stated that Pyare Lal and Laxman had come to their village on a motor cycle and demanded Rs.20,000/- stating that they had suffered a loss but since PW-3 could not pay such a heavy amount, they paid a sum of Rs.2000/- to them but while leaving the accused person threatened that Suman would face dire consequences in case their demand is not met of Rs20,000. This version of PW-3 is in contrast with the version of PW-4 who has stated that a demand of Rs.51,000/- was made by the accused persons when they had come to the village on motor cycle. PW 3 stated that a demand of Rs.20,000/- was made; she has further stated that this demand was made by the accused persons as they had suffered a loss in their business; PW-4 stated that this demand was made in February, 2002 by the accused

persons for the purposes of constructing a house. These versions are contrary and contradictory.

14. In her cross examination PW-3 has admitted that she cannot tell the date when the marriage of her daughter was solemnised but she denied the suggestion that she does not know what are thousand means or two thousand means and she is not clear on these counts. PW-3 has stated that she does not remember the exact dates when the dowry demands were made by the accused but she denied the suggestion that her daughter was happy with the accused persons. PW-4 has stated that his sister remained happy in the matrimonial home for 6 months but PW-3 has stated that one month after marriage her daughter Suman came back and told PW-3 that a demand of Rs.51,000/- was made.

15. Deen Dayal brother of Suman has been examined as PW-5. He has stated that they had given dowry to Suman according to their status and 6 months after her marriage the accused persons made a demand of Rs. 50,000/- as younger brother of Pyare Lal, Laxman who had got married after the marriage of his sister had received a motor cycle in the dowry and that is why they had pressed Suman for bringing Rs.50,000/- for the motor cycle and since this demand could not be fulfilled they continuously beat Suman. This version of PW-5 appears to be incorrect as admittedly in the version of PW-4 it has come that Laxman had got married one year after the marriage of Suman and how these demand of Rs. 50,000/- in lieu of motor cycle could be made 6 months after the marriage of Suman when Laxman was still not married is unexplained and these versions of PW-1, PW-4 and PW-5 on this score do not inspire confidence.

16. PW-5 has further deposed that on the birth of a son of their sister again demand of Rs.20,000/- was made but they paid only Rs.2,000/-. He has deposed that two months prior to the death of his sister which would be in the month of March, 2002, accused Pyare Lal and Laxman had come to their house and made a demand of Rs.20,000/- and in case this demand is not met with their sister would have to face dire consequences. This version of PW-5 is in contrast to the version of PW-4 who has stated that in February, 2002 demand of Rs.51,000/- was made and this was for the purpose of constructing their house; whereas PW-5 has stated that demand of Rs.20,000/- was made by the accused persons as they had suffered a loss in their business”.

15. On the reading of the above analysis of the evidence done by the learned Additional Sessions Judge, it is obvious that learned Additional

Sessions Judge was not convinced with the evidence given by the mother and brothers of the deceased i.e. PW3, PW4 and PW5, as such, he came to the conclusion that the versions of the witnesses are contradictory and contrary and their version did not inspire confidence. Despite of finding the version of star witnesses, namely, PW3, PW4 and PW5 unreliable, in Para 23 of the impugned judgment, learned Additional Sessions Judge has observed thus:

“23. In a case of circumstantial evidence the prosecution must prove all the links in the chain and there must only be a single hypothesis which must point to the guilt of the accused. In this case Suman was found lying dead on 15/05/02 at her matrimonial home where she was living admittedly with Pyare Lal. Bruises and injuries on her person speak volumes that she had been beaten by her husband and thereafter he had hanged her from the ceiling fan to set up a false case of suicide. Suman had related her woes of illegal demand of dowry upon her to her parents and all the PWs have categorically recited to this effect; merely because particular date and time when these demands were made has not been given specifically by the witness cannot be a ground to disbelieve the version of the prosecution as keeping in view the traumatic state of mind of such witnesses who have to recount and depose about the unhappy and sad incident and the emotional up-heavel of such PWs while recalling the incident and the witnesses coming into the witness box more than two years after the date of the incident all have to be kept in mind by the court while deciding such cases. Iron rod and the pipe also seized from the spot point a finger of guilt towards the accused. Testimonies of all the witnesses are clear and categorical that demand of money including demand of RS.50,000/- was made by the accused and even on the ceremony of “Chuckak”, the accused persons were not satisfied with what they had received and two months prior that is sometimes in February, 2002 accused Laxman and Pyare Lal had gone to the house of parents of Suman and again repeated their demand of RS.20,000/- ” whereupon only Rs.2,000/- could be paid up by Sunehari Devi and while leaving they threatened that if this balance amount is not paid up Suman will have to face dire consequences.”

16. This conclusion of learned Additional Sessions Judge cannot be reconciled with the finding in earlier part of the judgment that the testimony of PW3, PW4 and PW5 does not inspire confidence because of various contradictions. On careful perusal of evidence on record, I find that the learned Trial Judge was right in concluding in earlier part of the judgment that the testimony of PW3 to PW5 did not inspire confidence. It is significant to note that both PW4 and PW5, in their statements made in the court, have stated that two or three months prior to the death of the deceased, appellant and Laxman had visited their village and demanded money and while leaving the village, they threatened that if their demand was not fulfilled, the deceased will have to face dire consequences. Their testimony, however, in this regard regarding the quantum of demand is contradictory as PW4 Niranjan has stated that they demanded ₹ 51,000/- on that visit, whereas according to PW5, they demanded ₹ 20,000/- on that visit. Be that as it may, the fact remains that both of them had deposed that while leaving the village, the appellant and Laxman had threatened that in the event of non-fulfilment of their demand, the deceased Suman shall face dire consequences. PW3 Sunhari Devi, mother of the deceased has gone a step further by stating that the threat extended by the appellant and his brother Laxman was that if the demand was not met, they would kill Suman. This story put-forth by the witnesses regarding demand for dowry appears to be highly unnatural and does not inspire confidence for the reason that had such a threat been given

by the appellant and his brother, PW3 to PW5 would definitely have reported the matter to the police, particularly when PW4 Niranjana, brother of the deceased Suman, admittedly is ASI in Delhi Police. Not only this, PW4 Niranjana, who is the complainant in this case has made material improvements in his testimony vis-a-vis his earlier statement Ex.PW4/A made to the SDM on the date of incident wherein there is only a vague allegation that six months after the marriage of Suman(deceased), the appellant, his father and his brother started making frequent demands for money. In the said statement, PW4 Niranjana did not specify the amount of demand made by either of them nor he mentioned about the visit of the appellant and his brother to their village and demand of money made by them two or three months prior to the death of the deceased. PW4 Niranjana, when asked, in his cross-examination, stated that he had disclosed all the facts pertaining to the case to the SDM and he informed the SDM about the demand of ₹ 51,000/-. He was then confronted with the statement Ex.PW4/A and he admitted that there is no mention of demand of ₹ 51,000/- by the appellant in the said statement, but, he did not give any explanation for that lapse. He also admitted in his cross-examination that his sister did not tell him about her strained married life nor she informed their mother, in his presence about the beating or harassment at the hands of the accused persons. From this admission, it is doubtful if PW4 is a witness pertaining to the cruelty or harassment caused to his sister by the appellant. Thus, it is not safe to rely upon his testimony.

17. On reading of observation of learned trial Judge in above noted para 23 of the impugned judgment, it appears that while finding the appellant guilty of subjecting the deceased to cruelty in connection with the demand of dowry, the learned Additional Sessions Judge was influenced by two factors i.e. the presence of bruise marks on the body of the deceased and also the recovery of an iron pipe from the spot. Ex.PW6/B is the seizure memo vide which the said iron pipe was seized. On reading of the seizure memo, it appears that as per the case of prosecution, said pipe was used for breaking open the door. PW6 Tek Chand, cousin brother of the deceased who is also a witness to the seizure of iron pipe deposed that on 15th May 2002 when he reached at the house of the deceased along with the complainant Niranjana Singh and Jitender, he found the door of the room broken. This also indicates that the iron pipe seized at the spot perhaps was used for breaking open the door. That being the case, the possibility of the deceased having been beaten with the iron pipe is removed. Further, the presence of bruise marks on the body of the deceased by itself is not sufficient to conclusively find that she was beaten by the appellant before her death. The above circumstances do raise suspicion of some foul play but suspicion is not a substitute for proof. There is a long distance between 'may be' and 'must be' which the prosecution was required to establish.

18. In view of the above, I do not find it safe to rely upon the testimony of the prosecution witnesses. Thus, I find that the

prosecution has failed to prove beyond doubt that the appellant demanded dowry or subjected the deceased to cruelty or harassment because of non-fulfilment of demand. Thus, an essential ingredient to constitute offence under Section 498-A IPC as well as Section 304-B IPC is lacking in this case. As such, I find it difficult to sustain the conviction of the appellant on the aforesaid counts.

19. I accordingly accept the appeal and set aside the impugned judgment and order on sentence and acquit the appellant, giving him benefit of doubt.

20. Appellant is on bail. His bail-cum-surety bond stands discharged.

21. Appeal is disposed of accordingly.

(AJIT BHARIHOKE)
JUDGE

OCTOBER 26, 2010
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