

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

% *Judgment Reserved on : 10th March, 2010*
Judgment Pronounced on: 16th March, 2010

+ **CRL APPEAL NO.713/2007**

SORAN SINGH Appellant
Through: Mr.S.N. Gaur, Advocate

versus

STATE Respondent
Through: Ms. Richa Kapoor, A.P.P.

CRL APPEAL NO.706/2007

RAKESH Appellant
Through: Mr.S.N. Gaur, Advocate

versus

STATE Respondent
Through: Ms. Richa Kapoor, A.P.P.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J.

1. Rakesh husband of deceased Mamta and his father Soran Singh have been convicted for the offence punishable under Section 498A IPC as also for the offence punishable under Section 304-B IPC.

2. That deceased named Mamta committed suicide in her matrimonial house somewhere around 10:00 PM at 19.05.2005 is not in dispute and learned counsel for the appellant very fairly conceded to said fact. The deceased hung herself from the neck using a saree and the post mortem report Ex.PW-9/A duly proved by Dr.Arvind Kumar PW-9 and the opinion of the said doctor establishes the fact of Mamta suffering a suicidal death. That Mamta and Rakesh got married on 13.02.2005 is also not in dispute, being a fact deposed to by Mohan Singh PW-2, Maya Devi PW-4, Rai Singh PW-6 and Purshotam PW-3 being the brother, mother, father and uncle (fufa) of Mamta and not disputed by the appellants when they were examined under Section 313 Cr.P.C.

3. Thus, out of the three ingredients required to be proved by the prosecution entitling the prosecution to the benefit of the presumption contemplated by Section 304-B IPC and Section 113-B of the Indian Evidence Act 1872; shifting the burden upon the appellants to prove their innocence, two ingredients stand admitted, being that, the deceased died otherwise than under normal circumstances and that the death was within seven years of the marriage.

4. The debate before the learned trial Judge and in the appeal was, whether it was established that soon before her death the appellants subjected the deceased to cruelty in

relation to a demand for dowry. That is to say, whether the suicide by the deceased was driven by cruelty towards the deceased to extract dowry from her parents.

5. We note that two other co-accused, being Rakesh's sister and her husband, have been acquitted by the learned trial Judge.

6. The parents of the deceased as also her brother and her uncle have all deposed that the appellants used to trouble Mamta on account of dowry and that inspite of whatever was given to Mamta and Rakesh at the time of marriage, a demand for a two-wheeler conveyance and Rs.1 lac persisted. They deposed that Mamta used to frequently complain to them of being harassed by the appellants. Muted inculpatory statements qua Rakesh's sister and her husband were also made by the witnesses.

7. Save and except pointing out to us the difference in the language used by the four witnesses qua the demand of dowry, nothing of substance was shown to us to discredit the testimony of the witnesses save and except to urge that keeping in view the social profile of the parties the social custom of not trying to resolve the dispute with the elders of the community sitting as Panchas not having been resorted to, evidences that no such problem existed.

8. The said argument merits no deep consideration for the reason Rakesh and Mamta got married on 13.02.2005 and within seven months of the marriage Mamta committed suicide on 19.09.2005. So short is the time span that there is every reasonable probability that before inviting the intervention of community elders, the family members of Mamta tried to reason it out with the appellants. It does happen that before exposing the family problems to the world at large, an attempt is made to evolve in house consensus.

9. The testimony of the four afore-noted witnesses establishes beyond a shadow of doubt that Mamta was subjected to harassment on account of dowry. But whether the same were mere taunts or took the form of physical beating is not clear for the reason the four witnesses have deposed that Mamta used to cry before her family members stating that she was being harassed on account of non-payment of Rs.1 lac and a two-wheeler scooter. What acts constituted harassment have not been narrated.

10. Thus, the problem which needs to be addressed is, what is the effect of an incident which took place, concerning Mamta and her father-in-law, probably 3-4 days prior to 18.09.2005?

11. It be noted that Mamta committed suicide at around 10:00 P.M. on 19.09.2005.

12. The incident, as told by Mamta to her father, brother and uncle pertains to Mamta being sexually harassed by Soran Singh, her father-in-law. The three witnesses have used different expressions while deposing in court as to what Mamta told them, but each of them speaks unanimously and so does Mamta's mother that all of them went to the matrimonial house of Mamta on 18.09.2005 in the evening because Mamta had contacted her parents over the telephone and had urgently required them to meet her at her matrimonial house. As per the three witnesses, Mamta told them that her father-in-law had attempted, (to use the colloquial expression) to act fresh with her. As deposed to by Mohan Singh PW-2, Mamta's brother, as told to all of them by Mamta, her father-in-law had caught her hand. Rai Singh PW-6, Mamta's father, also deposed that Mamta complained of her father-in-law catching hold of her hand and molesting her. Purshotam PW-3 has also deposed likewise but with a further addition that when appellant Soran Singh was confronted with what Mamta told them, Soran Singh stated that he had no evil intention and was only looking at a mole on Mamta's face.

13. All the four witnesses unanimously deposed that on 19.09.2005, in the morning, Mamta and her brother Mohan Singh PW-2 spoke over the phone and Mamta told her brother that her in-laws were in a hurdle and were discussing

something and she feared that if they learnt that she had once again spoken with her parents they may beat her.

14. The same day around 10:00 in the night Mamta committed suicide.

15. It may be noted that the socio economic profile of Mamta's family and that of her in-laws is not too healthy. Her father-in-law Soran Singh is a junk dealer. Her father Rai Singh is a rickshaw puller. The families live in a slum area.

16. It is apparent that something had disturbed Mamta to the extreme. What was that?

17. Section 304-B IPC reads as under:

“304-B 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”

18. *'Soon before her death was subjected to cruelty or harassment'* is the lynch pin of the third limb of Section 304-B IPC.

19. Proximity of time, between harassment or cruelty motivated by the desire of dowry and death, is not to be measured with reference to hours or days. As held in the decision reported as Kans Raj vs. State of Punjab 2000 CrLJ 2993 (SC) the expression '*soon before*' is not synonymous with the term '*immediately before*' and is opposite of the expression '*soon after*' as used and understood in illustration (a) of Section 114 of the Evidence Act.

20. If the cruelty or harassment and demand for dowry being the foundation for the cruelty or harassment, is shown to have persisted, it shall be deemed to be soon before death unless intervening circumstances show the non existence of such treatment or any other cause which compelled the victim to take a drastic step terminating her life.

21. Evidence brought on record in the instant case points towards that the deceased was under immense mental strain on 18th on account of some overt acts directed towards her and committed by her father-in-law which she perceived as an affront to her dignity.

22. But the question arises what would be the position in law if it is shown that the demand for dowry and harassment

on account thereof was also persistently a source of torture to Mamta. The question then to be answered would be whether the ammunition which exploded was the harassment due to dowry demand or whether the ammunition which exploded was the act of sexual harassment or whether the act of sexual harassment was the spark and what exploded as ammunition was the harassment on account of dowry?

23. Nobody can answer this question with 100% accuracy save and except Mamta herself and since we cannot call her from her grave, we must answer the question with reference to what is treated by the law of evidence as proved.

The Indian Evidence Act defines the expression proved as:-

“Proved”- “A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.”

24. What is proved in the instant case i.e. if we may say so with respect to the prudent man, is that Mamta was continuously harassed on account of a persistent demand for dowry and additionally her father-in-law had an evil eye on her; at-least Mamta thought so. Thus, it can safely be said that Mamta's troubled mind which led her to commit suicide was certainly influenced by the fact that she was being harassed for dowry and thought that to get herself rid of the

problem, was to leave the world of living. The act of sexual harassment by her father-in-law would be, at best, an aggravating circumstance but would not mitigate the gravamen of the seriousness of dowry demand and harassment to fulfill the demand.

25. Thus, the prosecution has successfully established the commission of the offence under Section 304-B IPC by the appellants. We concur with the conclusion arrived at by the learned trial Judge, but not on the process of reasoning followed by the learned trial Judge.

26. On the issue of sentence we find that in the decision reported as 1994 6 SCC 727 Hem Chand vs. State of Rajasthan the Supreme Court held that the legislature has provided minimum sentence of 7 years for the offence punishable under Section 304-B IPC, which may extend to imprisonment for life and that the extreme sentence should be in rare cases and not in every case.

27. Noting that the acts of Soran Singh the father-in-law of Mamta did contributed to the tension of Mamta, requiring Rakesh to be visited with a sentence less than his father, affirming the conviction of the appellants for the offence punishable under Section 304-B IPC, we are of the opinion that the sentence imposed upon the appellants requires to be

modified, in that, Rakesh should suffer RI for 7 years and his father Soran Singh for 10 years.

28. The appeal stands disposed of modifying the sentence imposed upon the appellants. Appellant Soran Singh shall suffer RI for a period of 10 years for the offence punishable under Section 304-B IPC and shall suffer imprisonment for a period of 3 years for the offence punishable under Section 498-A IPC. Appellant Rakesh shall suffer RI for a period of 7 years for the offence punishable under Section 304-B IPC and shall suffer imprisonment for a period of 3 years for the offence punishable under Section 498-A IPC. The sentences upon both the appellants shall run concurrently. The appellants shall be entitled to the benefit of Section 428 Cr.P.C.

29. The appellants are in jail. We direct a copy of this decision be sent to the Superintendent, Central Jail, Tihar to be made available to the appellants.

**(PRADEEP NANDRAJOG)
JUDGE**

**(SURESH KAIT)
JUDGE**

**MARCH 16, 2010
'nks'**