

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

+ **Crl. A. No. 131/2001**

% Reserved on: 03rd December, 2010

Decided on: 21st February, 2011

PRAKASH WATI & ANR. Appellants

Through: Mr. N.Hariharan, Advocate

versus

STATE OF DELHI Respondent

Through: Mr. Pawan Bahl, APP with ASI Jagat
Singh, PS Lahori Gate.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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

MUKTA GUPTA, J.

1. On 31st May, 1990 an information was received at PS Civil Lines vide DD No.11A that one Smt. Varsha Gupta, wife of Ravi Gupta was admitted in

Tirath Ram Hospital after consuming poison. On the Investigating Officer SI R.R. Khatana reaching the hospital, he collected the MLC of Varsha Gupta and found that she was declared dead.

2. The deceased was married to Ravi Gupta, the Appellant No. 2 on 1st November, 1987. The SDM who inspected the scene of the crime and the dead body found that she died under suspicious circumstances after consuming some poisonous substance. On the basis of the typed statement of Usha Devi, the mother of the deceased, the SDM directed that FIR be registered. Smt. Usha Devi PW1, alleged that the in-laws of the deceased Varsha Gupta sent a message through their landlord who was a friend of the father of the deceased, that they wanted ₹5 lakhs to be spent in the wedding of the Appellant No. 2, however, they were ready to consider the proposal of Varsha as their daughter-in-law for a lesser amount, since Varsha was beautiful. Moreover, they knew that the girl's side always spends more than what they state, so they were hopeful of getting more than Rupees Four Lakhs in the marriage of their son with Varsha. Within 3-4 days of the marriage, the mother-in-law of the deceased, Smt. Prakash Wati started taunting her daughter-in-law that she had brought insufficient dowry and that she had expected a diamond set but her mother has given only one gold set. Though initially Varsha used to come regularly to her parental home, however, later

on Varsha was sent to her parents only on important family occasions and she was threatened that in case she would go to her parents' house, she would not be allowed to enter their house. Varsha would call her only when she was alone and not in the presence of her in-laws. The Appellant Ravi Kumar complained about the quality of goods given in marriage. She was taunted and beaten by her husband frequently. After the birth of Varsha's daughter Chitra, the in-laws of Varsha used to taunt her to bring more money so that the girl could be educated abroad. They also demanded things for her Mundan to be held on the 30th May, 1990. Varsha called up two days prior to her death and told them to do whatever best they could do for the Mundan of the girl. On the statement of Usha Devi, a case FIR No. 146/1990 under Sections 304B/498A IPC was registered and pursuant to the investigation, a charge sheet was filed. The Appellants were charged for offences punishable under Section 304B/498A IPC. Raghubir Singh, the father of Appellant No. 2, expired before the framing of charge. Smt. Prakash Wati and Ravi Kumar were convicted for offences punishable under Section 306 IPC and Section 498A IPC and awarded sentence of rigorous imprisonment for a period of seven years and a fine of ₹25,000/- and in default of payment of fine to further undergo simple imprisonment for further six months for offence under Section 306 IPC and rigorous imprisonment for a period of two years with a fine of

₹25,000/- and in default thereto to further undergo simple imprisonment for six months for offence under Section 498A IPC. The fine imposed on the Appellants has been paid. This judgment of conviction dated 6th February, 2001 and order of sentence dated 17th February, 2001 are impugned in the present appeal.

3. When the appeal came up for hearing, learned counsel for the Appellants pointed out that the Appellant No. 1 Prakash Wati expired on 26th June, 2005 which fact was verified by the State and thus, the appeal qua Appellant No. 1 stood abated. Thus, in the present appeal the only Appellant before this Court is Ravi Kumar, the husband of the deceased.

4. Learned counsel for the Appellant contends that the entire prosecution case hinges on the testimony of three witnesses; PW1 Usha Devi the step mother of the deceased, PW8 Shiv Kumar, the father of the deceased and PW9 Kishore Kumar an employee of PW8. As against this, the Appellant has examined five defence witnesses including himself and the testimony of the defence witnesses has gone un rebutted. It is the grievance of learned counsel for the Appellant that the learned Trial Court has not even considered the testimony of the defence witnesses. Reliance is placed on *State of Haryana vs. Ram Singh, 2002 (2) SCC 426* to contend that the defence witnesses are

also entitled to the same treatment and they are also equally trustworthy as the prosecution witnesses. The defence of the Appellant is that the Appellant's family even prior to the marriage had purchased premises in the name of Smt. Varsha Gupta, the deceased and the entire money for the same was given by his family. Besides this property, his father and mother had given gifts amounting to ₹20,000/-, ₹10,000/- etc. on a number of occasions which were duly deposited in her bank account and also shown in the income tax returns. He also stated that even at the time of birth of their daughter, his mother Smt. Prakash Wati gave a sum of ₹20,000/- to his daughter as a gift, besides other relations and guests who also gave cash amounts as gift and a complete list thereof was prepared and the cash so collected was deposited in her bank account and accounted for in the income tax returns. That immediately after Varsha consumed something, he and his parents took her to Tirath Ram hospital and even the bill of the hospital was paid by them. He has also exhibited photographs of the Mundan ceremony and other occasions showing cordial relations between his family and Smt. Varsha. According to the Appellant, who appeared as DW5, the step mother of Varsha, Smt. Usha Devi demanded ₹10 lakhs and the possession of the property which was in the name of Varsha for not filing the present case and on their refusal, she implicated them in this false case.

5. Learned counsel for the Appellant next contends that the mother-in-law of the Appellant i.e. PW1 was 19 years younger to her husband and was almost the age of his wife Varsha. Varsha were five brothers and sisters, out of whom one brother and the mother of Varsha died under mysterious circumstances and one more brother committed suicide. The other sister of Varsha was unmarried and there was a history of depression in the family.

6. It is contended that even looking at the prosecution case, the same is inherently improbable and full of contradictions. The allegations leveled by PW1 that the elder sister demanded ₹20,000/- as customary gifts at the time of Mundan of daughter Chitra is an improvement as the same was not stated in the detailed typed statement to the SDM on the basis of which the FIR was registered. PW8 Shiv Kumar, father of the deceased does not say anything about it and he gives a totally different version that a day prior to the Mundan of Chitra, Varsha called up and told her mother that the Appellant demanded ₹20,000/-. This statement of PW8 is also an improvement as nothing of this kind was stated in the statement before the SDM. It is stated that there are three allegations of demand of dowry; firstly, that soon after the marriage the mother-in-law of the deceased demanded a diamond set; secondly, an Air Conditioner and thirdly at the time of Mundan ceremony and all the three allegations are material improvements as no such allegations are levelled in

the complaint to the SDM. Even as per the recovery memo Ex.PX-9, the jewellery which the deceased was wearing at the time of the death, shows that she was wearing far more jewellery than what was given to her by her parents at the time of marriage. The allegation that an Air Conditioner was given is belied by Ex. PW8/D1 which is a declaration of gift duly signed by PW8 wherein he has stated that he had gifted an old Air Conditioner to his daughter valuing about ₹5,000/-, and that the gift was made out of natural love and affection and without any consideration. PW8 in his statement could not give any date or time of any specific demand of dowry made to him by the Appellant. Even the demand of car as alleged is an improvement and has been made for the first time in the Court. Relying on *Hasan Murtza v. State of Haryana*, JT 2002 (1) SC 539, it is contended that if material improvements are made in the evidence, then the testimony of the witness is unreliable and no conviction can be based thereon.

7. It is contended by learned counsel for the Appellant that the learned Trial Court applied a straight jacket formula to convict the Appellant for the offence punishable under Section 498A IPC and thereafter applying the presumption under Section 113A Evidence Act, convicted him for offence punishable under Section 306 IPC. In *Ramesh Kumar vs. State of Chhattisgarh*, JT 2001 (8) SC 599, their Lordships held that the expression

used in Section 113A of the Evidence Act is ‘may presume’ and not ‘shall presume’ and this is a rebuttable presumption. Thus, for convicting for offence punishable under Section 306 IPC, it is the duty of the prosecution to discharge the initial burden of showing that the cruelty meted out to the woman is the one which drives her to commit suicide. To raise the presumption, the Court has to consider all the other circumstances of the case. The conduct of the Appellant in calling the doctor immediately and taking her to the hospital is not in consonance with that of guilt. Reference is also made to *Girdhar Shankar Tawade vs. State of Maharashtra, 2002 (5) SCC 177* to contend that in order to bring home a charge under Section 498A IPC, the willful act or conduct ought to be the proximate cause. The legislative intent is clear enough to indicate in particular reference to Explanation (b) to Section 498A IPC that there has to be a series of acts in order to constitute harassment within the meaning of Explanation (b). Even a reprehensible conduct, cannot, bring home the charge of offence under Section 498A IPC against the Appellant and it is thus prayed that the Appellant be acquitted of the charges framed or in the alternative be released on the period of imprisonment undergone which is around 19 months.

8. Learned APP for the State on the other hand contends that the prosecution case hinges on the testimony of PW1, PW8, PW9, PW10, PW16

and PW20. The fact that the deceased committed suicide is not disputed. The willful conduct of the Appellant was such that it abetted the deceased to commit suicide. The learned Trial Court in para 26 of the judgment has given its conclusion for convicting the Appellant for the offences committed. The demand and torture to the deceased has been proved by the testimony of PW1 and PW8, and thus, the conviction of the Appellant for offences punishable under Section 306 IPC and 498A IPC is justified. There being no merit in the appeal, the same be dismissed.

9. I have heard learned counsel for the parties and perused the record. The issue that calls for determination is whether on the facts of the present case, the deceased was subjected to such a willful conduct which was of a nature as was likely to drive her to commit suicide, i.e., was there abetment of suicide by the Appellant. As per the evidence on record, the prosecution in the form of statement of PW1 Usha Devi and PW8 Shiv Kumar has proved a demand of dowry in relation to marriage as they were expecting that more than ₹4 lakhs would be spent for the marriage.

10. The fact that the Appellant was not satisfied with the dowry and gave beatings to the deceased two or three times in relation thereto is proved from the testimony of PW1 corroborated by the testimony of PW8 and PW9. The

learned Trial Court has acquitted Appellants for charge under Section 304B IPC on the ground that the demands made were customary in nature and thus it cannot be said that the deceased was harassed in relation to demand of dowry soon before her death. In the present case, no doubt that the defence has proved that the deceased was given gifts including gift of property even prior to marriage and thereafter cash which were duly deposited in her bank accounts, but does this conduct show that there was no demand of dowry? It does not reflect that there was no demand of dowry in relation to marriage or that there was no harassment on account thereof. The demand of dowry and harassment for non-fulfillment of the same, are not necessarily dependent upon the financial status of the parties or to the fact that gifts etc. were given by them to the deceased. There is unimpeachable evidence on record which unmistakably proves the demands made by the Appellant. There is yet another fact which is highly unnatural in the present case. Though it is common that whenever gifts are received, people deposit the same in the bank accounts to show in the income tax records as gifts but even getting a declaration of gift of an Air Conditioner purported to be an old one is highly unnatural and to this extent I find force in the statement of PW1, that in 1988 when the summer season was about to start, the in-laws of Varsha demanded an Air Conditioner which was given by her parents and to avoid any legal

tangle, the parents of Ravi Kumar asked them to duly execute a gift deed. The fact of the matter is that this document is relied upon by the defence and it corroborates the prosecution case that an Air Conditioner was given by the parents of the deceased. The contention of the learned counsel for the Appellant that the deceased had a family history of depression has no relevance without any documentary proof of the deceased suffering from the said ailment.

11. On 30th May, 1990, admittedly, the mundan ceremony of the daughter of the Appellant was performed. As per PW1 it was the sister-in-law of the deceased who called the brother of the deceased and told to send goods worth ₹20,000/- for the mundan ceremony otherwise consequences will not be good for Varsha. She further stated that the deceased had called her two days prior to her death at about 5:30/5:45 a.m. and asked to make suitable expenditure for the mundan ceremony. As per PW8 father of the deceased, his wife had told him that the deceased had called her one day prior to her death and stated that the accused Ravi, his mother and father were demanding ₹20,000/- as dowry at the time of mundan ceremony of her daughter. PW1 to whom Varsha had spoken two days prior to the mundan ceremony, does not state the demand of ₹20,000/- at the instance of the Appellant and his parents. Thus, in view of the fact that PW1 does not implicate the Appellant, the prosecution

has not been able to prove the role of the Appellant in relation to the alleged demand at the time of the mundan ceremony of the daughter of the deceased.

12. In the instant case, the acts attributed to the Appellant cannot amount to instigation under Section 107 IPC. Though, the Appellant had tortured and given beatings to the deceased, however, there was no proximate link between death of the deceased and the harassment and beatings caused. Howsoever reprehensible the conduct of the Appellant may be, the same cannot amount to instigation under Section 107 IPC. As held above in view of the contradictions in the statements of PW1 and PW8, it can be safely held that the prosecution has not been able to prove the role of the Appellant with regard to the alleged demand at the time of mundan ceremony. The incident witnessed by PW9 Kishore Kumar, an employee of PW8 was a year prior to the death, when the Appellant's mother was holding hair of the deceased and the Appellant was beating her. There is no allegation of beating or torture between this incident and the mundan ceremony, nor is there any allegation of a continuous willful conduct of such a nature as would drive the deceased to commit suicide. Thus, in absence of any role attributable to the Appellant in the form of any overt act or omission proximate to the death because of which the deceased was instigated to end her life or a continuous harassment to the extent that

drove her to commit suicide, the conviction of the Appellant under Section 306 IPC cannot be sustained.

13. However, the torture, and beatings given by the Appellant to the deceased and the harassment meted out to her have been proved by the testimonies of PW1, PW8 and PW9. It has been proved that the conduct of the Appellant was willful and of such a nature which caused grave injury and danger to life, limb and the health of the deceased. Hence the conviction of the Appellant under Sec. 498A IPC is upheld.

14. The Appellant was sentenced to Rigorous Imprisonment for a period of two years with a fine of ₹25,000/- for offences punishable under Section 498A IPC. The Appellant has undergone imprisonment for a period of 19 months and paid the fine. The Appellant has faced the ordeal of trial and the appeal for more than 20 years. It would be thus in the interest of justice if the sentence of imprisonment for offence punishable under Sec. 498A IPC is reduced to the period already undergone.

15. The appeal is partly allowed. The Appellant Ravi Kumar is acquitted of the offence punishable under Section 306 IPC. His conviction for offence punishable under Section 498A IPC is maintained, however the sentence is

reduced to the period of imprisonment already undergone and the fine paid.

The bail bond and the surety bond are discharged.

(MUKTA GUPTA)
JUDGE

FEBRUARY 21, 2011
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