

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

+ **CRL.A. 163/2001**

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Decided on: 18th May, 2011

BRIJ MOHAN

..... Appellant

Through: Mr. Hameed S.Shaikh, Mr. Nitin Yadav
and Mr. Vijender Singh, Advocates.

versus

STATE

..... Respondent

Through: Mr. Pawan Bahl, APP

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 29th June, 1995 an information was received at PS Karol Bagh regarding admission of one Sarita, wife of Brij Mohan in Khera Hospital by her husband after consuming something. On reaching Khera Hospital, the Investigating Officer collected the MLC in which the doctor had written

“patient brought dead”. The body was preserved as the parents of the deceased Sarita were residing in Bombay.

2. On 1st July, 1995 the SDM recorded the statement of Smt. Satyawati, the mother of the deceased. According to the Complainant, her daughter was married to Brij Mohan on 12th July, 1989 in Delhi. The deceased remained upset continuously after her marriage and even complained of being tried to be burnt by her husband and brother-in-law. Due to the misbehaviour meted out to Sarita, the Complainant and her husband lodged a complaint against the husband of Sarita in the police station and took her along with them to Bombay where she stayed for about 1¼ year. Thereafter, the in-laws of Sarita came to Bombay and apologized and took her back. The in-laws of Sarita used to demand dowry but they did not complain to the police regarding the demand of dowry. Thereafter, their daughter resided separately with her husband for three years at Rani Bagh where also the Appellant tried to throw her down from the flat. On 29th June 1999, they received the information regarding the incident on telephone from Brij Mohan, and thereafter, she along with her children came to Delhi. Since her husband was in Merchant Navy and was posted on his duty, he could not come to Delhi. She suspected that her daughter had been killed due to old disputes and demand of dowry and demanded action against the mother-in-law, sister-in-law and the husband

of the deceased. On the basis of the statement of the mother, FIR under Section 498A/304B/34 IPC was registered. After completion of investigation a charge sheet was filed. Since the Viscera report of the deceased gave negative test for common poison, PW3 Dr. B.L. Meena, who conducted the postmortem opined that no definite opinion could be given with regard to the cause of death. To the Court question during trial, that the death may be natural, he replied, 'May be'. Even PW8 Dr. R.K. Sippy in his cross-examination stated that he was not able to deny that in the particular incident, the death could be due to epilepsy seizure.

3. Thus, both the Appellant and his mother were acquitted of the charge under Section 304B IPC. Since the Appellant and the deceased were residing separately for more than 3½ years prior to the incident and the allegations leveled against the mother-in-law were vague in nature, the learned Trial Court acquitted her of the charge under Section 498A IPC also. However, the Appellant was convicted for commission of offence punishable under Section 498A IPC. By the time the trial concluded, the Appellant had undergone two years 11 months and 7 days in judicial custody. Thus, the Appellant was awarded the sentence for the period already undergone by him and a fine of ₹5,000/-, failing which he was directed to further undergo simple imprisonment for one month. The fine was deposited by the Appellant. It is

this judgment of the Additional Sessions Judge convicting the Appellant for the offence punishable under Section 498A IPC and sentencing him to the period of imprisonment already undergone which is in challenge in the present appeal before this Court.

4. Learned counsel for the Appellant submits that there is no allegation of harassment in relation to demand of dowry nor is there any allegation of harassment which would have driven the deceased to commit suicide. As per PW1 the father of the deceased, there is no allegation of any demand except that ₹38,000/- were demanded and as per PW1 it was clear that the same was a loan. Out of this, ₹33,000/- had been paid back by the Appellant. The present case is not one for harassment for demand of dowry and at best it can be said that there was merely an expectation of receiving dowry. Even in the statement of PW6 the mother of the deceased, there are no specific allegation that there was any demand for dowry and the gifts that were given were customary gifts. It is contended that where there is no demand and the gifts are given of the own free will of the family of the deceased, the same cannot fall within the purview of dowry demand. Moreover, the statement of PW6 before the Court was contrary to the statement made before the SDM and there were substantial improvements thus, discrediting her version. From the evidence of PW5 and PW7, it is evident that there were no witnesses who

directly saw any act of cruelty. The defence has confronted the witnesses with number of letters written by PW1 to the Appellant proved as Ex. PW1/D1 to Ex. PW1/D10 in which there is not even a whisper of any cruelty. Rather the letters show love and affection between the parties. Even in the year 1995, PW1 had sent greetings wishing happy birthday to the Appellant. Reliance is placed on *Rajbabu and Another vs. State of M.P.*, AIR 2008 SC 3212, *Bhairon Singh vs. State of M.P.*, AIR 2009 SC 2603, *Hazarilal vs. State of Madhya Pradesh*, 2009 (13) SCC 783 and *Vijay vs. State of Maharashtra*, AIR 2009 SC 1217. It is thus prayed that the Appellant be acquitted.

5. Learned APP for the State on the other hand states that besides the demand of ₹38,000/- in June 1994 for which PW1 was clear that he was giving the money as loan out of which ₹33,000/- were taken back from the Appellant, there were prior demands as well. On 18th August, 1990 when the deceased was to deliver the child and PW1 along with PW6 had come to Delhi, the deceased showed them bruises and contusions on the body caused by the beatings given by the Appellant, the brother-in-law, mother-in-law and the sister-in-law. On that day she stated that these persons used to beat her once in a week to 10 days and demanded ₹30,000/- in cash, failing which they threatened to kill her, whereupon a complaint was lodged at PS Karol Bagh on 23rd August, 1990. In his testimony PW5 the brother of the deceased has

stated that there was continuous misbehaviour and torture meted out to the deceased. He further stated that even after returning back after living with them for 15 months, she was forced to take a separate house in Sarai Rohilla with her husband and they gave colour TV, Fridge, Scooter, Mixer Grinder, ceiling fan and other articles to the Appellant on his demand from time to time. He also stated that he had come to attend the marriage around 20th June, 1995 when the Appellant besides stating that the wrist watch which was given to him in the marriage was not working, also demanded money to which PW5 stated that they were not in a position to give, on which he abused his sister and beat her. PW6 the mother of the deceased has also exhibited her earlier complaint dated 23rd August, 1990 as Ex. PW6/A wherein it was stated that soon after the marriage there were demands of dowry and the deceased was beaten for non-fulfillment thereof and also about the incident which happened in front of her on the 22nd August, 1990. In the statement before the Court, PW 6 also stated that her daughter showed her injury marks on her back due to the beating given to her by the Appellant by his belt. She has reiterated her allegations to the SDM vide Ex.PW6/B and stated about the continuous harassment caused to her daughter for non-fulfillment of dowry. PW6 also stated about the fulfillment of the demand relating to juicer mixer, small colour TV and a scooter made by the Appellant. According to her even

the rent of the house at Rani Bagh was paid by them. It is thus prayed that the present appeal be dismissed being devoid of merit.

6. I have heard learned counsel for the parties and pursued the record. From the statement of PW1 who is the father of the deceased, no allegation of cruelty is borne out. It is clear that after the allegation of harassment levelled against the in-laws at the time of birth of the child, the deceased was taken to Bombay for 15 months. Thereafter, when she shifted back, it is alleged that the deceased and her husband was thrown out by the mother-in-law. Thus the husband and wife were staying away from the mother-in-law since then. The mother-in-law has already been acquitted of the charges under Section 498-A/304 IPC. It is alleged that in June, 1994 Brij Mohan called PW1 at Bombay and demanded some money to purchase a plot in Delhi and PW1 gave ₹38,000/- in cash clearly stating that it was strictly a loan. Further in the cross-examination, PW1 he has accepted that he has received back ₹33,000/- out of the loan amount of ₹38,000/-. This witness was cross-examined by the learned APP for the State. In the cross-examination by the learned counsel for the Appellant, he has admitted that even after separation, Brij Mohan and his daughter had left their son at Bombay. This witness in his cross-examination has accepted that there was no demand ever made from him directly for ₹38,000/- which was a loan amount. A perusal of the letters Ex.PW1/D1 to

Ex. PW1/D10 written by PW1 to the Appellant show cordial relations between them. There is no grievance about the ill-treatment meted out to the deceased much less any demand of dowry.

7. PW5 Chander Shekhar Yadav is the brother of the deceased. As per this witness, the husband, mother-in-law and sister-in-law used to beat the deceased and taunt her that she had not brought sufficient dowry and cash. He has further stated that towards the end of 1990 and beginning of 1991, his sister was forced to take a separate house in Sarai Rohilla along with her husband. Then we gave colour T.V., fridge, scooter, mixer grinder, ceiling fan, box type diwan, water filter and other articles to Brij Mohan on his demand. PW 5 in cross-examination has admitted that these demands were not made to him. This witness has stated that only on the basis of talks between his father and sister he came to know about the demands being made, however, his father i.e. PW 1 in his testimony has not mentioned any of such things or demand being raised by the appellant. In his cross-examination, PW5 has admitted that the articles were given of their own free will and that from PW 5 nothing was demanded except a wrist watch and ghee. The witness is also confronted with his previous statement and it is found that the testimony of the witness is full of embellishments & improvements.

8. PW2 Udham Singh is a relative of deceased who has deposed that the in-laws of Sarita, the deceased used to harass her and specifically her mother-in-law. He has further stated that whenever the Appellant used to meet his mother then he used to harass the deceased for dowry, also in this regard a complaint was lodged by the father. Whereas there is no such allegation made by the father of the deceased PW 1. Thus, the testimony of PW1, PW5 & PW2 is only hearsay evidence and cannot be relied upon to sustain the conviction of the Appellant.

9. PW6 Satyawati is the mother of the deceased she has also reiterated the allegations made by her husband and the son that the deceased was harassed by her in-laws and has stated that when the son was born to the deceased, she was ill-treated & not given proper food. This witness in her previous statements has nowhere mentioned about deceased being treated barbarically or tortured by the Appellant & in her cross-examination she was duly confronted with her previous statement wherein allegations were leveled only against the in-laws of her daughter and not the husband. The allegations against the Appellant have surfaced primarily before the Court which are full improvements and embellishments.

10. A perusal of the earlier complaint dated 23rd August, 1990 Ex. PW 6/A on which much reliance has been placed shows that the only allegation

levelled is that when her daughter came from the hospital after the birth of the son, she was threatened and she was given stale rice and dal with lot of red chilli in it and she was made to eat cold and dry chapatti. On her asking, Brij Mohan as to the quality of food served to a nursing mother, the mother of Brij Mohan squeeze the stomach of her daughter and ran to beat the child. In the said complaint there is no allegation of demand of dowry. Moreover the allegations as set out in the complaint are more against the mother-in-law who has already been acquitted. It is only in the Court that PW6 has stated about the allegations of dowry against the Appellant. No prior complaint or any contemporaneous document has been placed on record to elucidate the demand of dowry and harassment by the Appellant. The version of PW6 is full of improvements and embellishments which cannot be relied upon. The version of PW2 and PW5 is based on hearsay evidence. PW 1 in his testimony has levelled no allegation against the Appellant as analyzed above.

11. Hence, the impugned order is set aside. The Appellant is acquitted of the charge punishable under Section 498A IPC for which he has been convicted. The appeal is accordingly disposed of.

(MUKTA GUPTA)
JUDGE

MAY 18, 2011/vn