

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

Judgment reserved on: February 02, 2011
Judgment delivered on: February 09, 2011

+ **CRIMINAL APPEAL NO.1072/2008**

RAJA @ RAM PAL

....APPELLANT

Through: Ms. Rakhi Dubey, Advocate/Amicus
Curiae.

Versus

STATE (NCT) OF DELHI

.....RESPONDENT

Through: Ms. Fizani Husain, 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. This appeal is directed against the impugned judgment dated 06.12.2007 in Sessions Case No.337/06 FIR No.184/04 under Section 498A/304B/34 IPC P.S. New Usmanpur and the consequent order on sentence dated 14.12.2007 whereby the appellant Raja @ Rampal was convicted for the offences punishable under Section 498A and 304B IPC and sentenced under Section 304B IPC to undergo RI for the period of

10 years and also to pay fine of ₹10,000/- , in the event of default, to undergo RI for a further period of six months and for the offence under Section 498A IPC, to undergo RI for the period of two years and to pay a fine of ₹10,000/-, in default of payment of fine, to undergo RI for a further period of six months. It was ordered that substantive sentences awarded to the appellant shall run concurrently.

2. Briefly put, case of the prosecution is that Ms.Beena (deceased) was married to the appellant Raja @ Rampal in the year 2000. After marriage, she initially stayed at her matrimonial home at Sonia Nagar, Beheta Hazipur, Loni, Ghaziabad. In March 2005, she along with the appellant, shifted to House No.H-32, Street No.5, Brahm Puri, Delhi. In the morning of 24th June, 2004, the deceased Beena was found hanging from the ceiling fan in her tenanted room. The landlady Ms.Susheela (DW-2) informed the police on telephone and aforesaid information was recorded at P.S. Usman Pur at 11.52 a.m. as DD No.7A(Mark-3). Copy of the DD report was entrusted to ASI Kamal Singh (PW-3) who left for the spot of occurrence with Constable Shiv Raj(PW-4). ASI Kamal Singh found the deceased hanging from the ceiling fan with her `chunni'. One drum was lying at the spot of occurrence. SDM was informed and Crime Team, as well as photographers, was called. Photographs of the spot of occurrence were taken from various angles and other formalities of investigation were done. SDM Shri R.K.Chauhan (PW-11) conducted the inquest proceedings. He also recorded statements of

the parents of the deceased, namely, PW-1 Rajwati and PW-2 Raj Bahadur.

3. Raj Bahadur, father of the deceased in his statement to the SDM claimed that the deceased was married to the appellant Raja @ Rampal in the year 2000. She was not liked by the appellant and his parents as she had a dark complexion. Father of the deceased claimed that appellant and his parents started harassing the deceased six months after the marriage. She was turned out of her matrimonial home after 2 years of marriage and she reached her parental house alone. On this, he (the complainant) called the in-laws of the deceased to resolve the matter and on that visit, they demanded ₹10,000/- from him. To ensure the well being of his daughter, he arranged and paid ₹10,000/- to them and they took the deceased Beena to her matrimonial home. He further stated that 15 days before the incident, the appellant demanded ₹10,000/- from him on telephone saying that he needed money to meet the expenses of marriage of his sister. The appellant also threatened that in case demand was not met, he would send the deceased to her parental home. Complainant Raj Bahadur further stated that he showed his inability to meet the demand and on 24th June, 2004 at about 3.30 p.m., the appellant informed him on telephone that deceased Beena had committed suicide by hanging. He expressed his suspicion against the appellant and his parents. On the basis of aforesaid statement of Raj Bahadur(Ex.PW-2/B), formal FIR was

registered against the appellant and his parents under Sections 498A and 304B IPC and the investigation was taken up.

4. During investigation, rough site plan was prepared, post-mortem of the dead body was got conducted, statements of witnesses were recorded and the accused persons were arrested. On completion of investigation, the appellant and his parents were challaned and sent for trial.

5. All the three accused persons were charged by learned Additional Sessions Judge for the offences punishable under Sections 498A and 304B IPC, to which they pleaded not guilty and claimed to be tried.

6. In order to bring home the guilt of the appellant, prosecution has examined 13 witnesses including PW1 Rajwati and PW2 Rajbahadur, parents of the deceased to establish the dowry demand and the harassment and cruelty meted out to the deceased by the appellant for and in connection with the dowry demand.

7. The appellant, when examined under Section 313 Cr.P.C., denied the prosecution version and claimed to be innocent. He submitted that the deceased was not keeping well, therefore, she committed suicide due to frustration. In defence, the appellant examined two witnesses. DW1 Murali Lal is the employer of the appellant, who at the relevant time was running a readymade garment business at Karol Bagh. He has stated that on the relevant day, the appellant had come to work at around 10:30 am and he left the work with his permission after getting

a telephone call about the death of his wife by hanging. He also stated that in the month of June, 2004, the appellant had sought assistance from him in respect of the marriage of his sister. DW2 Susheela has testified that the appellant along with his wife shifted to a room in their house as tenants and during their stay, they were residing peacefully. She also stated that on the day of incident, the deceased had cooked food for the appellant and he left for his job. Thereafter, the deceased told her that she was not feeling well and she advised her to take rest. At around 11:00 am, her daughter-in-law Priyanka went upstairs and found that the deceased was hanging from the ceiling fan with the help of a *chunni*. On being informed by her daughter-in-law Priyanka, she informed the Police Control Room. She denied the suggestion given by learned APP that the deceased committed suicide on account of torture caused to her by the appellant and his parents.

8. The learned Additional Sessions Judge, relying upon the testimony of the parents of the deceased, convicted the appellant on charges under Section 498A as well as 304B IPC.

9. Case of the prosecution is essentially based upon the testimony of PW1 Rajwati and PW2 Rajbahadur. It would be useful to have a look upon their testimony before adverting to the submissions made by the respective parties.

10. PW1 Rajwati is the mother of the deceased. She stated that the deceased was married to the appellant on 09.03.2000. The appellant

and his parents used to harass the deceased on account of dowry and once they made a specific demand of ₹10,000/-. Said demand was fulfilled by her husband Raj Bahadur and the deceased was sent back to her matrimonial home with the appellant. One and a half years later, appellant, in collusion with his parents, again demanded ₹10,000/- from them, which they could not fulfil and one and half months thereafter, they received information that their daughter Beena has died.

11. PW2 Rajbahadur, father of the deceased stated that on 09.03.2000, deceased was married to the appellant Raja. After the marriage, the appellant and his parents started harassing and taunting the deceased on account of her dark complexion and they used to say that appellant would desert her. On many occasions, the deceased was sent to her parental home alone. Witness further stated that the appellant demanded ₹10,000/- from him, failing which he threatened to leave the deceased and on this he arranged ₹10,000/- and fulfilled the demand. Thereafter, the appellant took the deceased with him. One and half years later, the appellant and his parents again demanded ₹10,000/-, but he refused to fulfil the demand because of financial incapacity. One and a half months later, he received information from the accused person on telephone that Beena has died due to hanging. He stated that his statement Ex.PW2/B was recorded by the SDM.

12. Learned Ms. Rakhi Dubey, Advocate for the appellant referred to the judgment of Supreme Court in **Durga Prasad & Anr. Vs. State of M.P.**, (2010) 9 SCC 73 and contended that in order to succeed, prosecution was required to prove not only the dowry demand but also that the deceased was subjected to harassment and cruelty prior to her committing suicide. Learned counsel contended that the learned Additional Sessions Judge has failed to appreciate that the appellant is a victim of suspicion and testimony of PW1 Rajwati and PW2 Rajbahadur does not inspire confidence. Learned counsel contended that the prosecution has failed to prove either the demand for dowry or cruelty or harassment caused to the deceased, as such the appellant is entitled to acquittal.

13. On the contrary, learned APP has canvassed in favour of the impugned judgment and submitted that the trial court has rightly appreciated and relied upon the testimony of the parents of the deceased, namely, PW1 Rajwati and PW2 Rajbahadur to conclude that there was a dowry demand and the deceased was subjected to harassment and cruelty for and in connection with the dowry demand. Thus, she has urged for dismissal of the appeal.

14. I have considered the rival contentions and perused the material on record. On careful appreciation of the evidence, I find that the evidence of the star witnesses, namely, PW1 Rajwati and PW2 Rajbahadur, parents of the deceased, does not inspire confidence. If

they are to be believed, only two demands were made by the appellant and his parents, both demands being for ₹10,000/- each. So far as testimony regarding the demand of dowry is concerned, it is vague and neither of the witnesses has given the dates or months in which the demands were made. PW2 Rajbahadur in his statement Ex.PW2/B made to the SDM, which is the basis for registration of FIR, stated that he met the first demand of ₹10,000/- after borrowing money from someone. In the said statement or in his testimony, PW2 neither disclosed the name of the person from whom he borrowed the money nor has the said person been examined by the prosecution to corroborate the version of PW2 Rajbahadur. Further, the version of above witnesses appears to be unnatural to be believed for the reason that both of them in their respective statements Exhibits PW2/B and PW1/A made before the SDM had stated that the appellant and his family members did not like the deceased because of her dark complexion and for that reason they used to harass her. According to PW2 Rajbahadur, the appellant and his parents used to harass and beat the deceased and they started doing so six months after her marriage with the appellant, whereas according to PW1 Rajwati, they started harassing and beating the deceased two months after the marriage. If they are to be believed, harassment of the deceased started before the first demand was met. Both PW1 and PW2, in their cross-examination have admitted that at the time of marriage, no demand for dowry or cash was made by the appellant or his family

members. If the appellant and his parents had not demanded dowry at the time of marriage, it is highly improbable that they would have started demanding money 1½ years after the marriage. As regards second demand of ₹10,000/-, both PW1 and PW2 in their testimony have stated that said demand was made 1½ months before the death of the deceased. Neither of the witnesses has deposed about the purpose for said demand. Therefore, even if aforesaid version is believed, it falls short of proving that the second purported demand was a demand for dowry. Thus, I find it difficult to rely on the testimony of PW1 or PW2, which does not inspire confidence.

15. Coming to the issue of harassment and cruelty meted out to the deceased. In this regard PW1 Rajwati in her cross-examination testified that 1½ years after the marriage of the deceased, she came to know from the deceased herself that she was subjected to harassment by the appellant and his parents. This version is contradictory to the version given before the SDM in her statement Ex.PW1/A, wherein she stated that the appellant and his family members started harassing the deceased two months after the marriage. Further, PW1 Rajwati stated in her cross-examination that the deceased used to write about harassment in her letters addressed to her (witness). No letter, however, has been produced to corroborate the aforesaid version. Therefore, in my view, even the story of cruelty and harassment caused to the deceased is doubtful.

16. Ex.PW7/A is the post mortem report of the deceased. On perusal of post mortem report, it transpires that no external injury, except ligature marks on the neck of the deceased, was found. This circumstance rules out any possibility of the deceased having been subjected to physical torture by the appellant shortly before her death. Further, landlady Susheela (DW2), who is an independent witness, has categorically stated that the appellant shifted to a room in their house along with the deceased in the month of March, 2004 and during their stay in the house, they were residing peacefully in their tenanted accommodation. She denied the suggestion that the appellant and his parents used to torture the deceased, which pushed her into committing suicide or that they demanded dowry from her. I find no reason to disbelieve the above referred testimony of DW2 Susheela. Thus, it appears that at least during the period w.e.f. March, 2004 to 24.06.2004, the date of death of the deceased, she was not subjected to harassment or cruelty by the appellant.

17. In view of the above, I do not find it safe to rely upon the testimony of PW1 Rajwati and PW2 Rajbahadur. I am of the view that prosecution has failed to bring home the guilt of the appellant under Section 498A and 304B IPC beyond reasonable doubt.

18. Appeal is accordingly accepted. Impugned judgment and consequent order on sentence are set aside and the appellant is acquitted of charges under Section 498A and 304B IPC, extending him benefit of doubt.

19. Appellant is in custody. He be released forthwith, if not required in any other case.

20. Appeal is disposed of accordingly.

(AJIT BHARIHOKE)
JUDGE

FEBRUARY 09, 2011

ks/pst