

*** HIGH COURT OF DELHI AT NEW DELHI**

+ CRL. A. No. 330/2001

Date of Decision : 05.01.2012

STATE

..... Appellant

Through: Mr.Naveen Sharma, APP

Versus

SHRI CHANDER MOHAN & ORS.

..... Respondents

Through: Mr.Sanjay Suri and
Mr.Rishab Relan, Advs.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is an appeal filed by the State against the judgment dated 18.12.1999 passed by Sh. A. K. Pathak, the learned Additional Sessions Judge, Delhi (as His Lordship then was) acquitting the respondents Chander Mohan/husband (since deceased), Narender Pal/brother-in-law and Chander Kala/mother-in-law for an offence under Section 498A/306/34 IPC registered by P.S. Mangolpuri, Delhi vide FIR No. 123/1986 .
2. At the outset, it may be pertinent here to mention that Chander Mohan/husband has also expired, and therefore, the proceedings against him stands abated and the

present appeal is pending against the respondents Narender Pal (brother-in-law) and Chander Kala (mother-in-law of the deceased).

3. Briefly stated the facts of the present case are that Satwanti (since deceased) was married to Chander Mohan (since deceased) according to Hindu rites on 20.01.1984. They were blessed with a son named Lovely on 08.11.1984. On 06.05.1986, at about 12.35 p.m. both Satwanti and her son Lovely were admitted to R.M.L. Hospital, New Delhi with burn injuries. Lovely had received 100% burn injuries while as the mother Satwanti had received 80% burn injuries. Lovely succumbed to the burn injuries at about 12.50 p.m. on the same day, whereas Satwanti succumbed to burn injuries at about 2.50 p.m. on 06.05.1986 itself. At the time of receiving burn injuries, Satwanti was residing at the matrimonial home along with Chander Mohan, Narender Pal and Chander Kala. The inquest was conducted by SDM, Punjabi Bagh(Ex.PW23/F) on

07.05.1986. The dead body of the deceased was identified by her brother (Ex. PW-4/A). The post mortem was done at Civil Hospital, Subzi Mandi, Delhi by Doctor L.T. Ramani on 07.05.1986 at 4.30 p.m. In his report (Ex. PW 26/B), the doctor has opined that the death was due to shock resulting from burns which were ante-mortem in nature and caused by fire. The SDM had also recorded the statement Ex.PW2/A, Dilpat Singh, father of the deceased, wherein it was stated that he had married his daughter Satwanti with Chander Mohan on 20.01.1984 according to Hindu rites and ceremonies. It was stated by him that after the marriage, in-laws of the deceased Satwanti started beating her. Her husband Chander Mohan (since deceased) was alleged to return home from his office under the influence of liquor and at the instigation of his mother and sister, he used to beat the deceased. It was alleged by him that his daughter was being subjected to demand of dowry on various occasions, which at times were fulfilled while as, on other

occasions, they were not able to muster sufficient financial sources to meet the same. It has also been alleged by Dilpat Singh that his daughter was turned out from her matrimonial home because of cruelty and the beatings meted out to her, as a consequence of which, she stayed with him. Subsequently, with the intervention of 4-5 persons from the village Mangolpuri, he went to the matrimonial house of the deceased and persuaded Chander Mohan to accept the deceased Satwanti afresh. Satwanti went back to her matrimonial home. On 06.05.1986, he received information that his daughter received burn injuries and she has been hospitalized to Willington Hospital. On the basis of the statement of the father of the deceased, the aforesaid FIR No.123/1986, under Section 302/498A IPC was registered by P.S. Mangolpuri, Delhi.

4. After investigation, a charge sheet was filed and all the three accused persons were charged for an offence under Section 306/498A/34 IPC. The prosecution examined 26

witnesses in support of its case after which the statement of the accused persons were recorded. The accused persons, namely, the respondents also examined two witnesses in their defence. The learned Trial Judge after hearing the arguments, acquitted all the three respondents of the offence under Section 306/498A/34 IPC by holding that there was no willful conduct on the part of the respondents/accused persons which will tantamount to any cruelty with a view to demand dowry meeting the requirement of Section 498A IPC. Similarly, the learned Trial Judge also came to the conclusion that there was no instigation, goading, incitement and provocation on the part of any of the respondents, which could be termed as abetting her to commit suicide. On the contrary, it gave a definite finding that there used to be disputes between Chandra Mohan/ husband (since deceased) and the Satwanti/wife (deceased) on trivial matters. One of the basic issue on which there was a difference of opinion which resulted in frequent quarrel

between them was that the deceased Satwanti did not like to stay in joint family along with the mother-in-law and the brother-in-law, which was opposed by the deceased husband/Chander Mohan on account of the fact that he was the sole bread earner of the family including his widowed mother, younger brother and sister, who were wholly dependent for finances on him. It was also proved before the learned Trial Judge that Chander Mohan was under a moral obligation to maintain his family on account of the fact that his father, who was working in the Ministry of Defence had died in harness and the deceased Chander Mohan had got the employment in the Ministry of Defence on compassionate ground. It is urged that it was because of her inherent temper incompatibility that the deceased had committed suicide on her own which could not be said to be at the instigation of any of the respondents.

5. I have heard the learned APP as well as the learned counsel for the respondents and have gone through the

record including the impugned judgment passed by the learned Trial Court.

6. There are two sets of witnesses whose testimony is important from the point of view of examining the guilt of the respondents. The first set of witnesses consists of PW-2/Dilpat Singh (father of the deceased), PW-3/Bhupinder Singh (brother of the deceased), PW-7/Bharpai (mother of the deceased) and PW-12/Yogender Singh (brother of the deceased). This forms one set of the witnesses who have been examined by the prosecution in order to prove the guilt of the accused for an offence under Section 498A read with section 306/34 IPC. The second set of witnesses is the residents of the same village where the father of the deceased was living. These witnesses are PW-8/Mir Singh, PW-9/Mange Ram and PW-11/Sher Singh. The second set of witnesses is also examined by the prosecution in order to prove the offence under Section 498A IPC by testifying that the

deceased Satwanti was being subjected to cruelty by her husband Chander Mohan and his other family members.

7. So far as the testimony of the first set of witnesses is concerned, the same has been discarded by the learned Trial Judge on account of two reasons. Firstly, there are many contradictions and improvements in the testimony of these witnesses inter se and further contemporaneous conduct and the documentary evidence which is produced or purported to be produced by the prosecution by way of letters and diary etc. which are allegedly written by the deceased does not corroborate the oral testimony of these witnesses. It is dealt with in detail herein after.
8. PW-2/Dilpat Singh is the father of the deceased who had deposed that he had visited the house of the deceased two or three times, she informed him that her husband used to say that she belongs to a family of beggars and they have not given sufficient dowry on the occasion of the birth of the child to the deceased. Her husband

Chander Mohan and his mother-in-law Chander Kala are alleged to have demanded fridge, cooler and cash from the father of the deceased. PW-2/Dilpat Singh is stated to have given Rs.2,000/- in cash, some gold and silver ornaments to the new born child which was not considered to be sufficient by the respondents. He has testified that his daughter was being harassed and maltreated by the accused persons. These facts are not supported by the statement of the witness made to the SDM, which is exhibited as PW 2/C. Had such an event taken place, the most natural and contemporaneous conduct of the witness would have been to make a mention about these details before the SDM, which he has not done, therefore, the allegations in this regard made by the PW-2 in his statement before the Court seem to be an afterthought. Such kinds of improvements are bound to occur in the statement of the witness when he has lost somebody in his immediate family in an unnatural manner.

9. PW-3/Bhupinder Singh is the brother of the deceased who has also stated that some presents were given on or around 08.11.1984 when his sister was blessed with a male child and he has also made a reference on the same lines on which his father has made statement that Chander Mohan/husband and her mother-in-law/Chander Kala demanded fridge and cooler etc. It is also alleged by him in his statement that the deceased had told him that she was subjected to harassment on account of the demand of the aforesaid items. His statement was recorded and was exhibited as PW/3DA where none of these facts were stated. He was confronted with the said statement. Apart from this, the testimony of PW-3 is not corroborated by the purported diary and the letters exhibited PW12/A to 12/C which are alleged to have been written by the deceased herself. The testimony of PW-3 has not been accepted by the learned Trial Judge as truthful on account of this discrepancy. I share the same view which has been given by the learned Trial

Judge that PW-3 being the brother of the deceased and having lost his sister is bound to feel the loss and in such cases, a sense of revenge sets in and person tries to make all kind of wild allegations without their being contemporaneous corroboration from the documents, if they are in existence.

10. PW-7/Barpai is the mother of the deceased, who did not talk about the items like fridge, cooler, cash and cloths which were alleged to have been demanded by the in-laws of the deceased. This had been stated by PW-2, PW-3 and PW-12. She has only stated that her daughter had disclosed to her that a sum of Rs.10,000/- or Rs.20,000/- was demanded from the deceased. In her cross-examination, she was not able to give the details of any harassment to which her daughter was purportedly subjected. Her statement was not recorded before the police and she was testified before the Court straight away. So far as her statement is concerned, this also does not get corroborated from the letters and

the diary of the deceased which are exhibited as PW-12/A to 12/C, therefore, the testimony of this witness also does not inspire confidence to be relied with regard to the deceased being subjected to cruelty with a view to demand dowry. More so somewhat proximate to the date of death of the deceased.

11. PW-12/Yoginder Singh is the other brother who has deposed that he along with his brother went to the matrimonial home on 13.06.1984, his sister told them that she was being subjected to harassment by her husband/Chander Mohan with a view to demand dowry. She has also stated that her husband/Chander Mohan used to come home after consuming liquor, in the evening and then he used to harass the deceased. It is also alleged to have been stated to them that on one particular occasion Chander Mohan allegedly tried to strangle the deceased. He also deposed that an amount of Rs.10,000/-, fridge and cooler was demanded by the respondents. The testimony of PW-12 was also

analyzed by the learned Trial Judge and he came to the conclusion that this witness has made a considerable improvement in his statement before the Court as compared to his statement recorded under Section 161 Cr.P.C. with which he was confronted, exhibited as PW 12/A DA. There are number of facts which he has testified regarding an amount of Rs.10,000/- Rs.20,000/- or items like cooler, fridge etc. being demanded from the deceased which have not been found recorded in his statement under Section 161 Cr.P.C. Therefore, his testimony was also not found to be credible in nature which would make the Court to believe the allegation of the prosecution that the deceased was being subjected to cruelty with a view to demand dowry, and therefore, the respondents being guilty for an offence under Section 498A IPC.

12. I have minutely examined the testimony of all these witnesses and I also share the same view which the learned Trial Judge has opined that the testimony of all

the three witnesses, namely, PW-2, PW-3 and PW-12 who are interested witnesses, is not of such a sterling quality which would inspire confidence and so far as PW-7 is concerned, she does not say much against the respondents. One important factor which makes the Court to hold such a view is that the deceased is purported to have written the letters and a diary upto one year prior to the date of her death which does not support the prosecution case as suggested by them. The case of the prosecution, in nutshell, is that immediately after the marriage, the demands of dowry were made and consequently the deceased was subjected to cruelty and harassment but none of the entries which are alleged to have been made by way of letters or the recordings made in the diary of the deceased bears the recording of the said fact. In addition to this, these letters and diary were curiously produced by the brother of the deceased and not recovered from the matrimonial home. It is

understandable that the relations of the deceased, namely, PW-2 father and PW3 and PW-12 brothers and PW-7 mother were distraught on account of the demise of their daughter, who seem to have taken her own life without their being any cogent reason for that. On the contrary, it has been brought on record by way of ample evidence that there used to be frequent quarrel between the deceased and her husband/Chander Mohan on account of sharing a common kitchen and living jointly with the mother-in-law of the deceased and her younger brother and sister. I have already mentioned that the father of Chander Mohan (since deceased) was working in the Ministry of Defence, who had died in harness and Chander Mohan got the employment in the Ministry of Defence on compassionate ground. There was no other source of income in the family, and therefore, the husband of the deceased was under a moral obligation to maintain his widowed mother and other two family members while as the deceased seems to be interested

in living separately. It has also come on record that the deceased had actually persuaded her husband/Chander Mohan to have a separate kitchen in the same building 15 days prior to the date of the incident however, that decision had to be reversed as Chander Mohan persuaded the deceased to revert to a joint kitchen again which seems to be the reason because of which the deceased was upset and she set herself ablaze. Such an action of the husband of living along with his widowed mother and brother etc. cannot be said to be the 'willful conduct' within the explanation of Section 498A IPC which would warrant the conviction of the respondents for an offence under Section 498A IPC. The other set of evidence which has been produced by the prosecution is in the nature of hearsay evidence of three witnesses from the village who are purported to have stated that the deceased had told them that she was being subjected to cruelty and harassment with a view to demand dowry but on cross examination, it has come on record that none of

the witnesses has ever interacted with the deceased directly or indirectly, and therefore, the information on the basis of which they have testified with regard to the demand of dowry etc. becomes a hearsay. These witnesses are PW-8/Mir Singh, PW-9/Mange Ram, Pw-11/Sher Singh. They were allegedly members of panchayat which brought the reunion of the deceased with her husband. Further, placing reliance on their testimony has been held to be unsafe on account of the fact that they are the members of the Panchayat, yet each one of them were not able to give the names of other member of panchayat. All these three witnesses i.e. PW-8, Pw-9 and PW-11 have been termed as doubtful so far as their testimony are concerned. I do not have any reason to hold a different view then the one which has been expressed by the learned Trial Judge.

13. I meticulously have gone through the evidence. I find that there is no ground to reverse the order of acquittal of the respondents, handed down by the learned Trial

Court. The prosecution has failed miserably, as has been held by the Trial Court, to prove that there is an unlawful conduct on the part of the respondents, which could be said to meet the requirements of the demand of dowry as envisaged under Section 498A IPC. So far as the 'abetment to suicide' by the deceased is concerned, there is absolutely no evidence that there was any act or omission attributable on the part of the respondents to persuade, incite, goad, compel or instigate the deceased to commit the offence of taking her own life, and therefore, no offence under Section 306 IPC for 'abetment to suicide' is made out.

14. For the reasons mentioned above, I feel that the appeal is without any merit, and accordingly, the same is dismissed.

V.K. SHALI, J.

**January 05, 2012
KP**