

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

RESERVED ON : 24th SEPTEMBER, 2013

DECIDED ON : 16th DECEMBER, 2013

+ CRL.A. 115/2000

GOPI @ HUKAM Appellant

Through : Mr.Sushant Singh, Advocate with
Mr.P.C.Arya & Mr.Tejinder Singh,
Advocates.

versus

STATE Respondent

Through : Mr.M.N.Dudeja, APP.

AND

+ CRL.A. 73/2000

SHANTI DEVI Appellant

Through : Mr.Sushant Singh, Advocate with
Mr.P.C.Arya & Mr.Tejinder Singh,
Advocates.

versus

STATE Respondent

Through : Mr.M.N.Dudeja, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Gopi @ Hukam (A-1) and Shanti Devi (A-2) question the legality and correctness of a judgment dated 17.07.1999 of learned Addl.

Sessions Judge in Sessions Case No. 2/98 arising out of FIR No. 978/97 PS Mangolpuri by which they were held guilty for committing offences punishable under Sections 498A/304B IPC read with Section 34 IPC and were awarded RI for seven years each under Section 304B IPC. The facts projected in the charge-sheet are as under :

2. Hemlata, PW-1 (Babu Lal)'s daughter was married to A-1 on 17.05.1997. Various dowry articles were given to her by her parents according to their financial capacity. After the marriage, Hemlata lived at her matrimonial home i.e. House No. I-735, Mangolpuri. It is the case of the prosecution that after marriage, she had to face harassment and cruelty at the hands of her husband and his mother in connection with the demand for dowry. When she was unable to bear the harassment and cruelty meted out to her, on 05.10.1997 at about 11.30 A.M., she poured kerosene and set herself ablaze. She suffered 95% - 98% burn injuries on her body and was taken to ESI Hospital, New Delhi by A-1, her husband. Daily Diary (DD) No. 43B (Ex.PW-10/A) was recorded at 03.25 P.M. on 5.10.1997 at PS Mangolpuri after getting information of the incident and the investigation was assigned to SI Prakash Chand who with Const. Raja Ram went to the hospital and collected Hemlata's MLC (Ex.PW-2/A). Since she was physically unfit to make statement, the Investigating

Officer informed PW-6 (R.L.Sharma, Sub Divisional Magistrate) and he lodged First Information Report after recording her statement (Ex.PW-6/A) on 06.10.1997 at 03.30 P.M. Hemlata succumbed to the injuries on 06.10.1997 in the hospital. As it was a case of unnatural death, post-mortem examination was conducted on the body on 07.10.1997 and in the opinion of PW-3 (Dr.B.N.Acharya), cause of death was 98% ante-mortem burns with septicaemia. During the course of investigation, statements of the witnesses conversant with the facts were recorded. Both the accused persons were arrested; sent for trial; duly charged and brought to trial. The prosecution examined ten witnesses to establish their guilt. In their 313 statements, they pleaded false implication and denied their complicity in the crime. They claimed that Hemlata was never ill-treated and her incurable disease was the reason to commit suicide. She was unhappy with her marriage which was not to her liking. DW-1 (Darshan Lal), DW-2 (Maya) and DW-3 (Rambir) appeared in defence. The Trial Court, after considering the evidence particularly the dying declaration and the rival submissions of the parties came to the conclusion that both the appellants were responsible for her dowry death. Being aggrieved by the orders of conviction and sentence, they have preferred the appeals.

3. I have heard the learned counsel for the parties and have examined the record. Learned counsel appearing for the appellant has submitted that the Trial Court failed to appreciate the evidence in its correct perspective and ignored material contradictions in the statements of PWs-1, 5, 7, 8 & 9 without valid reasons. There was no demand of dowry at the time of marriage and allegations regarding harassment or cruelty in connection with dowry demands emerged only after the sad demise. Prior to occurrence, none had any grievance about the conduct and behaviour of the appellants. Neither the deceased nor her parents ever lodged any complaint with any authority for physical or mental torture to the deceased. Rekha, deceased's sister, staying in the matrimonial home did not inform her parents or any relative regarding the cruelty meted out to her. The provisions of Sections 304B/498A IPC were not attracted as there was no cogent and worthwhile evidence on record to establish that 'soon before death', Hemlata was tortured on account of non-fulfilment of dowry demands. The Trial Court did not give weightage to the material inconsistencies in the statements of PW-2 (Dr.R.K.Sharma) and PW-6 (R.L.Sharma, SDM) regarding obtaining of thumb impression of the deceased on the dying declaration. It does not contain a truthful version of what actual had happened. It was recorded on the next day of the incident

and there was every possibility of her parents to tutor her. The real and immediate cause for committing suicide was that Hemlata was unable to stand or walk due to incurable disease for which she was getting regular medical treatment. Since, she had affairs with a boy in the neighbourhood before marriage and was forced to marry A-1, she was not happy to stay in the matrimonial home. She was frustrated and depressed due to her illness. Per contra, learned Addl. Public Prosecutor for the State vehemently opposed the appeal contending that Hemlata, 26 years old girl died within six months of her marriage in the matrimonial home. The appellants doubted her fidelity alleging that she had developed relations with a neighbour and wanted to marry him. The dying declaration recorded by a responsible Officer clearly implicates them for her death. The other witnesses examined by the prosecution have corroborated her version without major variations.

4. It is admitted position that Hemlata died within six months of her marriage with A-1 in the matrimonial home. It is also undeniable that her death was a case of suicide and it was caused by 95% - 98% burn injuries suffered by her. Both the appellants were present when Hemlata brought an end to her life by pouring kerosene on her body. She was taken to hospital by A-1 and MLC (Ex.PW-2/A) at ESI Hospital, New Delhi

records the arrival time of the patient at 03.45 P.M. The alleged history records that Hemlata 'got burnt herself by pouring kerosene oil upon herself due to a quarrel with husband'. This statement was made by Hemlata to PW-2 (Dr.R.K.Sharma) who medically examined her in the presence of her husband (A-1). She was conscious that time. A-1 did not contradict her and did not disclose any reason to PW-2 (Dr.R.K.Sharma) compelling Hemlata to pour kerosene on her body to set herself on fire. Apparently, A-1 had quarrelled with the deceased soon prior to the incident and she was driven to commit suicide. The appellants did not give any plausible reason for the quarrel that occurred on the day of incident.

5. PW-6 (R.L.Sharma, SDM) recorded dying declaration (Ex.PW-6/A) on 06.10.1997 at 03.30 P.M. after Hemlata was declared fit for statement. MLC (Ex.PW-2/A) records that Hemlata was conscious when taken to ESI Hospital on 05.10.1997 and had given the alleged history to the examining doctor herself. PW-6 in his Court deposition unequivocally stated that after satisfying himself that Hemlata was conscious and in a stable and fit mental and physical condition to make statement, he recorded it in question-answer form, questioned her regarding her name, husband's name, date of marriage and what had lead

to the incident. She answered all the questions freely, voluntarily and coherently. He further deposed that Hemlata disclosed that her husband and mother-in-law used to harass her and due to that, she took the step to burn herself. She specifically stated that her mother-in-law used to severely harass her and she should be dealt with according to law along with her husband. The statement was read over and her left thumb impression was taken at point 'A' on Ex.PW-6/A. In the cross-examination, he explained that delay in recording the statement was due to the victim's inability to give statement due to her physical and mental condition on 05.10.1997. He denied that dying declaration (Ex.PW-6/A) was fabricated and did not contain her thumb impression at point 'A'. In the instant case, dying declaration was recorded by Sub Divisional Magistrate in question-answer form and as far as practicable, in her own words. When a dying declaration is recorded by a competent Magistrate in the words of the maker of the declaration, it would stand on a much higher footing and has higher evidentiary value. A competent Magistrate has no axe to grind against the person named in the dying declaration of the victim and in the absence of circumstances showing anything to the contrary, he should not be disbelieved by the Court. PW-6 (R.L.Sharma, SDM) being independent witness holding high position had no reason to

do anything which was not proper. The authenticity of dying declaration recorded by him, thus, cannot be doubted. Normally, the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to medical opinion. PW-2 (Dr.R.K.Sharma) deposed that on 06.10.1997 at about 03.30 P.M. after examining the patient, he had declared her fit to make statement vide endorsement (Ex.PW-2/B). Before recording the statement, PW-6 had satisfied himself about the mental fitness of the deceased. No suggestion was put to the witness that she was under the influence of her parents and family members and was tutored to make it. No circumstances have been brought on record to infer that the declaration was result of tutoring, prompting or imagination. It is true PW-2 (Dr.R.K.Sharma) and PW-6 (R.L.Sharma, SDM) have given conflicting version regarding obtaining of thumb / toe impression. The doctor in his wisdom got toe impression of the victim on the MLC (Ex.PW-2/A) on 05.10.1997 as her thumbs were burnt. The dying declaration (Ex.PW-6/A) recorded next day bears her thumb impression at point 'A' on Ex.PW-6/A. This inconsistency is not material to doubt the veracity and genuineness of the dying declaration recorded by a competent Officer. In the dying declaration, Hemlata consistently implicated both the appellants for forcing her to commit suicide. She

disclosed that the appellants were quarrelling with her for the last three days. On the day of incident itself, they picked up a quarrel with her. She disclosed that her parents had given dowry articles according to their capacity and she was being harassed & tortured for dowry by them. In the dying declaration, she divulged definite reason which prompted her to commit suicide i.e. harassment caused by them. She appealed to award suitable punishment to the appellants; specifically her mother-in-law who used to treat her with cruelty. The appellants did not give plausible explanation as to why Hemlata opted to implicate them and what prompted a newly wedded wife to take extreme step within six months of her marriage. The surrounding circumstances forcing the deceased to commit suicide were within their special knowledge and under Section 106 of the Evidence Act, it was their bounden duty to disclose and prove as the incident occurred in the matrimonial home. They took inconsistent and divergent defence that she had developed relations with a boy in the neighbourhood before marriage and wanted to marry him. However, the name of the said boy never surfaced during trial. Another suggestion was put to her father that she (Hemlata) was not maintaining good character before marriage or that her marriage with A-1 was against her will. It was also suggested that she used to frequently give calls to his neighbour

which were objected to by the appellants. Another reason given was that the deceased was suffering from an incurable disease and committed suicide on that account. It has come on record that Hemlata was suffering from some sexual disease and was unable to walk and stand. PW-9 (Rekha) had come to stay in the matrimonial home to assist her. However, it has not been established that the disease was incurable despite regular treatment given to her. The appellants did not produce on record any medical documents to assess the degree / extent of the disease and to find it out if it was not curable. They did not divulge as to what was the immediate compelling circumstance which forced the deceased to commit suicide that day. They denied all the questions put to them in examination under Section 313 and did not furnish any explanation whatsoever to any question. They pleaded a false defence that Hemlata had developed intimacy with a boy before marriage and wanted to marry him. Observations of Supreme Court in case ‘S.Govindaraju vs. State of Karnataka’, 2013(10) SCALE 454, are relevant to note :

“23. It is obligatory on the part of the accused while being examined under Section 313 Code of Criminal Procedure, to furnish some explanation with respect to the incriminating circumstances associated with him, and the Court must take note of such explanation even in a case of circumstantial evidence in order to decide whether or not

the chain of circumstances is complete. When the attention of the accused is drawn to circumstances that inculcate him in relation to the commission of the crime, and he fails to offer an appropriate explanation, or gives a false answer with respect to the same, the said act may be counted as providing a missing link for completing the chain of circumstances.

24. This Court in *Rohtash Kumar v. State of Haryana* : JT 2013 (8) SC 181 held as under:

Undoubtedly, the prosecution has to prove its case beyond reasonable doubt. However, in certain circumstances, the accused has to furnish some explanation to the incriminating circumstances, which has come in evidence, put to him. A false explanation may be counted as providing a missing link for completing a chain of circumstances.

(Emphasis added)

25. *The prosecution successfully proved its case and, therefore, provisions of Section 113 of the Evidence Act 1872 come into play. The Appellant/accused did not make any attempt, whatsoever, to rebut the said presumption contained therein. More so, Shanthi, deceased, died in the house of the Appellant. He did not disclose as where he had been at the time of incident. In such a fact-situation, the provisions of Section 106 of Evidence Act may also be made applicable as the Appellant/accused had special knowledge regarding such facts, though he failed to furnish any explanation thus, the court could draw an adverse inference against him.”*

6. The dying declaration recorded by the deceased does not suffer from any infirmity and its veracity could not be doubted. It is true and volunteer and was not the result of tutoring by interested parties.

Great solemnity and sanctity is attached to the words of a dying person. Once the Court is satisfied that the declaration is true and voluntary, it could base conviction without corroboration.

7. PW-9 (Rekha) aged 14 years who was staying in the matrimonial home for the last five days of the incident is the most curicial witness. She deposed that on Saturday at about 10.00 A.M. A-1 and A-2 gave severe beatings to his sister and it continued till Sunday. Thereafter, a quarrel ensued between her sister and A-1. She was given 'chapaties' by A-1 and after consuming it, she came down and became unconscious. When she came to senses, she found her sister burning and lying on the stairs. Both the accused were standing near her. Accused Gopi and one Parveen took her sister to hospital. She informed her parents on telephone about the incident. In the cross-examination, she explained that she had gone to assist her sister due to her physical illness as she was unable to walk. This child witness had no ulterior motive to falsely implicate the appellants. She denied that Hemlata had put herself on fire as she was fed up with her illness which had crippled her. PW-1 (Babu Lal), deceased's father, also accused the appellants for harassing his daughter on account of dowry demands. He gave a specific instance of cruelty when the bed given in the marriage had broken and she was forced to bring a new one.

He further deposed that during her visits, Hemlata used to tell / inform him that her husband and mother-in-law used to quarrel and beat her for more dowry and were demanding scooter and fridge. In the cross-examination, he fairly admitted that there was no demand of dowry by the appellants at the time of marriage. Dhaneshwari, his sister-in-law, was mediator in the marriage who lived in the neighbourhood of the appellants. PW-5 (Kanhaiya Lal), deceased's maternal uncle, also corroborated his version and deposed that during her visits to him, Hemlata had disclosed that she was being treated with humiliation for bringing insufficient dowry. PW-7 (Hemraj), deceased's brother, informed that after about two months of the marriage, she told him that she was being harassed by the accused and they were demanding a two-wheeler scooter. Bed and table broken at the time of transportation were replaced and given new ones. He also deposed that during conversation with her in the hospital, she told him that she was being given beatings for the last three days. PW-8 (Krishna) deposed on similar lines. No ulterior motive was assigned to all these witnesses for making false statements. There are no valid reasons to disbelieve their evidence as they are the most natural witnesses in whom the deceased could confide. The veracity of the testimony is to be tested on objective parameters and not to be thrown

overboard on the ground that these witnesses are related to the deceased.

In a matrimonial dispute, it would be inappropriate to expect outsiders to come and depose.

8. The next limb of argument that ingredients of Section 304B are not attracted in the absence of cruelty or harassment on account of dowry demand soon before death has no force. In ‘*Hira Lal & Ors. vs. State*’, AIR 2003 SC 2865, Supreme Court observed :

“.....The expression ‘soon before’ is very relevant where Section 113-B of the Evidence Act and 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. ‘Soon before’ is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period of soon before the occurrence. Suffice, however, to indicate that the expression ‘soon before’ would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.”

9. In the instant case, the marriage had lasted only for about five months and during this period she lived at her matrimonial home for about

four months. Her parents were not expected to rush to the police authorities to lodge complaints to rule out the possibility of any settlement. Initially, attempts are made to reconcile and resolve the disputes to save marriage. The deceased categorically informed that the appellants used to harass on account of dowry demands during her stay with them. Even before the incident in question, they had quarreled with her for the last three days and it forced her to put an end to her problems by committing suicide. It is difficult to imagine a more proximate link between harassment and cruelty in connection with the demand of dowry and the death of the victim resulting from it. The appellants did not produce any reliable and clinching evidence under Section 113B IPC. The defence witnesses examined did not divulge any specific reason for the deceased to commit suicide. The impugned judgment is based upon proper and fair appreciation of the evidence and warrants no interference. Minor contradictions, inconsistencies, improvements on trivial matters without effecting the core of the prosecution case cannot be made a ground to reject the evidence in its entirety. Minimum sentence prescribed under Section 304B IPC is seven years and cannot be modified / altered / reduced.

10. The appeals are dismissed being unmerited. The conviction and sentence of the appellants are maintained. The appellants are directed to surrender before the Trial Court on 20th December, 2013 to serve out the remaining period of sentence. Trial Court record be sent back immediately.

(S.P.GARG)
JUDGE

DECEMBER 16, 2013/*tr*