

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

**RESERVED ON : 22nd FEBRUARY, 2013
DECIDED ON : 15th MAY, 2013**

+ CRL.A. 349/2000

KRISHNA & ANR Appellants
Through : Mr.K.B.Andley, Sr.Advocate with
Mr.M.Shamikh, Advocate.

versus

STATE OF DELHI Respondent
Through : Mr.M.N.Dudeja, APP for the State.

AND

+ CRL.A. 396/2000

RAMESH Appellant
Through : Mr.K.B.Andley, Sr.Advocate with
Mr.M.Shamikh, Advocate.

versus

STATE OF DELHI Respondent
Through : Mr.M.N.Dudeja, APP for the State.

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

S.P.GARG, J.

1. The appellants Ramesh (A-1), Krishna (A-2) and Sonia (A-3) impugn judgment in Sessions Case No.69/1998 arising out of FIR No.5/1998, PS Shahdara by which A-1 was convicted under Sections 498A/304B IPC and sentenced to undergo RI for 10 years with fine. A-2 and A-3 were convicted under Section 498A IPC and sentenced to undergo RI for 2 years with fine ₹ 1,000/- each.

2. Sheetal (since deceased) was married to Ramesh on 03.03.1995. She resided at her matrimonial home No.1/5102, Gali No.3, Balbir Nagar, Shahdara after her marriage. On 01.01.1998, she expired after sustaining cent-percent burn injuries. Daily Diary (DD) No.82B (Ex.PW-7/A) was recorded at PS Shahdara at 07.15 P.M. The investigation was assigned to SI Grudev Singh. He informed SDM (Sh.Vinay Bhushan), who recorded statement of the deceased's father and lodged First Information Report. Case under Sections 498A/304B/34 IPC was registered. The Investigating Officer recorded statements of witnesses conversant with facts. Post-mortem on the body of the deceased was conducted. After completion of investigation, a charge-sheet was filed against the appellants. They were duly charged and brought to trial. The prosecution examined ten witnesses to substantiate the charges. After

appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, convicted the appellants as mentioned previously. It is relevant to note that the State did not prefer appeal against acquittal of A-2 and A-3 under Section 304B IPC.

3. Learned Senior Counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of PW-2 and PW-3 who were interested witnesses. No independent public witness from the locality was associated. There was no demand of dowry. A-1 and Sheetal had gone to her parents' house and stayed there for 3 - 4 days. A-1 himself sustained injuries in an attempt to save Sheetal. There was no evidence to prove that 'soon before her death' any dowry demand was made by the appellants. Learned APP urged that A-1 had demanded ₹ 30,000/- but deceased's parents were able to give him ₹ 10,000/-. Soon after return from the parents' house, Sheetal died an unnatural death in the matrimonial home. PW-2 and PW-3 have no ulterior motive to falsely implicate the appellants and their relationship with the deceased is not a factor to discard their truthful version.

4. I have considered the submissions of the parties and have examined the record. It is not disputed that Sheetal was married to A-1 on 03.03.1995 and she expired by sustaining burn injuries on her body on 01.01.1998 at her matrimonial home. A conjoint reading of Section 113 B of the Evidence Act and Section 304 B shows that there must be material to show that soon before her death, the victim was subjected to cruelty or harassment for or in connection with any demand of dowry. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injuries or danger to life, limb or health of the woman are required to be established to bring home the application of Section 498A IPC. It is a matter of record that at no stage prior to death, Sheetal or her parents ever lodged any complaint whatsoever against any of the appellants for harassment/ torture, physical or mental on account of dowry demands. No '*Panchayat*' was ever organised in this regard. Admittedly, there was no demand of dowry by the accused prior to the marriage. PW-2 (Harvinder Singh), Sheetal's father admitted that there was no talk of dowry when marriage was negotiated. PW-3 (Madhu Bala), Sheetal's mother also admitted that there was no dispute over dowry articles either at the time of engagement or marriage. The accused persons were old relatives of deceased's parents. The mediator in the marriage was

Harvinder's mother-in-law (deceased's grand-mother). PW-2 & PW-3 never lodged complaint with her against the conduct and behaviour of the appellants towards the deceased for harassment on account of dowry demands. Her statement was not recorded and she was not examined as a witness. The Investigating Officer did not record statement of any neighbour to ascertain the conduct and behaviour of the accused persons towards the deceased during her stay in the matrimonial home. Nothing emerged on record if any quarrel had taken place with the deceased in the matrimonial home prior to the incident or she was subjected to any physical or mental torture. There are no allegations that any of the appellants abetted or instigated Sheetal to commit suicide. No overt act was attributed to them. The prosecution has to establish that there must be nexus between the cruelty and the suicide and the cruelty meted out have induced the victim to commit suicide. She herself did not inform police or any authority. She was not medically examined to find out if at any time she was physically beaten. PW-2 & PW-3 have admitted that they used to visit the matrimonial home at regular intervals. Sheetal and A-1 also used to visit them regularly. They had gone at the house of Sheetal's parents on 26.12.1997 at Panipat and stayed there till 30.12.1997. They left on 31.12.1997 at noon hours. PW-2 (Harvinder Singh) admitted that no

quarrel took place during their stay at Panipat. No altercation or difference of opinion occurred during that period. He sent them happily after two or three days. PW-2 and PW-3 apparently did not find anything suspicious/amiss.

5. Sheetal expired at 07.15 P.M. on 01.01.1998. Intimation was given to her parents. They did not lodge FIR with the police after coming to Delhi. The Investigating Officer took them next day on 02.01.1998 to SDM for recording their statements. Thereafter SDM directed the police to register the case as per provisions of law and take necessary action. It appears that the Investigating Officer did not conduct proper investigation. He did not investigate as to how and under what circumstances, Sheetal sustained burn injuries. There was no investigation if any quarrel had taken place in the family on any specific issue prompting the deceased to take extreme step. He did not examine any witness from the neighbourhood to ascertain whether the relationship of the deceased with her in-laws was cordial or there used to be frequent quarrels. The body was not taken to hospital from the spot. Specific plea has been taken by A-1 that he had intervened to save the deceased and had suffered injuries. He was medically examined but the MLC has not been placed on record. Investigating Officer even did not opt to record statement of mediator of

marriage. There is no investigation if Sonia used to reside at her parents' house after marriage or on the day of incident, she was present in the house. The entire prosecution's case is based upon the testimony of PW-2 (Harvinder Singh) and PW-3 (Madhu Bala), deceased's parents.

6. PW-2 (Harvinder Singh), in the statement (Ex.PW-2/A) disclosed to the SDM that A-1 used to demand ₹ 20,000/- - ₹ 30,000/- every time on his visits to them with Sheetal. He used to give ₹ 10,000/- - ₹ 15,000/- to him to save her marriage. On 30.12.1997 also the accused had demanded ₹ 30,000/- from him and he had given ₹ 10,000/- after borrowing it. He also leveled allegations against Krishna and Sonia for harassing Sheetal on account of dowry demands. PW-2 (Harvinder Singh) on 28.09.1998 in his examination-in-chief, specifically stated that her daughter used to tell that her mother-in-law and sister-in-law used to quarrel with her. He further stated that her husband had not demanded anything from her. Further examination of the witness was deferred at the request of the learned APP as he had not gone through the file. This witness was examined thereafter on 23.10.1998. He made improvements from his previous deposition and alleged that A-1 used to demand cash and he had paid ₹ 10,000/- to him on 30.12.1997. In the cross-examination, he stated that A-1 used to demand ₹ 20,000/- - ₹ 30,000/- as

he required the money for his business. He further admitted that he was not in a position to pay that amount to his son-in-law. He again changed his version and stated that Sheetal used to demand from him and not A-1. He further admitted that the accused persons had not demanded any money from him. PW-3 (Madhu Bala) gave inconsistent version that A-1 had demanded ₹ 10,000/- from her as well as from her husband for some work. ₹ 10,000/- were given to him for the first time after one year of the marriage. Second time ₹ 10,000/- paid on 30.12.1997. Apparently, PW-2 (Harvinder Singh) has made improvements in his deposition before the Court and there is inconsistencies in the statement of PW-2 (Harvinder Singh) and PW-3 (Madhu Bala) as to when any demand of money was made by the accused. No cogent evidence came on record to prove that ₹ 10,000/- were paid by PW-2 (Harvinder Singh) or PW-3 (Madhu Bala) to A-1 on 30.12.1997 and from whom the said amount was borrowed. In his 313 statement, A-1 categorically stated that he had opened an account bearing No.4421 at Vijaya Bank, Rathi Mill, Shahdara and another account at post office, Tehsil Camp, Ashok Nagar in the name of his wife Sheetal. PW-7 (Gurdev Singh) did not investigate this aspect. He admitted that he had collected A-1's MLC from the hospital but no MLC was placed on record.

7. Sonia was married to DW-2 (Raju) and lived at Uttam Nagar. DW-2 (Raju) deposed that at the time of incident he and his wife were present at their residence. They came to know about the incident next day. No evidence was collected as to when Sonia had visited the house and if there was any provocation to force the deceased to end her life. No findings were recorded against Krishna and Sonia for their involvement under Section 304B IPC.

8. In order to attract application of Section 304B IPC, it is one of the essential ingredients that the deceased must have been subjected to cruelty or harassment by her husband or any relative and such cruelty and harassment should be for in connection with the demand of dowry and it is shown to have meted out to the woman soon before her death. In the instant case, the prosecution has miserably failed to establish that the victim was subjected to cruelty or harassment on account of dowry demands. The evidence adduced by the prosecution to establish the guilt of the accused under Section 498A/304B IPC is highly scanty. The investigation is defective and no attempt was made to find out the true reasons for the unfortunate death of deceased within three years of her marriage at the matrimonial home. The Investigating Officer did not

investigate the surrounding circumstances leading to the death of the victim. The accused deserve benefit of doubt.

9. The appeals are allowed and the conviction and sentence of the appellants are set aside. Bail bonds and surety bonds of the appellants stand discharged. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

MAY 15, 2013

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