

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

RESERVED ON : 9th SEPTEMBER, 2013

DECIDED ON : 7th OCTOBER, 2013

+ CRL.A. 354/2001

ASHOK KUMAR Appellant

Through : Mr.Sumeet Verma, Advocate.

versus

STATE Respondent

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

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Ashok Kumar (the appellant) impugns a judgment dated 09.11.2000 of learned Addl. Sessions Judge in Sessions Case No. 233/97 arising out of FIR No. 161/97 PS Pratap Nagar by which he was convicted for committing offences punishable under Sections 498A/304 B IPC. By an order dated 10.11.2000, he was sentenced to undergo RI for seven years under Section 304B and RI for three years with fine ₹ 500/- under Section 498A IPC.

2. Ashok Kumar was married to Suman on 26.09.1993. After the marriage, she lived at House No. 472/27, Gali Chisti Chaman, Kishan Ganj and was blessed with two daughters. On 18.06.1997, she sustained

burn injuries in the matrimonial home and was admitted at RML Hospital. She succumbed to the injuries on 26.06.1997. Post-mortem examination of body was conducted. Statements of the witnesses conversant with the facts were recorded. In her statement recorded on the night intervening 18/19.06.1997 by Sh. H.P.S.Saran, Sub-Divisional Magistrate (in short SDM) she implicated her husband and mother-in-law for harassing her on account of dowry demands. SDM directed the Investigating Officer to lodge First Information Report under relevant offences. After completion of investigation, a charge-sheet was filed against Ashok Kumar and his mother – Pushpa Devi in the Court. The prosecution examined fifteen witnesses to substantiate the charges. In his 313 statement, Ashok Kumar pleaded false implication without producing any evidence in defence. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held Ashok Kumar guilty for the offences mentioned previously. Pushpa Devi was convicted under Section 498A IPC only. State did not challenge her acquittal under Section 304B IPC.

3. I have heard the learned counsel for the parties and have examined the record. It is not disputed that Suman's death occurred at the matrimonial home due to burn injuries sustained by her within seven years

of her marriage. In her statement (Ex.PW-10/A), Suman Sharma categorically disclosed to SDM that her husband used to ask to bring money or else to stay at her parents' house. She further revealed that on 18.06.1997 in the evening, her husband had a quarrel with her over demand of money and she poured kerosene in anger. Her husband, mother-in-law and father-in-law who were present there did not restrain her from doing so and continued to witness the 'scene'. Her husband exhorted her to die 'Tu Mar Ja'. She further informed that her husband and mother-in-law used to harass her. Appellant's counsel urged that version narrated by the victim (Ex.PW-10/A) cannot be believed as she was not in a fit state of mind to make the statement and no prior permission was sought from the doctor to record her statement. I find no substance in the plea. The burning incident occurred in the evening and immediately, she was taken to RML Hospital at 08.10 P.M. MLC (Ex.PW-12/A) reveals that she was conscious and oriented that time and extent of burns were 30 – 35%. The MLC (Ex.PW-12/A) contains endorsement (Ex.DX1) whereby she was declared 'fit for statement' on 18.06.1997. Again, she was certified fit to record statement at 11.55 P.M. and 0010 hours as per endorsements at point (DX2) and (Ex.PW-15/A). PW-10 (H.P.S.Saran, SDM) deposed that he recorded victim's statement

(Ex.PW-10/A) in his own handwriting in question-answer form after Dr.Ratna Kumar declared her physically and mentally well-oriented to give statement. In the cross-examination, he elaborated that no relative of the patient was present near her bed at that time. Dr.Ratna Kumar had declared the injured fit for statement before and after the recording of the statement vide endorsement (Ex.PW-10/A) at Ex.DX1 and Ex.DX2. There are no sound reasons to disbelieve the testimony of an independent official witness who had no ulterior motive to fabricate the statement. He being independent witness holding high position had no reason to do anything which was not proper. The genuineness of the dying declaration cannot be doubted as it was recorded promptly without any delay. PW-6 (Rajender Kumar Sharma), also deposed that, the victim had disclosed him that Ashok and Pushpa used to demand money from her and she poured kerosene on her body. PW-15 (Jagbir Singh), Record Clerk, RML Hospital identified and recognised Dr.Ratna Kumar's signatures on Ex.PW-15/A, DX3 on Ex.PW-10/A whereby the victim was declared fit for statement. The appellant has no foundation / basis to doubt her mental disposition to make statement as neither he nor any of his family members accompanied her to the hospital or remained with her till death. PW-8 (ASI Anupama), CAW Cell testified that on her visit to RML Hospital on

20.06.1997, she directed Rajender Kumar Sharma to inform her the whereabouts of the husband and in-laws of Suman. When she visited House No. 472/27, Gali Chisti Chaman, Kishan Ganj, it was found locked and from the neighbourers, she came to know that Suman's in-laws were absconding from the day Suman was admitted in the hospital due to fear. Appellant's conduct in not taking the victim / his wife to hospital for treatment is unreasonable and can be considered an incriminating circumstance. The victim was fair enough to admit that after she sustained burn injuries, her husband threw two or three glasses of water on her body to extinguish the fire. She was also fair to say that she was not aware as to who set her on fire. No evidence has come on record that the statement (Ex.PW-10/A) was result of any tutoring, prompting or imagination. The SDM has categorically stated that there was none else with her when he recorded the statement of the victim. The Dying Declaration was made at the earliest opportunity without any influence being brought on the dying person. There is absolutely no reason to doubt it. The statement has to be accepted as the relevant and truthful one, revealing the circumstances which resulted in her death. The victim and her parents had no ulterior motive to falsely implicate the appellant. The victim gave graphic details as to how and under what circumstances she was harassed and subjected

to cruelty on account of demand of money. The appellant used to compel her to bring cash from her parents and squander it in lottery. PW-6 (Rajender Kumar Sharma) has corroborated her version on material aspects and deposed that after eight months of the marriage Ashok and his mother started demanding dowry and cash from Suman. Ashok used to spend entire earnings on liquor and lottery and beat Suman for not bringing cash for him. Whenever, Suman came and asked for money, he gave her. He paid ₹ 4,000 and ₹ 5,000/- to Ashok through her daughter Suman. Ashok sold all the dowry articles except one diwan. In the cross-examination, he denied that ₹ 4,000 or ₹ 5,000/- given to Suman were customary payments from time to time on various festivals/ occasions. The appellant's contention that since PW-6 had no financial capacity there was no possibility of demand of dowry / cash from him is devoid of merits. Both the parties belonged to poor strata of society. Even ₹ 4,000 or ₹ 5,000/- in 1997 had substantial value for the poor father of the victim. In her dying declaration (Ex.PW-10/A), there is specific mention regarding demand of cash and harassment on account of its non-payment by the appellant soon before her death. Even on the day of incident, a quarrel had taken place over demand of money and had forced the victim to pour kerosene on her body. The victim had no other compelling reason to take

the extreme step. The appellant did not adduce any evidence to prove that Suman had suicidal tendencies or used to extend threat to commit suicide. No such treatment, at any time, was made available to the victim to cure the alleged suicidal tendencies (if any). The contention is not sufficient to discredit her statement. It makes no difference that before the incident the victim had not lodged any complaint with the authorities against the appellant and his family members for harassment on account of dowry demands. In a tradition and custom bound Indian society, no conservative woman would like to disclose family discords before a person, however close he or she may be. Merely because the deceased had not told close friends about the demand of dowry or harassment that does not positively prove the absence of demand of dowry. If the evidence regarding demand of dowry is established in the dying declaration (Ex.PW-10/A) and the statement is cogent and reliable, merely because the victim had not stated before some authority earlier about the harassment or torture that would be really of no consequence. The dying declaration is worthy of acceptance. It is truthful & voluntary, without influence or rancour and can form the foundation for a conviction.

4. PW-6 (Rajender Kumar Sharma)'s statement (Ex.PW-6/A) was recorded by Sh. H.P.S.Saran, SDM next day of incident at his office

at Tis Hazari. Despite lengthy cross-examination, the appellant could not elicit any material discrepancies or contradictions to disbelieve the version in its entirety. No ulterior motive was assigned to him for falsely implicating the appellant in the incident. There is no ambiguity or irregularity as far as the dying declaration is concerned and it has been stated in clear and simple language that the victim had been treated with both mental and physical cruelty. The victim stated that when she poured kerosene on her body in anger, the appellant and his family members did not intervene. They did not explain as to who set her on fire. Instead of taking the victim to hospital directly, she was taken at her parents' house and from there, her mother took her to the hospital. PW-6 (Rajender Kumar Sharma), deposed that demand of dowry continued unabated and the victim was unable to further bear torture or harassment. Continuous taunting and teasing led her to such a situation where she had been disgusted and went to the extent of pouring kerosene on herself.

5. All the relevant contentions of the appellant have been dealt with in the impugned judgment which is based upon fair appraisal of the evidence and requires no interference. The appeal is unmerited and is dismissed. The conviction and sentence of the appellant are maintained.

The appellant – Ashok Kumar is directed to surrender before the Trial

Court on 21st October, 2013 to serve the remainder of sentence. The Registry shall transmit the Trial Court records forthwith to ensure compliance with the judgment.

(S.P.GARG)
JUDGE

OCTOBER 07, 2013/*tr*