

R-40# \$

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

+ **CRL.A. 177/2003**

% Decided on: 13th May, 2013

SANJAY DASS

..... Appellant

Through: Mr. Dinesh Mathur, Sr. Advocate with
Mr. Amish Dabas, Advocate with
Appellant in person.

versus

STATE

..... Respondent

Through: Mr. Manoj Ohri, APP for the State
with SI Bhoop Singh, PS C.R. Park.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. The Appellant is aggrieved by the judgment dated 25th February, 2003 whereby he was convicted for offences under Sections 304B/498A IPC and the order on sentence dated 5th March, 2003 whereby he was directed to undergo Rigorous Imprisonment for a period of seven years under Section 304B IPC and Rigorous Imprisonment for a period of three years and to pay a fine of Rs. 5,000/- under Section 498A IPC and in default of payment of fine he was directed to further undergo Rigorous Imprisonment for a period of three months.

2. Learned counsel for the Appellant contends that in the suicide note Ex. PW2/B which was purportedly written by the deceased soon before the death she had not stated anything about the demand of dowry rather she had

spoken about her own sins, wished Appellant well and requested him to bring up the son. Letter Ex. PW2/C written by the deceased on May, 1998 does not also level any allegation of demand of dowry qua the Appellant and if at all there was some harassment the same was by the father-in-law and the mother-in-law who have already been acquitted on the same evidence. Further there is no allegation of demand of dowry between 1998 to 2001. The allegations, if at all, in the statement of the PW3 the cousin brother does not amount to act of cruelty as no demand was made. Version of PW3 is not supported by Ex. PW2/C or PW2/B. The marriage lasted for nearly six years and there was no complaint lodged to the police. Hence the Appellant be acquitted of the charges framed.

Learned APP for the State on the other hand contends that PW3, the cousin brother has deposed about the harassment by the Appellant in relation to demand of dowry. The statement of the father as well to Ex. PW2/B and PW2/C clearly show continuous course of harassment. Thus no case of acquittal is made out and the appeal be dismissed.

3. I have heard learned counsel for the parties.

4. The deceased Preeti who was married to the Appellant on 29th November, 1994 died on 13th March, 2001 when she left the following suicide note Ex. PW2/B which was written in Bangla language and translated in Devnagri script by PW11:

“Pitaji Mr. P.B. Roy

Dear father, take my love for yourself and mother. Father, I am leaving my life of my own free will. No one is responsible for this. After my death, you should not say anything to my father in law, mother in law. They shall get

peace by this. You should take care of mother. Father, I am destroying my life of my own because of my folly. I did not give any honour to you people nor to my in laws nor to my husband. Father, you have got son in law by fate, that is all. Yours Bavli.

Back page.....Father-After my death, you should not say anything to my father in law and mother in law. Father, you would understand me. I am leaving this life of my own free will. Yours Bavli.

Dear Sanjoy-Take my love Sanjoy. I have committed lot of sin, which I cannot forget, I am feeling embarrassed, you should take care of Shubho and bring him up and give him love. I am leaving this life for my salvation.”

5. A perusal of this suicide note absolves everybody and it is evident that the deceased did not want to prosecute either the Appellant or any of his family members. But that does not absolve the Appellant. In May, 1998 the deceased had written letter to her father Ex. PW2/C narrating her day-to-day woes and sorrows in the matrimonial house and her pathetic condition. The translation of Ex. PW2/C reads as under:

“I came to their house (in laws) as a bride. From that very day, when I came as a bride, story of my woes and sorrows started. I considered my mother in law at much higher pedestal than my mother and I considered my father in law as my own father and I placed my sister in law and her husband at the place of my sister and brother and treated their daughter as my own daughter. This was fourth year of my marriage and in these three years of marriage and upto May month of this year, these people (in laws and others) have crossed all limits. I am constrained to think that those persons who perform, once in a year Jagdani Pooja and also perform once Satya Narain Pooja,

they have so much of sin in their heart. If I had known about this family from the very beginning (before marriage), I would have never married in this family. (I curse myself, I blame God, perhaps, there was some shortcoming in me). I am 12th pass and in the childhood, in an accident, which had taken place on Diwali, some burning scars come on my stomach and foot, these persons made hill out of this mole and also harassed me in different ways and manners. I know, if I disclose all these facts to police and lodge FIR, these all persons would be in jail but I do not want all this, I want my husband, my child and a respectable life. Whatsoever, I am writing about these persons, that is, just nothing (as compared to what they have done). I am not feeling embarrassed while writing this letter. My husband had taken vows of marriage in the presence of FIR and performed Sapatpadi and had also promised me to give me company in my good and bad days before several people. The letter should be read before all of them. I did not have so much hatred in my heart, why this hatred had come in my heart? If I ask something to them (in laws), they do not have time and consider my talks as useless. I am just like a puppet, the strings of which are in the hands of heavenly bodies and all these persons are making me dance. (Alok Da, all this, which I have written is for you and you will not disclose this) Because of these people, I have suffered mental torture but I want them to live in peace and I want they should get whatever they want and for this reason, I had tried to kill myself by consuming phenyl but that is just nothing. They wanted a B.A. pass bride, who should have come to their house, loaded with jewellery. She should have been beautiful, educated. She should have brought a Bangla and car with bank balance. They were having these hopes from the marriage. After my marriage with their son, their all these hopes were dashed to ground. I had not even thought in my dreams that a person, whom I was married can fall to that extent (these facts, I have written for Moni Didi, these things she should keep to herself).

Point- mother in law- There are 24 hours in a day and in these 24 hours, I find myself ostensibly the daughter in law of the

house but in their heart, I am not more than a maid servant. I just keep on looking for the home and doing work. I am one, who has no importance in this house. Daily before coming of my husband and father in law, she (mother in law) taunts me on small things and picks up quarrel with me on trivial. Right between 1.50 p.m. to 3 p.m., she quarrels with me, I have to write all this due to my mental compulsion, otherwise, I am so much harassed due to their acts that I am not even capable of writing. Because of these people for the last 4-5 months, I am suffering from headache”

6. A perusal of this letter shows that the deceased was harassed in number of ways on account of lack of education, not being beautiful and not loaded with house and jewellery. After this letter of May, 1998 prosecution has not produced any document except the suicide note Ex. PW2/B. Besides these two documents the prosecution relies upon the statement of PW2, father of the deceased and PW3, cousin brother of the deceased. PW2 Parimal Vikas Rai, the father of the deceased stated that his daughter was unhappy and sad. After the marriage her in-laws used to taunt her and ask her as to what dowry has been given by her father and maternal uncle. He further stated that in the year of 1998 his daughter was beaten severally by the Appellant, his parents and the Appellant called him up in the night at around 12'o clock stating that he should take away his daughter. He reached the house of his daughter around 1.30 to 2.00 a.m. and talked to the father-in-law of the deceased and requested that his daughter should be adjusted but the father-in-law stated that giving food to his daughter was like giving food to dog. On the persistent request of PW2 they agreed to keep the deceased in the house in the night and next morning they came back to their house. Despite repeated request of PW2, the younger brother of the accused, father-

in-law did not counsel his brother and thus his daughter lived at his house for about one month and thereafter it was decided that the deceased and the Appellant should be separated from their parents' home and they should live separately. PW2 stated that he would not interfere in their decision and this was their internal matter and came back to his house. Thereafter the Appellant and deceased started living separately when once the Appellant beat her. However, PW2 could not prove the report lodged in this regard. There was no allegation of harassment after the Appellant and the deceased were living together to 2-2½ years however, in the year 2001 the Appellant again shifted to his parents' house at C.R. Park along with his daughter. There again the in-laws did not permit her to make the telephone calls. Three days prior to the fateful day his daughter called him up and stated that she would be coming to their house on Tuesday as that would be the day when the Appellant's shop remained closed.

7. A perusal of the testimony of PW2 shows that the allegations of harassment are relating to harassment for bringing less dowry but not soon before the death. Further for a period of between 2-2½ years before 2001 there was no allegation except that once the Appellant beat the deceased. Further the only allegation leveled by PW3 Pankaj Roy, the cousin of the deceased is that on 19th January, 2001 when the deceased along with the Appellant came to the wedding of his sister, the Appellant taunted the deceased and told her that she should see the ornaments being given in the marriage of his sister Sangita and what meager dowry had been given by her parents.

8. From a careful perusal of the evidence on record it is clear that there is no evidence on record to prove that soon before death the deceased was

subjected to harassment in relation to demand of dowry resulting in her death. In view of this position the Appellant is entitled to be acquitted of the charge under Section 304B IPC. However, a perusal of the letter Ex. PW2/C dated May, 1998 and the statements of the witnesses show that the Appellant caused mental and physical trauma to the deceased. Though the deceased did not want any action against the Appellant and wanted the Appellant to bring up the son however, the same does not exonerate the Appellant of the offence committed. The offence under Section 498A IPC is clearly made out against the Appellant and the conviction on the said count is liable to be upheld.

9. As per the nominal roll the Appellant has undergone more than two years of imprisonment including remissions. In view thereof, I deem it fit to modify the order on sentence to the period already undergone. Consequently the conviction for offence under Section 304B IPC is set aside and for offence under Section 498A IPC is upheld. The sentence for offence under Section 498A is modified to the period already undergone.

Appeal is disposed of.

(MUKTA GUPTA)
JUDGE

MAY 13, 2013
‘vn’