

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

+ **CRL.A. 103/2011**

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Reserved on: 12th February, 2013
Decided on: 2nd April, 2013

LALITA AND ORS.

..... Appellant

Through Mr. Davinder Hora, Mr. Sikandar
Khan, Advs.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through Mr. Manoj Ohri, APP with SI
Abhishek Kumar, PS Prasad Nagar.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, the Appellants impugn the judgment dated 9th November, 2010 convicting the Appellants for offences punishable under Sections 498A/34 and 306/34 IPC and the order dated 16th November 2010 directing them to undergo rigorous imprisonment for a period of 10 years with fine of Rs. 10,000/- for offence under Section 306 IPC and rigorous imprisonment for a period of three years with fine of Rs. 5000/- for offence under Section 498A IPC. In case of default in payment of fine the Appellants were directed to further undergo rigorous imprisonment for six months on each count.

2. Learned counsel for the Appellants contends that the deceased died due to hanging on 6th December, 2005 however the FIR was registered

belatedly on 9th January, 2006 after a period of 35 days as the SDM could not fix the responsibility on anyone. Thus, the FIR itself was an afterthought wherein on the basis of false allegations the Appellants and the husband of the deceased were implicated. The husband of the deceased has been acquitted on the same evidence and the Appellants who are the two sisters-in-law and the mother-in-law of the deceased have been convicted and sentenced to maximum punishment. No suicide note was left by the deceased. The version of the PWs even regarding alleged demand of Rs. 50,000/- is a clear improvement from their previous statements and they have been duly confronted with the same. As a matter of fact, the cross-examination of each witness shows that their examination-in-chief is full of material improvements. The Appellants have been convicted for offences punishable under Section 306 and 498AIPC for the reason that they used to taunt the deceased for having relations with the cousin of the husband who was living in the same house. Even as per the statements of the prosecution witnesses the alleged taunts took place before Raksha Bandhan and there is no evidence that the deceased was taunted thereafter. The deceased committed suicide on 6th December, 2005 and thus there is no instigation by the Appellant which led the deceased to commit suicide. The allegations of demand of Rs. 50,000/- are against the husband Anil Kumar who has been acquitted and thus the Appellants are also liable to be acquitted on the same parity. Learned Trial Court has relied upon Ex.P-1, a list of demanded items prepared at the time of Karva Chauth. The list Ex.P1 are items which are required for rituals and are not costly items for which demand of dowry could have been alleged. PW10 the cousin of the Appellant No.1 & 3 has denied that there was any alleged relationship between him and the deceased

or that the deceased was taunted for the same. Reliance is placed on *Ashok Vishnu Davare Vs. State of Maharashtra II (2004) SLT 2004* to contend that if glaring material improvements are there in the statement of witnesses, the same affects the creditworthiness of the prosecution case and it is not safe to base the conviction thereon. Relying on *Devender Singh Vs. State of Haryana IX (2006) SLT 639* it is contended that purported demand should have a direct nexus or immediate cause for commission of suicide by the deceased, otherwise the same would not amount to abetment of suicide. Reliance is also placed on *Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh 2002 (2) RCR (Criminal) 687 (SC)*.

3. Learned APP on the other hand contends that the marriage between the parties lasted only for 10 months. On the date of incident itself the statement of mother was recorded. Since SDM did not specifically write the Sections under which action was to be taken, there was delay in registration of FIR which has been clarified by PW14 the investigating officer and the two Police officials called as Court witnesses CW1 and CW2. Besides the harassment caused to the deceased alleging relations with the cousin of the husband, the continuous course of mental cruelty was inflicted on the deceased by demanding Rs. 50,000/-. The deceased had gone to her parental home a fortnight prior to the alleged incident when the husband and the in-laws made a demand of Rs. 50,000/- and from her parental home she had come back just one day ago. Since the deceased died within 10 months of her marriage by committing suicide presumption under Section 113A Indian Evidence Act is required to be drawn against the Appellants and the onus shifts on them to prove that no instigation was caused soon before resulting

in the deceased committing suicide. The learned Trial Court has in extenso considered the aspect of instigation and has come to the conclusion that the conduct of the Appellants was sufficient abetment to the deceased to have committed suicide. Reliance is placed on *Thanu Ram Vs. State of M.P. (2010) 10 SCC 353*, *Narwinder Singh Vs. State of Punjab (2011) 2 SCC 47*, *Parveen Pradhan Vs. State of Uttaranchal and Anr. (2012) 9 SCC 743*, *Rakhal Debnath Vs. State of West Bengal 2012 (8) SCALE 497*, *Vajresh Venkatray Anvekar Vs. State of Karnataka Crl. Appeal 12/ 2013 decided by Supreme Court on 3rd January, 2013*.

4. I have heard learned counsel for the parties. The case of the prosecution in brief is that on 6th December, 2005 Chanda Kumari was brought to Bali Nursing Home at 3.10 PM where PW6 examined her and found her to be brought dead. An information was conveyed to PS Prasad Nagar. The SDM recorded the statement of mother of the deceased PW1 as Ex.PW1/A wherein she stated that she married her daughter on 3rd February, 2005 as per Hindu Rites. She gave dowry beyond her capacity and spent around Rs. 2,25,000/- the loan of which she was paying till that date. On the last day of February, 2005 her son-in-law sent her daughter and asked for Rs. 5000/- for the album of the wedding which she gave. After the marriage on the various festivals things were demanded by the in-laws and she kept fulfilling the same. The two sisters-in-law and mother-in-law of her daughter used to taunt her which her daughter told to her. Her daughter's father-in-law was a very good man and did not say anything. She further stated that the cousin of her son-in-law used to stay with them and the two sisters-in-law and mother-in-law used to taunt her as to why the deceased

used to talk to Parvesh. On the basis of the said complaint after receiving the report of the post-mortem etc., the SDM directed registration of FIR and an FIR under Section 498A/304B IPC was registered. After investigation a charge-sheet was filed for offence under Section 304B/498A/34 IPC against the Appellants and Anil Kumar, the husband of the deceased. The learned Trial Court vide its order dated 8th May, 2006 came to the conclusion that charges for offences under Section 498A/306/34 IPC were made out against the Appellants and Anil Kumar and no charge for offence under Section 304B IPC was framed. It appears that the order dated 8th may, 2006 was not even challenged by the State and thus has attained finality. The evidence of the prosecution witnesses, statement of the accused and two Court witnesses i.e. the then SHO Surender Singh and then ACP P.S. Kushwaha, PS Prasad Nagar were recorded by the learned Trial Court. Consequently, the impugned judgment was passed convicting and sentencing the Appellants as above and acquitting Anil Kumar, the husband of the deceased. It may be noted that no leave to appeal has been sought by the State against the acquittal of Anil Kumar and thus the impugned judgment has attained finality to that extent.

5. PW1 the mother of the deceased reiterated the contents of her statement made to the SDM before the Trial Court. PW1 further stated that Anil and the Appellants used to pass comments on her daughter and harass her because of insufficient dowry at the time of marriage. They used to say that their expectations were not fulfilled. She however clarified that this incident happened in the end of February. PW1 stated that on the festivals the in-laws used to send her daughter to her house along with the list of

items which she managed to fulfill. The deceased further informed that the accused persons passed comments for not bringing fridge and motor-cycle and that the furniture was below their standard. She clarified that the conversation between her and her daughter regarding the incident of Parvesh took place on the occasion of Raksha Bandhan. She has further stated that her daughter came to her house on 21st November, 2005 and remained there for 15 days when she informed that she was sent by all the four accused to bring Rs. 50,000/-. It is further alleged that prior to this on 30th October, 2005 Appellant No.2 came to her house and demanded Rs. 50,000/- and refused to take any eatable till Rs. 50,000/- was given to her. On 21st November, 2005 accused Anil conveyed the same message to Chanda to bring the money. However, PW1 kept her daughter for 15 days and then sent her back to her matrimonial home at about 8.30 PM on 5th December, 2005 and on 6th December, 2005 at 5.00 PM she came to know that condition of her daughter was serious and she was in Bali Nursing Home. This witness has been extensively confronted with the previous statement. From the confrontation it is evident that in the statement before the SDM she had not stated that there was a demand of Rs. 50,000/- in the month of October or thereafter or that the deceased was sent on 21st November, 2005 with the demand of Rs. 50,000/- or that Appellant No.2 had come to her house to demand Rs. 50,000/-.

6. PW2 Krishna, the younger sister of deceased was also examined who stated that the deceased used to complain that accused persons were demanding money and they were sending her to bring money from her mother. She further stated that a fortnight before her death, the deceased

came to stay with them and informed that a demand of Rs. 50,000/- was made. PW2 stated that her sister told her that she was sent by her husband with this demand. She further stated that one Parvesh, cousin brother of her brother-in-law was staying in the matrimonial home of her sister and whenever her sister used to talk to Parvesh, the other family members objected to it. PW2 was again confronted with her earlier statement wherein list of demand only on one single occasion of festival of Karva Chauth was made in the statement under Section 161 Cr.P.C.

7. PW4 Dinesh, the brother of deceased was also examined who also stated that Anil Kumar made a demand of Rs. 5000/- through his sister. The said amount was paid after about one and a half month of marriage. He further stated that when the deceased came to live with them for around 15 days she disclosed that the accused persons demanded Rs. 50,000/- from them and that was the reason she was sent. He also reiterated that her sister told that the accused person used to object her talking with Parvesh. Her sister had gone to her matrimonial home on 5th December, 2005 and on 6th December, 2005 he received the information regarding her being taken to the hospital. This witness was also confronted with his previous statement and it was found that the demand of Rs. 50,000/- was not a part of a statement recorded under Section 161 Cr.P.C. PW5 Manju, the cousin sister of the deceased deposed that the deceased met her about 15 days prior to her death when she came to her mother's house and in her presence she told that her in-laws were demanding Rs. 50,000/-.

8. PW10 Parvesh who was also examined before the learned Trial Court stated that he came to stay at the house of his aunt after two-three months of

the marriage of his cousin Anil with the deceased. Anil helped him in getting a job in Jain Paper Mart where Anil was also working. He further stated that his relationship with Chanda was normal and the family of the accused was having no objection with the same. This witness has been cross-examined by the learned APP and in his cross-examination he admitted Ex.PX1 to be in his own hand-writing. Ex.PX1 is a note written by PW10 on 8th December, 2005 immediately after the death of Chanda Kumari on 6th December, 2005. PW10 in the said note has stated that he was too fond of his Bhabhi probably because she was the eldest daughter-in-law in the family and like her mother, but some people can only understand one relationship between a boy and a girl. The note further states that he was feeling the house very lonely after she has left and her Kaki stated that if you loved her so much why don't you hang yourself and thus he was going to his sister-in-law of his free will and nobody was responsible for it. He further stated that even his last rites should be performed at Panchkuiyan Shamshan Ghat so that he could easily reach to her. Learned Trial Court has laid a lot of emphasis on this. However from the evidence on record it may be noted that neither any witness has stated about his attempted suicide nor that PW10 attempted to commit suicide. PW10 has also denied this suggestion. The only admission is that Ex.PX1 is in his hand-writing and the note being addressed to his family members. Apparently the EX.PX1 appears to be hand written suicide note, however the same cannot simply lead to the inference that PW10 attempted to commit suicide with no other evidence being available on record in this regard.

9. A perusal of the statements of the witnesses show three kinds of allegations. Firstly taunts when the deceased used to talk to Parvesh, demand at the various festivals and demand of Rs. 50,000/-. As regards allegation of taunts relating to relations between PW10 and the deceased are concerned, no doubt from the statement of PW1 it appears that the said taunts were informed to her when she came to meet her at Raksha Bandhan and there is no evidence that the deceased complained about the same when she came to meet her in November 2005 that she was taunted in this regard. PW2 also has reiterated this allegation, however she has not stated as to when her sister was taunted for talking to Parvesh by the family members. Similarly PW4 has also not clarified the time when his sister told regarding the taunts by the accused persons in relation to Parvesh. Thus, there is no material on record to suggest that the suicide of the deceased was abetted by objecting to her relations with PW10 Parvesh. No doubt PW10 has admitted Ex.PX1 to be in his hand-writing, however as regard admissibility of Ex.PX1, the same is not the statement of the deceased Chanda Kumari and thus is not admissible under Section 32 of the Evidence Act. In relation to PW10 it is only a previous statement with which he can be confronted with. In the present case the issue is not with regard to circumstances leading to the death of PW10 but the suicide and the circumstances leading to the death of Chanda Kumari. This is not even an evidence of conduct of a witness. Thus, this document relied upon by the learned Trial Court is not admissible in evidence per se.

10. As regards the allegation of the mother that on each festival demands were made and she fulfilled the same, it may be noted that PW1 has been

confronted with her earlier statement and it was found to be an improvement from her statement before the SDM. Further PW2 was also confronted with her earlier statement wherein it was stated that a list was sent only on one occasion i.e. Karva Chauth. Thus, at best the allegations against the Appellants are with regard to demand on Karva Chauth. In this regard it would be relevant to note Ex.P1 the list sent for the festival of Karva Chauth. Ex.P1 reproduces the items as 7 (Karvas of sugar) with 21 rupees therein and sweet or laddoo, mother-in-law's and daughter-in-law's saree-blous, sindoor, bangles, a brass utensil, cosmetic items like Bindi, Lipstic, mehendi etc. and fruits and pajeb/ chukti. It may be noted that these are the items required to perform the necessary puja/ rituals and not demand of dowry in relation to the marriage.

11. As regards the allegations of demand of Rs. 50,000/-, PW1 has been confronted with the previous statement made before the SDM wherein there is no allegation of demand of Rs. 50,000/-. There are material improvements in her statement before the Court in this regard. Further PW2 has stated that her sister was sent with the said demand by her husband. Anil Kumar, the husband of the deceased has already been acquitted and is not the Appellant in the present appeal. PW4 has further stated that his sister disclosed that the accused persons were demanding Rs. 50,000/- from them and that is why they had sent her to the parental home. Again PW4 was confronted with his previous statement recorded with the Police wherein these facts were not recorded. In view of the fact that the only allegation is demand of Rs. 50,000/- which is also based on material improvements by the prosecution witnesses, I do not find it safe to rely upon the same.

12. In *Ashok Vishnu Davare* (supra) it was held:

“15. From the above evidence, in our opinion, it is not possible to come to the conclusion that the prosecution has established its case beyond all reasonable doubt in regard to the charges alleged against the appellant. In our opinion, the courts below have not properly appreciated the evidence and failed to notice the glaring improvements made by the witnesses in their evidence given before the court. These improvements in our opinion materially affect the creditworthiness of the prosecution case hence it is not safe to base a conviction.”

13. Further for the prosecution to prove an offence under Section 306 IPC it is essential that instigation proximate in time to the death is proved. In *Sanju @ Sanjay Singh Sengar* (supra) it was held:

“15. A plain reading of the suicide note would clearly show that the deceased was in great stress and depressed. One plausible reason could be that the deceased was without any work or avocation and at the same time indulged in drinking as revealed from the statement of the wife -- Smt. Neelam Sengar. He was a frustrated man. Reading of the suicide note will clearly suggest that such a note is not a handy work of a man with sound mind and sense. Smt. Neelam Sengar, wife of the deceased, made a statement under Section 161 Cr.P.C. before the Investigation Officer. She stated that the deceased always indulged in drinking wine and was not doing any work. She also stated that on 26th July, 1998 her husband came to them in an inebriated condition and was abusing her and other members of the family. The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25th July, 1998 and if the deceased came back to the house again on 26th July, 1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken place on 25th July, 1998. Viewed from the aforesaid circumstances independently, we are clearly of the view that the ingredients of

'abetment' are totally absent in the instant case for an offence under Section 306 I.P.C. It is in the statement of the wife that the deceased always remained in a drunken condition. It is a common knowledge that excessive drinking leads one to debauchery. It clearly appeared, therefore, that the deceased was a victim of his own conduct unconnected with the quarrel that had ensued on 25th July, 1998 where the appellant is stated to have used abusive language. Taking the totality of materials on record and facts and circumstances of the case into consideration, it will lead to irresistible conclusion that it is the deceased and he alone, and none else, is responsible for his death.

14. In *M. Mohan Vs. State Represented by the Deputy Superintendent of Police* (2011) 3 SCC 626 it was held:

“43. This Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* [(2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the word “instigation” and “goading”. The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act

which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

15. From the evidence on record, I do not find any live link between the taunts by the Appellants and the suicide committed by the deceased. Thus, the Appellants are acquitted of the charges under Section 306/34 IPC.

16. As regards Section 498A IPC is concerned, as stated above the allegations with regard to demand of dowry of Rs. 50,000/- by the Appellants are clear improvements. Further even taunts for talking to Parvesh are neither proximate nor of such a nature so as to constitute the offence under Section 498A IPC. The impugned judgment of conviction and order on sentence are set aside. The Appellants are thus acquitted of the charges framed. Appellants No.2 and 3, who are in custody, be released forthwith if not required in any other case. The bail bond and surety bond of Appellant No.1 are discharged. Appeal is disposed of.

(MUKTA GUPTA)

APRIL 02, 2013
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