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

% *Judgment dated 23rd September, 2013*

+ CRL.A. 4/2005

PUSHPA JAIN Appellant

Through : Mr.M. Shamikh, Adv.

versus

STATE Respondent

Through : Mr.Pawan Sharma, Adv.

+ CRL.A. 23/2005

PANKAJ JAIN Appellant

Through : Mr.M. Shamikh, Adv.

versus

STATE Respondent

Through : Mr.Pawan Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Both the present appeals arise out of a common judgment dated 13.12.2004 and order on sentence dated 14.12.2004 passed by learned Additional Sessions Judge, Delhi, in S.C.No.108/2002. The appeals have been heard together and are being disposed of by a common judgment.
2. By the impugned judgment, Smt.Pushpa Jain, mother-in-law, (appellant in Crl.Appeal No.4/2005) has been sentenced to undergo rigorous imprisonment for a period of two years for the offence punishable under

Sections 498A IPC with fine of Rs.10,000/- and in default of payment of fine, simple imprisonment for a period of three months. Pankaj Jain, husband, (appellant in Crl.Appeal No.23/2005) has been sentenced to undergo rigorous imprisonment for seven years for the offence punishable under Section 307 IPC with fine of Rs.20,000/- and in default of payment of fine, simple imprisonment for six months. Pankaj Jain has further been sentenced to undergo rigorous imprisonment for two years for the offence punishable under Section 498A IPC with fine of Rs.10,000/- and in default of payment of fine, simple imprisonment for three months.

3. The case of the prosecution, as noticed by the trial court and stated by counsel for the appellants, is as under:

“2. Prosecution case, as emanating from the report under section 173 Cr.P.C. is as follows: Smt.Meenu made a statement to the Ms.Manisha, the then SDM (Shadara), to the effect that she was thrown by accused persons from the roof of her house and also stated that she was being harassed by the accused persons for being not satisfied with dowry and also for demanding more dowry. She also explained the delay in lodging the complaint being under fear from the accused persons. On the endorsement made by SDM, FIR of this case was registered. After arrest of accused persons and upon completion of investigation, challan was filed before the Court.

3. This case was committed to the court of Sessions and vide orders dated 24.8.01, Id. Predecessor had framed charges under Sections 498-A/34 and 307/34 IPC against all the accused persons, to which, each one of them pleaded not guilty and claimed trial.”

4. The prosecution in all has examined ten witnesses. Six witnesses were examined by the defence.
5. Learned counsel for the appellants submits that the learned trial court has erred in passing the impugned judgment and order on sentence on the ground that there is no legal evidence against the appellants justifying their conviction. A common argument has been raised that there is nothing on record to show that the appellants ever demanded dowry or harassed Meenu Jain for dowry. Counsel further submits that no complaint was ever made by Meenu Jain prior to the incident with regard to demand of dowry. It is also submitted that Meenu was suffering from depression, she was taking treatment from IHBAS and because of her depression she fell from the roof on account of giddiness. It is next contended that the mother-in-law is at present eighty years of age, she is suffering from various ailments, including hypertension, acute arthritis and blood pressure.
6. Learned counsel for the appellant further contends that there was gross delay of thirty one days in filing the FIR. The incident took place on 19.2.1999, a complaint was made by Meenu Jain on 15.3.2009 and her statement was recorded under Section 161 Cr.P.C. wherein she stated that she fell as she was feeling giddy. Counsel further contends that on this ground alone the impugned judgment and order on conviction should be set aside.
7. It is also contended by learned counsel for the appellants that the evidence of PW-9, Meenu Jain, is unreliable as she had implicated the brother-in-law and one cousin brother of the husband and these allegations have found to be unreliable by the learned trial court. Thus, the entire evidence of Meenu Jain is worthless. It is further contended that the statement

recorded by the SDM was a tutored statement and, thus, the same should not be relied upon. It is next contended that the conduct of the husband would show that he took Meenu to the hospital, he signed all the medical papers before the surgeries were made and further he remained near his wife throughout her period of illness, besides paid for all the expenses.

8. Learned counsel for the appellants submits that keeping in view the age of the mother-in-law she should be given benefit of Sections 4 and 6 of The Probation of Offenders Act. Counsel further submits that as far as the husband of Meenu Jain is concerned, he has already undergone three years and ten months and, thus, the order on sentence should be modified to the period already undergone.
9. Mr.Sharma, learned standing counsel for the State, submits that the prosecution has been able to prove its case beyond any shadow of doubt. Standing counsel has drawn the attention of the Court to the statements made by Meenu Jain before the SDM and also in Court wherein an explanation has been given for delay. It has been stated that Meenu Jain was threatened by her husband that he would kill her, her brother and nephew and because of this fear she did not make the complaint. Standing counsel further states that in the complaint which was made on 15.3.1999 Meenu Jain had made an allegation that she was thrown by her husband but when the statement was recorded by the Sub-Inspector, out of fear she did not disclose the correct and true facts. It is only when she was able to regain some strength that she had the strength to speak out the truth.
10. I have heard learned counsel for the parties, considered their rival contentions, examined the trial court record and the evidence of the witnesses. Statement of Meenu Jain was recorded by the SDM on 22.3.1999 at 11.30 a.m., in the Special Ward (Ortho), LNJP Hospital, Delhi. The translated version of the statement, Exhibit PW-8/A, reads as

under:-

“Q. What is your name?

A. My name is Meenu Jain.

Q. How it happened?

A. I was standing on the roof. My mother-in-law and many other persons were there on the ground and were talking ill of me. I got bored and came to the roof. It was a three storeyed house and on its roof I had come. In the meantime, Ankur and all other persons came and started saying throw her and end the matter.

Q. When did it happen?

A. 19th around morning time.

Q. When did the marriage solemnise? What is the name of your husband?

A. I do not remember the date exactly..... 23 It was solemnised about one & a half years ago. Pankaj Jain.

Q. What had happened on that day?

A. He was going to his office and I stopped him by saying that don't go as they have come. Thereafter I came on the roof. My mother-in-law, Sureshji (nandoi) and my husband were talking ill of me. Then, they came upstairs and threw me downstairs. Thereafter, I don't

Q. Did quarrels used to take place in the house?

A. Yes. After the marriage I was not served with food properly for a single day. I used to take meal in the end. My all jewellery was sold. They used to take money. Whatever money I got from my brother's marriage or someone else, they used to take all. When my parents used to send things/articles on the occasion of any festival, they used to quarrel and used to say that money should be given. They often demanded money. Mother-in-law is very clever. I was not allowed to tie Rakhi to my brother. My brother got tied Rakhi after 4-5 days. They used to tell that I have a child before marriage. On this issue, I and my brother quarrelled.

Q. Quarrel used to take place on the very first day of marriage or it has started thereafter?

A. First 2-3 months remained good. But thereafter, they started to harass. I was having pain of Appendix. Mother-in-law got bottles from Vaid but pain remained as it is. Then I phoned to my brother to send the vehicle and when my brother sent the vehicle then operation was done. During operation my

husband came with empty hands. After taking money from my purse, he had done something. My whole jewellery was sold. I can tell where it was sold. Whole night there used to be pain in my legs. My legs were broken as I was thrown from the roof by them. I like children. I was not allowed to meet the children of my sister during the whole year. They had quarrelled with me.

Q. What happened on that day? Who had thrown?

A. Pankaj my husband, his jija.... Suresh and Ankur the son of his Tauji.

Q. After that did they come to hospital?

A. Yes. First of all they had come to GTB Hospital and had stayed for three days.

Q. Did they take your care (sic. care) in the hospital?

A. Yes, they did take care for 4-5 days. Pankaj also donated blood and then said if I speak further, my nephew would be kidnapped or they would kill my brother.

Q. When did you come to LNJP?

A. On 22nd February. I do not know how my brothers are helping. Expenses are rising. Even I have not enough money to take tea. In my house (matrimonial home) all of them gave beating to me. Sometimes they tried to strangle my throat. The lights were put off till 7 pm. Even at the time when appendix pain occurred, so that I could not take medicines.

Q. Do you want to prosecute them?

A. Yes.

Q. Then why you did nothing for so many days?

A. I could not gather courage. Now brothers have given me courage. I need maintenance. Rs.Five Lacs were spent in the marriage and now today there is nothing. Two lacs were in cash. Rs.10,000/- was taken out from my almirah. They should be prosecuted. I have given this statement without any fear. Statement heard, it is correct.”

11. It is on the basis of this statement that the State machinery was put into motion.

12. Meenu Jain has also deposed before the Court on the same lines as her statement made before the SDM. Her testimony has remained unshaken in the cross-examination.

13. In order to decide the issue whether Meenu Jain fell down from the roof accidentally or was intentionally pushed by her husband, the trial court examined PW-1 Dr. Ajay Kumar who opined that it is very unlikely that a patient on anti depression drugs will fall down from the roof of the house unless the patient expresses the desire to end his or her life. In my view, the trial court has rightly observed, after considering the opinion of PW-1, that there is no doubt that the injured fell down accidentally because of medication especially in light of the fact that she never expressed the desire to end her life at any point of time.
14. I have also examined the MLC, Exhibit PW-3/A, which was recorded in the LNJP Hospital. The MLC contains the alleged history of being pushed by the husband from height. Exhibit PW-3/A also reveals multiple fractures of limbs, ribs, etc., which corroborates the evidence of PW-9. I find that the trial court has rightly not considered the evidence of defence witnesses to be reliable being interested witnesses. PW-9 the injured has given a cogent explanation for the delay and recording of FIR.
15. It is understandable that a person, who was thrown from the roof, had sustained serious injuries and was going through multiple surgeries and was in pain may not have had the strength out of fear she may not have made a complaint against her husband. Evidence of the brothers of Meenu (PW-1 and PW-6) also shows that she was being harassed for dowry by her mother-in-law and her husband.
16. Accordingly, I find no infirmity in the judgment and order on sentence passed by the trial court, however, keeping in view the submissions made by learned counsel for the parties and taking into consideration that the incident pertains to the year 1999, the age of appellant, Pushpa Jain (mother-in-law), who is over eighty years, the fact that she is suffering from various ailments and she has faced trial for many years, the sentence

awarded to the mother-in-law is modified and she is directed to be released on probation for a period of one year on her furnishing a personal bond in the sum of Rs.25,000/- for good conduct to the satisfaction of the trial court. As far as the appellant, Pankaj Jain, is concerned, taking into consideration that he has remained in custody for three years and ten months and the facts that he had taken his wife to the hospital and also signed the necessary papers at the time of her surgery, which would show that he was present at that time and also paid for surgeries and treatment, the sentence awarded to him is also modified to the period already undergone.

17. In the case of *Ankush Shivaji Gaikwad v. State of Maharashtra*, reported at (2013) 6 SCC 770, the Supreme Court of India has elaborately discussed Section 357 of the Code of Criminal Procedure, which provides the power to award compensation to the victims of the offence in every case.
18. In my view the compensation awarded by the trial court is not adequate. While awarding the compensation in this case the trial court has not considered the fact that the victim was pushed from the roof, she sustained multiple injuries, she had to undergo surgeries and she remained in hospital. Accordingly, in addition to what has been awarded by the trial court, it is deemed appropriate to award a sum of Rs.1.00 lakh to the victim by the husband within four weeks from today as compensation. Bail bonds be cancelled. Surety stands discharged.
19. Appeals stand disposed of in above terms.

SEPTEMBER 23, 2013 msr

G.S.SISTANI, J