

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

+ CRL.A. 857/2008

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Decided on: 4th January, 2013

PREM PAL SINGH

..... Appellant

Through **Mr. Rajat Navet, Amicus Curiae**

versus

STATE OF NCT OF DELHI

..... Respondent

Through **Mr. Mukesh Gupta, APP for State.**

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MS. MUKTA GUPTA, J (ORAL)

1. By the present appeal the Appellant challenges the judgment dated 26th August, 2008 convicting the Appellant for offences under Section 498A IPC and 304B IPC and the order on sentence dated 27th August, 2008 sentencing the Appellant to undergo simple imprisonment for 7 years without a separate sentence being imposed in respect of offence under Section 498A IPC.

2. Learned amicus curiae for the Appellant contends that the conviction of the Appellant is based solely on the uncorroborated testimony of PW1 the

brother of the deceased. The uncle of the deceased who had in fact brought up the deceased after the death of her parents has not supported the prosecution version. Moreover, no material has been placed on record to corroborate the demand of fridge or Rs. 50,000/- for business. The allegations of beating are also not substantiated as PW6 Dr. Mukta Rani in her testimony has stated that besides the anti-mortem hanging injury there was no other injury on the deceased. The learned Trial Court erred in drawing a negative inference that merely because the Doctor has stated that there is no injury mark that does not mean that no injury was inflicted on the deceased. The fridge was allegedly brought one month prior to the demise of the deceased and no receipt thereof has been exhibited. A perusal of testimony of PW1 the brother of the deceased does not show that there was a demand of dowry. Even if the version of PW1 is accepted, at best it was a demand of Rs. 50,000/- for running the business which was not in relation to the marriage and thus did not constitute a dowry demand. The judgment of the learned Trial Court is contrary to the law laid down by the Supreme Court in *Appasaheb and Anr. Vs. State of Maharashtra* (2007) 9 SCC 721 followed by this Court in *Hans Raj Sharma Vs. State Govt. of NCT of Delhi* 175 (2010) DLT 446 and *Sanjiv Vs. State* 164 (2009) DLT 459.

3. Learned APP relying upon *Jagjit Singh Vs. State of Punjab AIR 2009 SC 2133* contends that in almost similar facts where there was a demand of Rs.1,00,000/- for purchasing a new house, the Hon'ble Supreme Court upheld the judgment of conviction by the High Court on the ground that the same would fall within the definition of dowry demand. Reliance is further placed on *Prem Kanwar Vs. State of Rajasthan AIR 2009 SC 1242*. The testimony of PW1 the brother of the deceased is amply clear as he has stated that 4 days prior to her death, the deceased had made a telephonic call to him and stated that she was being beaten. On speaking to the Appellant, the Appellant demanded Rs. 50,000/- for business. Besides less than a month prior to this incident there was a specific demand of fridge which PW1 bought and gave to the Appellant. Hence no case for interference is made out and appeal be dismissed.

4. I have heard learned counsel for the parties. Briefly the case of the prosecution on the basis of the statement of PW1 Jitender Kumar Rajput is that his sister Geetanjali was married to the Appellant on 16th May, 2005 as per Hindu rites. The parents of PW1 and the deceased had passed away at an early age and they were brought up by their uncles Rajender Kumar, Surender Kumar, Gyanender Kumar, Narender Kumar and Dheerender

Kumar. It is stated that in the marriage of Geetanjali dowry articles were given as per their capacity. Initially the deceased lived with the Appellant in the village Makhana, District Bullandshehar, U.P. for two months and thereafter came to Delhi in a tenanted house C-83, Master Gali, New Ashok Nagar. When PW1 went on the festival of Raksha Bandhan, the deceased told him that the Appellant used to consume liquor, came late along with other boys, compelled her to prepare food for them and used to abuse and beat her. When PW1 tried to make the Appellant understand, the Appellant demanded a fridge by saying that they had to drink hot water or take cold water from the neighbours. On the demand of the Appellant PW1 purchased a fridge from the market and gave it to him. On 12th September, 2005 his sister made a telephone call to him and told that her husband was beating her. When PW1 spoke to the Appellant on phone and asked for the reason for beating his sister, the Appellant demanded Rs. 50,000/- for running a business. PW1 assured the Appellant for arranging the money within a week, however unfortunately on 16th September, 2005 he came to know that his sister had committed suicide.

5. Learned counsel for the Appellant has laid a lot of stress on the fact that the testimony of PW1 is not supported by the uncle Rajender Kumar

PW5 who in fact was the one who brought up the deceased and her brothers after the death of their parents. No doubt PW5 has not supported the case of the prosecution and has been declared hostile. However, a perusal of the statement of PW5 shows that in cross-examination on behalf of the State he has admitted the fact that PW1 told him that the Appellant demanded a fridge by saying that they had to drink hot water or take cold water from the neighbours and on the demand of the Appellant his nephew PW1 purchased a fridge from the market and gave it to the Appellant. Further the version of PW1 is corroborated by PW2 Bijender Kumar the other brother of the deceased who stated that the deceased had informed his brother i.e. PW1 regarding the torture at the hands of the Appellant.

6. On the facts proved in the present case the following ingredients of the offence under section 304B Indian Penal Code, 1860 stand proved beyond reasonable doubt which are not even disputed by the learned amicus curiae; firstly that the deceased died within 7 years of the marriage and secondly that the death was unnatural. The only issue raised is that even if accepting the evidence of PW1 on its face value which is otherwise not corroborated, at best it was a demand made but not in relation to marriage and thus could not be said to be a demand for dowry. I am afraid the contention of the

learned counsel for the Appellant cannot be upheld. This Court while dealing with a similar situation in *Hans Raj* (supra) held that demands of articles like T.V., fridge etc. can be easily said to be in relation to demand of dowry. In the case in hand less than a month before the death of the deceased the Appellant demanded a fridge which demand was fulfilled by PW1. Merely because the receipt of the fridge purchased was not exhibited would not be sufficient to discard the testimony of PW1. Further as regards the demand of Rs.50,000/- for running the business, learned counsel for the Appellant has placed reliance on *Appasaheb*. In *Appasaheb* the Hon'ble Supreme Court was dealing with a case of harassment and beating to the deceased wherein the witnesses stated that the deceased used to complain that she was subjected to harassment by the Appellants therein on account of some domestic reasons and when the domestic reasons were asked it was stated that she was asked to bring Rs.1000-1200/- for expenses and for manure as the Appellant therein had no sufficient money. The Apex Court clearly noted that witnesses did not state that the cause for ill-treatment was a demand for money and a consequent beating.

7. In the case in hand when PW1 spoke to the deceased on the telephone on 12th September, 2005 she specifically stated that she was being beaten

and when PW1 asked for the reasons from the Appellant he demanded a sum of Rs. 50,000/- for running the business. It would be thus apparent that not only money was demanded but the deceased was beaten while demanding the said money. The Hon'ble Supreme Court while dealing with a similar case in *Jagjit Singh* (supra) wherein the allegations were for demand of Rs.1,00,000/- for purchase of a new house upheld the judgment of the High Court relying upon the decision in *Appasaheb* (supra). Further in *Prem Kanwar* (supra) the Apex Court considered the necessity for insertion of the two provisions i.e. Section 304B IPC and Section 113B in the Evidence Act and it was held that keeping in view the impediments in the pre-existing law in securing evidence to prove dowry related death, the Legislature in its wisdom inserted a provision relating to presumption of dowry death on proof of certain essentials. In the present case on the facts of the case there is no dispute that soon before death the Appellant was meted out of the cruelty and the only dispute relates to whether that cruelty was in relation to simple demand of Rs. 50,000/- for running the business or the same would be called a dowry demand. In *Prem Kanwar* (supra) it was held:

“9. The offence alleged against the accused is under Section 304B IPC which makes "demand of dowry" itself punishable. Demand neither conceives nor would conceive of any

agreement. If for convicting any offender, agreement for dowry is to be proved, hardly any offenders would come under the clutches of law. When Section 304B refers to "demand of dowry", it refers to the demand of property or valuable security as referred to in the definition of "dowry" under the Act. The argument that there is no demand of dowry, in the present case, has no force. In cases of dowry deaths and suicides, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence. That could be either direct or indirect. It is significant that Section 4 of the Act, was also amended by means of Act 63 of 1984, under which it is an offence to demand dowry directly or indirectly from the parents or other relatives or guardian of a bride. The word "agreement" referred to in Section 2 has to be inferred on the facts and circumstances of each case. The interpretation that the accused seek, that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or taking dowry and Section 4 which deals with a penalty for demanding dowry, under the Act and the IPC. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. It is not always necessary that there be any agreement for dowry."

8. It is thus clear that to find out whether the particular demand was a demand simplicitor or a dowry demand, inference has to be drawn from the circumstantial evidence. In the present case less than a month ago the Appellant demanded a fridge and then within one month he demanded Rs. 50,000/- for running the business and assaulted the deceased in relation thereto. The prosecution having discharged the initial burden of showing that the same was in relation to the dowry and that demands were made in

quick succession, the presumption stood raised against the Appellant which it failed to discharge under Section 113B. The Appellant failed to show that the demand made was as a loan and not a demand in relation to dowry. Even in the question put to the Appellant under Section 313 Cr.P.C. he has stated that the evidence of PW1 was false and a bunch of lies and no material has been placed to show that the demand was a repayable loan. The defence witnesses produced by the Appellant have stated that at the time of marriage there was no demand which fact has not even been stated by PW1 or the other relations.

9. In view of the material evidence on record, I do not find any reason to interfere with the impugned judgment of conviction and order on sentence passed by the learned Trial Court. Appeal is dismissed.

10. Before parting I would like to appreciate the assistance rendered by the learned amicus curiae.

(MUKTA GUPTA)

JANUARY 04, 2013
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