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

+ CRL.A. 295/2000

SHIV KUMAR & ORS. Appellants

Through: Mr. L.B. Rai and Ms. Preeti
Bhandari, Advocates

versus

STATE Respondent

Through: Mr. Ravi Nayak, Additional Public
Prosecutor for respondent-State

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

23.01.2014

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Appellants are the father-in-law, brother-in-law and husband of deceased-*Alkesh*, who had died unnatural death by hanging in her matrimonial house on 20th December, 1997 i.e. within one year and four months of her marriage with appellant-husband.

Appellants were tried for the offences under Section 304-B/498-A/34 of IPC in FIR No.389/1997 registered at P.S. Anand Parvat, Delhi and vide impugned judgment of 5th May, 2000, they have been convicted for the offence of dowry death and of subjecting deceased to cruelty whereas their co-accused *Smt. Jhabbo Devi (Bua of husband of deceased)* and *Babli (nand of deceased)* have been declared as Proclaimed Offender. Vide impugned order of even date, appellants have been sentenced to rigorous imprisonment for seven years each with fine for committing the offence of dowry death and for the offence under Section 498-A of IPC,

they have been sentenced to rigorous imprisonment for two years each with fine. Both the sentences were ordered to run concurrently.

The factual background of this case as noticed by trial court in the impugned judgment is as under: -

“The short facts of the case as per the prosecution are that on 29.12.97, Ran Singh Chauhan r/o Village Nagaria of District Mainpuri, U.P. aged about 50 years came to P.S. Anand Parbat and got recorded his complaining statement that he was the father of Alkesh who was married to Raj Kumar accused on 22.4.96 and at the time of marriage, he has given dowry and other articles as per his capacity. According to Ran Singh Chauhan, after the marriage, when his son Sudesh came to Delhi at Prem Nagar at the house of the accused persons for taking back his sister Alkesh, at that time, Kashi Singh, father-in-law of Alkesh and Jhaboo Devi (P.O.), Bhua of Raj Kumar told his son Sudesh that in the marriage, the wrist watch and taper recorded since have not been given, as such, Alkesh would be sent after these articles are delivered. Sudesh assured the accused persons that when the accused would come for taking back his sister, all these articles would be given to them. According to Ran Singh Chauhan, when Raj Kumar accused came to take back Alkesh, he was given the wrist watch and the tape recorder. It is alleged that thereafter the demand for dowry started increasing and the accused persons asked for colour T.V. and Gas Cylinder. It was also alleged by Ran Singh that his daughter Alkesh was harassed and was given beating by the accused persons. Due to the harassment of the accused persons, his daughter Alkesh wrote a letter to him and thereafter he sent his son again to the house of the accused persons and his son after consoling them came back to his house and told Ran Singh that in-laws of Alkesh were greedy

and their demand should not be fulfilled, otherwise they would raise more demands. According to Ran Singh, he wrote several letters to the in-laws of Alkesh for enquiring about her well being, but none of the letters were passed on by the accused persons to his daughter. According to Ran Singh, his son Sudesh came to the house of in-laws of Alkesh several times and every time he used to complain that the accused persons namely Raj Kumar-husband, Kashi Singh-father-in-law, Jhabbo Devi (Phuphia Saas) and Babli-Nanad and Devar-Pappu were all harassing Alkesh. In the mid of July, a letter without any postage stamp was received by Ran Singh in which his daughter has stated that due to the atrocities and harassment of her in-laws, she would be committing suicide by hanging herself on 20.7.97. Immediately, on receipt of this letter, Ran Singh Chauhan sent his son Sudesh to the house of the accused persons and to bring back Alkesh from the house of the in-laws on which the accused persons are alleged to have told Sudesh that Alkesh would be sent on the occasion of Bhaiya Dooj and when Sudesh came at the time of Bhaiya Dooj, Alkesh was not sent saying that accused Babli was to be married in the month of November and Alkesh would be sent after the marriage. According to Ran Singh Chauhan, thereafter he did not get any information about his daughter. On 24.12.97 on receipt of information from a relation regarding the death of Alkesh hearing which he immediately rushed to Delhi and came to know about the death of Alkesh. Ran Singh expressed his doubt that her daughter Alkesh had not died due to any stomach problem but all the five accused persons were responsible for her death as she was being harassed by all the accused persons on account of demand of dowry and she had committed suicide by hanging herself due to the harassment of the accused persons. According to

Ran Singh Chauhan, his daughter Alkesh was cremated even without any information to him.”

Trial court has relied upon the deposition of deceased's father-*Ran Singh Chauhan (PW-6)* and deceased's brother-*Sudesh Kumar (PW-7)* to hold appellants guilty. In support of the plea of innocence raised by appellants before trial court, they had got examined two witnesses in their defence whose testimony has been rejected by trial court. While accepting the prosecution case, appellant stand convicted and sentenced as noticed herein above.

With the assistance of learned counsel for appellants and learned Additional Public Prosecutor for respondent-State, the evidence on record, the impugned judgment and the material on record have been perused. At the outset, it was urged by learned counsel for appellants that the offence of dowry death is not proved. To dislodge the ocular version put forth by father and brother of the deceased, learned counsel for appellants had drawn the attention of this Court to the letters of 8th July, 1997 (Ex.P-1) and 20th December, 1997 (Ex.P-2) written by deceased. At this stage, it would be worthwhile to refer to these letters. The official transliteration of letter of 8th July, 1997 (Ex.P-1) reads as under: -

08/07/97

“Adarniye Papaji wa mummyji ko sadar Namaste. Maloom ho papa ye mera aakhiri patr hai. Papa main bahut pareshaan hoon. Papaji patr humne to 2-3 likhe magar unhone daala nahi. Keh-te hain ki wo sab pareshaan honge aur kuch karte nahi. Papa, mujh par jhoote ilzaam bahot lagate hain. Buaji, bua ne mera parivaar bhi humse chheen liya hai. Papa meri bahut beizzati hoti hai. Papa, papa aaj ki taareekh men, main

clear baat karungi. Agar wo maan gaye to main rahungi, agar na maane to, papa, nau (9) tareekh (09.07.1997) ko faansi laga kar apni jaan de rahi hoon. Papa mere marne ke baad bua ki wo haalat karna ki zindagi tak yaad rakhe. Uske baad ghar ke ek bhi sadasya ko nahi chhorna chahe koi bhi ho. Papa police se wo dande parvana ki zindagi bhar jail ki roti khayen. Papa main bahut pareshaan hoon.

Papa yahan kisi ne jhoot ye kaha ki unki badi ladki ghar hi rehti hai, uske saas sasur ne chhor diya. Papa yeh patr padte hi aana. Dus din ka intezaar karungi. Papa, bua kehti hai ki mai badla le kar rahungi, jo baraat men hua, papa yahan aise mat aana police ke saath.

*Ye marriage hi kyun ki?
Mere paas lifafa nahi, papa mere saath wo ho raha hai jo hum sahan nahi kar paa rahe hain.*

Sd/-

*Alkesh Chauhan
(In Hindi)*

*Jaan de rahi hun bua ke peechhe.
Jaan ki wajah bua.*

Sd/-

*Alkesa Chauhan
(In Hindi)*

Papa yahan ladke ladkiyan sab love marriage karte hain. Ye log gaon men munh dikhanae ke laayaque nahi hain. ”

The official transliteration of letter (Ex.P-2) written by deceased on the day of incident i.e. 20th December, 1997 reads as under: -

Date 20/12/97

“Adarniye Papaji va mummyji ko sadar pranaam svikaar ho, aur sab kya likhun? Papa meri kismat hi bekar hai jo mujhe kisi ka pyaar nahi mila. Papa ye log mujhe zabardasti marna chahte hain. Papa agar mujhe kuchh hota hai to papa va sabhi bhaiyon aap log inko mat chorna. Sara parivaar jail me hona chahiye tabhi hume tasalli milegi. Papa in logon ki wo haalat karna jo kabhi kisi ne nahi ki ho. Khaaskar bua aur babli ki. Ye meri bua ek ki dus jorti hai. Ye sabki baton me aakar na jaane kya kya kehte hain mujhse sahan nahi hota hai. Ghalat baat mujhse sahan nahi hoti hai. Papa, ye log bahut shareef bante hain lekin ye log bahut neech hain. Papa is ghar me koi shareef nahi hai, sivai inke lekin ye kaha suni par aa jaate hain. Papa ye bhi barang hain. Kyunki mere paas lifafa nahi hai. Papa men bahut majboor hoon. Papa chhorna mat. Shaadi February men hai. Ye shaadi me hi tumhe sabhi ko pakadna hai. Jija se keh kar kaam karna. Unke kuchh aadmi honge. Papa in logon ko aisa barbaad karna ki ye log kahin ke nahi rahain. Papa shaayad aaj meri last zindagi ka din hai. Papa, jo meri ichha hai wo karna zarur. Tumhari beti Alkesh urf Sunita Chauhan.

Sd/-

(Md. Heshamuddin)

Senior Judicial Translator”

After having heard both the sides and on scrutiny of the entire evidence on record, I find that though the substratum of the prosecution case stands firmly established from the evidence on record, but what is required to be seen is that before conviction for a serious offence of dowry death is recorded, whether the necessary ingredient of *“deceased being subjected to cruelty on account of not fulfilling the dowry demands*

soon before her death” is established or not. Apex Court in its recent decision in *Surinder Singh v. State of Haryana* 2013 (13) SCALE 691 has reiterated that before statutory presumption under Section 113-B of *the Evidence Act* can be raised against an accused, it is essential for the prosecution to prove that “*soon before the death*”, deceased was subjected to cruelty on account of dowry death. In this regard, the pertinent observations made by Apex Court in *Surinder Singh (supra)* are as under:-

“Section 113B of the Indian Evidence Act, 1872 states that when the question is whether a person has committed the dowry death of a woman, and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death. Section 304B of the IPC states that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called ‘dowry death’, and such husband or relative shall be deemed to have caused her death. Thus, the words ‘soon before’ appear in Section 113B of the Indian Evidence Act, 1872 and also in Section 304B of the IPC. For the presumptions contemplated under these Sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words ‘soon before’ is, therefore, important. The question is how ‘soon before’? This would obviously depend on facts and circumstances of each case.

The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, 'soon before' is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death."

The startling feature of the instant case is that trial court has preferred to rely upon ocular version of this incident while ignoring the documentary evidence, which was available to trial court in the shape of letters (Ex.P1 & P-2) of deceased. In doing so, trial court has gravely erred. A bare perusal of the aforesaid letters (Ex.P1 & P-2) of deceased makes it abundantly clear that deceased was upset not because of harassment being meted out to her for not fulfilling dowry demands or on account of bringing insufficient dowry but because of the persistent interference in her matrimonial life by *Bua* of the husband of deceased.

On perusal of the aforesaid letters (Ex.P1 & P-2) of deceased, I find no hesitation in discarding the ocular version of this incident put forth by father and brother of deceased. In the face of the letters (Ex.P1 & P-2) of deceased, though the conviction of appellants for the offence of dowry death is rendered unsustainable, but on the basis of afore-referred letters, appellants deserve to be convicted for the offence under Sections 306/34 of IPC.

Consequently, this appeal is partly allowed and the conviction of appellants for the offence under Sections 304-B/34 of IPC is altered to one under Sections 306/34 of IPC. On the quantum of sentence, it appears from the record of this case that appellants-husband and brother-in-law of deceased have remained behind bars in this case for nearly three years and father-in-law of deceased has also remained behind bars for about 2 ½ years. Appellants have faced the agony of trial and appeal proceedings since the year 1997 i.e. for a period of 16 years. In the face of the evidence on record and the facts of this case, the substantive sentence awarded to appellant stands reduced to the period already undergone by them.

To the afore-noted extent, this appeal is allowed.

(SUNIL GAUR)
JUDGE

JANUARY 23, 2014

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