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

+ CRL.A.667/2000

BHUPINDER

..... Appellant

Through: Mr. Anil Soni, Advocate (Amicus
Curiae)

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Ravi Nayak, Additional Public
Prosecutor for Respondent-State
with SI Premvir Singh, P.S.
Sultanpuri

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
08.01.2014

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Appellant is husband of *Raj Kumari*, who had died unnatural death in the house of appellant within 2½ years of the marriage. Vide impugned judgment and the order of 13th September, 2000 appellant has been convicted for causing dowry death and has been sentenced to undergo Rigorous Imprisonment for seven years with fine for the offence under Section 304-B of *IPC* and for the offence under Section 498-A of *IPC*, he has been sentenced to undergo Rigorous Imprisonment for one year with fine and default clause.

The factual aspect of this case as noticed in the impugned judgment is as under: -

*“Brief facts of the case are that the case against the
accused persons was registered on the statement Ex.*

PW7/B, made by Smt. Naraini Devi, against the accused persons, before the Sub Divisional Magistrate (SDM) on 20.7.1998. The subject of the statement is that she stated that she was living with her son. She married her daughter Raj Kumari on 10.2.1996 with Bhupinder s/o Amar Singh, who lived at P-2/219, Sultanpuri, Delhi. After sometime of her marriage, the in-laws of her daughter, particularly, her husband Bhupinder and Surender and Amar Singh, used to harass and beat her for not bringing dowry again-and-again. They spent on her marriage about Rs.1-1/2 Lacs. Even after that, Amar Singh, accused, within a period of 2-1/2 years, used to harass her daughter in many ways. All these three accused persons, used to instigate her daughter to commit suicide. On 19.7.1998, some unknown man telephoned to them, that her daughter, hanged herself in her in-laws. On this, they, at about 10:30 or 11:00 PM, reached Sultanpuri, from Nand Nagri, and found in the upper storey of the house, her daughter was lying dead. They suspected that her daughter was murdered by Bhupinder, Surinder and Amar Singh by strangulating her. Action be taken.”

On the statement (PW-7/B) of Smt. Naraini Devi (PW-4), FIR of this case was registered initial version disclosed by Smt. Naraini Devi (PW-4) mother of the deceased, as recorded by the concerned SDM and reproduced in vernacular by trial court in the impugned judgment, needs to be noticed. Its official translation reads as under: -

Stated as under:-

“I reside at the aforesaid address alongwith my son. I had got my daughter Raj Kumari married to Amar Singh’s son Bhupender on 10/02/1996. PW-2/219 resides in Sultan Puri, Delhi. Just after a few days after the marriage, the

in-laws of my daughter especially her husband Bhupender, Surrender, father-in-law Amar Singh started harassing and torturing my daughter for bringing dowry time and again. We had spent in her marriage approximately 1-½ lacs of rupees. In spite of the fact, Amar Singh harassed her in many ways during 2-2 ½ years. All the aforesaid three persons kept instigating for killing my daughter. On 19/07/1998, someone rang at my home and informed that my daughter had hanged herself at her matrimonial home at which we reached Sultan Puri from Nand Nagri at about 10-½-11 at night and found that my daughter was lying dead at the upper floor of the house. We fully suspect that Bhupender, Surrender and father-in-law Amar Singh have killed my daughter by way of pressing her throat. Legal action may be initiated against them. I heard the statement and found the same to be correct.”

At trial, deposition of 10 witnesses was recorded. Material evidence is of *Smt. Naraini Devi (PW-4)*, *Nem Singh (PW-3)* brother of the deceased. Apart from their deposition, there is evidence of *Dr. Sarvesh Tandon (PW-2)*, who has conducted the post-mortem of the deceased and has opined that *Smt. Raj Kumari* had committed suicide.

Appellant in statement under Section 313 of Cr.P.C. had stated before trial court as under: -

“Q.21 Anything else, do you want to say?”

Ans. I have been falsely involved in this case. I have never tortured the deceased on account of dowry and never demanded any dowry from her. In fact, deceased Raj Kumari had no issue and she committed suicide because of not having any child. I have no hand in causing her death. The police has

involved me and my co-accused persons, falsely in this case and have fabricated the documents on the file, falsely.”

After trial, appellant stands convicted and sentenced as noticed above.

With the able assistance of Mr. Anil Soni, learned Amicus Curiae, and Mr. Ravi Nayak, Additional Public Prosecutor for respondent-State, evidence on record has been scrutinized and submissions of both the sides are duly considered. Thereupon, this Court finds that although *Smt. Naraini Devi (PW-4)* has stated in her evidence that eight days’ prior to death of her daughter-*Raj Kumari*, she had given ₹5,000/- as deceased had told her that her in-laws would buy a plot of land and she should bring ₹5,000/- more from her parental house but, when confronted in the cross-examination with the aforesaid incriminating evidence, it was found that she has made an improvement in this regard. It has not come in her evidence as to why she could not state so in her initial version before the concerned SDM. Pertinently, brother (*PW-3*) of the deceased has not stated any such thing. He has levelled general allegations of harassment on account of not bringing money. It has also come in the evidence of brother (*PW-3*) of the deceased that money was given to deceased as accused did not do any work.

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. 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."

Applying the afore-noted dictum of Apex Court in *Surinder Singh (supra)*, this Court finds that the allegations to bring the offence under dowry death, are improvements and so, such improvements have to be discarded. Trial court has not considered this aspect at all.

In the facts and circumstances of this case and in view of the evidence on record, this Court finds that conviction of appellant for the offence of dowry death is unsustainable. However, on the basis of evidence on record, appellant deserves to be convicted for the offence under Section 306 of *IPC*.

To the aforesaid extent, conviction of appellant stands altered. The Nominal Roll of appellant reveals that appellant has already remained behind bars for a period of four years, one month and three days and has earned remissions of seven months and six days on account of his good conduct in jail. In the instant case, ends of justice would be met if the substantive sentence is also altered to the period already undergone by

appellant as there is no minimum sentence for the offence under Section 306 of *IPC*.

To the aforesaid extent, the appeal is allowed.

(SUNIL GAUR)
JUDGE

JANUARY 08, 2014

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