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

+ (i) **CRL.A.412/2002**

ANGOORI DEVI Appellant
Through: Ms. Sahila Lamba, Delhi High
Court Legal Services Committee's
Panel Counsel
versus

STATE (N.C.T. OF DELHI) Respondent
Through: Mr.Ravi Nayak, Additional Public
Prosecutor for Respondent-State

+ (ii) **CRL.A.413/2002**

MUKESH Appellant
Through: Ms. Sahila Lamba, Delhi High
Court Legal Services Committee's
Panel Counsel
versus

STATE (N.C.T. OF DELHI) Respondent
Through: Mr.Ravi Nayak, Additional Public
Prosecutor for Respondent-State

+ (iii) **CRL.A.415/2002**

SUNIL Appellant
Through: Ms. Sahila Lamba, Delhi High
Court Legal Services Committee's
Panel Counsel
versus

STATE (N.C.T. OF DELHI) Respondent
Through: Mr.Ravi Nayak, Additional Public
Prosecutor for Respondent-State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
28.03.2014

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In the above-captioned three appeals, appellants are the mother-in-law, brother-in-law (*Devar*) and husband of *Smt. Aneeta*, who had died unnatural death in the house of appellants on 24th March, 1995. In FIR No. 123/1995 under Sections 498-A/406/304-B/34 of IPC registered at police station Jahangir Puri, Delhi, these three appellants were tried and vide impugned judgment they have been convicted for the offence of dowry death and of subjecting deceased to cruelty. Vide impugned order of 22nd April, 2002 appellants have been sentenced to rigorous imprisonment for seven years each for the offence of dowry death and to rigorous imprisonment for two years each for the offence under Section 498-A/34 of IPC with default clause.

Since these three appeals arise out of common impugned judgment, therefore, these appeals were heard together and by this common order, they are being disposed of.

The factual matrix of this case as emerging from impugned judgment is as under: -

“This case was registered on the statement of Shri Dharam Singh father of the deceased made by him to the SDM. In his statement he has stated that he was working as driver in Survey of India, Delhi, his daughter Anita was married with Sunil Kumar S/o Sher Singh on 3.5.92 according to Hindu Rites and ceremonies, after 2/4 months

of the marriage in-laws of his daughter, mother-in-law Angoori, devar Mukesh and her husband Sunil started harassing and beating her and asked her that her father had not given dowry articles in the marriage according to their status. Whenever his daughter came to his house she used to explain the same by weeping, to him and his wife Smt. Chandro. He gave Rs.2000/4000 to his son-in-law Sunil on several occasions but in laws of his daughter were not satisfied. His daughter was having one son aged about 2 years, about one month prior to Holi his daughter Anita came to his house and told that her mother-in-law, Devar and husband had asked to bring Rs.5000/- and threatened that in case of non payment she would not be left alive. He sent his daughter to the house of her in laws after persuading her that he would come to her in laws and talk with her husband, mother-in-law and Devar. He alongwith 3/4 other persons of Panchayat went to the house of in laws of his daughter, they quarreled with him and told him that in case he fails to make the payment of Rs.5000/-, they would recover the said amount by peeling the skin of his daughter. He persuaded his daughter Anita and left her in the house of her in laws. On 24.3.95 he came to know that his daughter Anita had expired at JPN Hospital. He alongwith his wife Chandra and his son Dinesh Kumar reached at JPN Hospital and saw that his daughter was badly burnt and was lying dead. His daughter expired due to burn injuries caused

by her husband Sunil, mother-in-law Angoori and Devar Mukesh and Dharambir @ Kaka with their common intention. The dowry articles which were given by him in the marriage be got returned to him.”

The material evidence upon which trial court has relied to convict appellants is of *Dharam Singh (PW-2)* and *Smt. Chandro Devi (PW-3)*, who are parents of deceased. The plea of denial taken by appellants-accused persons has been repelled by trial court while convicting and sentencing appellants, as noted hereinabove.

During the pendency of these appeals, the substantive sentence awarded to appellants was suspended vide order of 21st July, 2006 while noting that appellant-*Angoori Devi* has already suffered imprisonment of 5 years and 6 months out of sentence of 7 years. It stands noted in the order of 29th November, 2006 that appellant-*Mukesh* has suffered imprisonment of 6 years and 7 months with remissions out of sentence of 7 years. So far as appellant-*Sunil* is concerned, it appears that the substantive sentence awarded to him was suspended for a period of one week only and as per communication of 17th February, 2006 from jail authorities, he had surrendered after availing of a week's interim bail. Nominal Roll of appellant-*Sunil*, on record, is of July, 2004, which reveals that by then, he had undergone sentence of 4 years. However, it can be gathered on perusal of the appeal file that appellant-*Sunil* has undergone the sentence awarded to him. Be that as it may.

At the final hearing of these appeals, presence of appellants was secured by issuing bailable warrants and they had infact appeared and it

was undertaken on their behalf that their counsel would appear on their behalf as and when these matters are taken up for hearing. However, today, none has appeared on behalf of appellants. Ms. Sahila Lamba, Delhi High Court Legal Services Committee's Panel Counsel, present in the Court and is appointed as *Amicus Curiae* counsel to defend appellants in these three appeals.

It is a matter of record that trial court record has been reconstructed in this case, which does not have copy of deposition of witnesses. On this account, respondent-State/prosecution is seriously handicapped.

With the assistance of learned Additional Public Prosecutor for Respondent-State and learned *Amicus Curiae* counsel, the impugned judgment has been perused and thereupon it emerges that there is brief reference to the deposition of witnesses.

Upon hearing and on careful perusal of the impugned judgment, I find that there is some improvement regarding the demand of ₹5,000/- made on the occasion of Holi but *Dharam Singh (PW-2)*, father of deceased, has been confronted about it. *Smt. Chandro Devi (PW-3)*, mother of deceased, in her deposition has reiterated what father of deceased has deposed regarding the demand of ₹5,000/-, but it stands noted in paragraph No.12 of the impugned judgment that in cross-examination, she could not tell date, month and year when the demand was made. This creates a reasonable doubt about subjecting of deceased to cruelty '*soon before her death*'. However, from the facts of this case, as noted in the impugned judgment, it can be safely said that offence under Sections 306/34 of IPC is certainly made out. But whether the offence under Section 304-B/34 of IPC is made out or not, remains in the realm

of grey area. Under somewhat similar circumstances, a Division Bench of this Court in its order of 5th May, 2009 in Crl. Appeal No.704/2003 titled *Lal Babu & Ors. v. State* had set aside the conviction from Section 364-A of IPC while pertinently observing as under: -

“The problem which we are facing in hearing of the appeal is that the entire trial court record is missing and inspite of attempts being made for the last three years, the same has not been located. An inquiry has been ordered as to who is the responsible for the loss of the trial court record, which we note got lost when the trial court record was sent to the translation branch for preparation of a paper book.

The compilation which has been compiled for our consideration, and as placed before us, does not have the evidence of all the witnesses of the prosecution and the documents proved at the trial.

The problem has been compounded for the reason the police file available with learned counsel for the State has the deposition of the witnesses of the prosecution but minus the documents which have been proved at the trial.

The biggest problem is that the statement of Santosh recorded under Section 164 Cr.P.C. is neither with the counsel for the appellants nor with the counsel for the State nor in the police file; much less with us.

The importance of appreciating what the child told the Magistrate under Section 164

Cr.P.C. is evident to any person with even bare knowledge of the law on evidence, as indeed, the learned Trial Judge has heavily relied upon the same while acquitting the co-accused.

In the absence of the record, which unfortunately cannot be reconstructed in full, inasmuch as copies of the proved documents are neither with the counsel for the appellants or with the counsel for the State, we express our handicap in considering the matter in detail.

Needless to state a conviction for the offence punishable under Section 364A IPC mandates the minimum sentence of imprisonment for life and therefore a greater responsibility is cast on us to consider with care and circumspection the evidence led at trial.

It has seriously not been disputed before us, that on the truncated evidence available with us, it would be improper to hold that the appellants are guilty of the offence of kidnapping. Complete evidence not being available, everybody would be handicapped while considering whether the offence punishable under Section 364A IPC is made out or not.

Under the circumstances, faced with a hobsons choice, we dispose of the appeals, partially allowing the same.”

However, Division Bench of this Court in *Lal Babu (supra)*, had maintained the conviction under Section 363 of IPC and appellants were

sentenced to undergo rigorous imprisonment for two years, which was already undergone by appellants-accused persons.

Afore-noted pertinent observations aptly apply to the instant case. In the facts and circumstances of this case and in view of the handicap of trial court record not being there before this Court and in the face of impugned judgment, conviction of appellant is altered from Sections 304-B/34 of IPC to Sections 306/34 of IPC. Since offence under Sections 306/34 of IPC does not carry any minimum sentence, therefore, the substantive sentence awarded to appellants is reduced to the period already undergone by them as this Court finds that they have already undergone substantial sentence and have faced the agony of trial and appeal proceedings in this case virtually for two decades.

To the aforesaid extent, these appeals are allowed and stand accordingly disposed of.

(SUNIL GAUR)
JUDGE

MARCH 28, 2014

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