

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

RESERVED ON : 6th November, 2013

DECIDED ON : 6th January, 2014

+ CRL.A. 738/2000

AHMED SAYEED

..... Appellant

**Through : Mr.Arun Sharma with Mr.Saleem
Malik, Advocates.**

VERSUS

STATE

..... Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Ahmed Sayeed (the appellant) impugns a judgment dated 07.06.2000 of Additional Sessions Judge in Sessions Case No.15/98 arising out of FIR No.311/98 registered at Police Station Rajouri Garden whereby he was held guilty for committing offences under Section 498A/304B IPC. By an order dated 9th June, 2000, he was awarded rigorous imprisonment for seven years under Section 304-B IPC and rigorous imprisonment for two years with fine ₹500/- under Section 498-A IPC. Both the sentences were to operate concurrently.

2. Allegations against the appellant were that he used to harass Ishrat, his legally wedded wife, for or in connection with dowry demands during her stay at the matrimonial home. She committed suicide on the night intervening 17/18-05-1998. Daily Diary (DD) No.14/A was recorded on 06.00 A.M. on 18.05.1998 at Police Station Rajouri Garden in this regard. During the course of investigation, statements of witnesses conversant with the facts were recorded. Post-mortem examination of dead body of the deceased was conducted. After completion of investigation, a charge-sheet was submitted in the court against the appellant for committing offence under Section 498A/304-B IPC. The prosecution examined 15 witnesses to prove the appellant's guilty. In 313 statement, the appellant denied his complicity in the crime and stated that Ishrat used to remain depressed as no child was born to her. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court by the impugned judgment held the appellant guilty for the offences mentioned previously. Being aggrieved, the appellant has come in appeal.

3. I have heard the learned counsel for the parties and have examined the record. It is not disputed that on the intervening night of 17/18-05-1998 Ishrat died due to burns otherwise than under normal

circumstances at the matrimonial home i.e.F-143, Raghubir Nagar, Delhi within seven years of her marriage. The marriage had taken place between the parties about four years prior to the occurrence and no issue was born to her out of this wedlock. It has come on record that prior to the incident no complaint was ever lodged by the deceased or her parents against the appellant for treating her with cruelty on account of non-fulfillment of dowry demands. She was never taken for medical examination to ascertain if any time prior to the occurrence she was caused physical harm. No injuries on her body were noticed at the time of post-mortem examination. Nothing has come on record to infer if during her stay for about one and a half month at the said premises with the appellant any quarrel took place between the two or she was subjected to any physical or mental torture. PW-1 (Kamrul Islam) residing in the neighbourhood of the parties did not depose if the relations between the accused and the deceased were strained or that she was subjected to any harassment or cruelty any time by the appellant. PW-2 (Ram Dhan), landlord, also did not implicate the accused. In the cross-examination by learned Additional Public Prosecutor, he disclosed that he had not seen the accused quarrelling with his wife during her stay at the said house. The Investigating Officer did not examine any other neighbour to find out if

the accused used to subject Ishrat with cruelty or had given beatings to her any time. He admitted in the cross-examination that he had not gone to the village of the accused to verify whether the deceased lived there happily or not. The Trial Court in the impugned judgment noted that there was no harassment to Ishrat due to dowry demands. The observations in para (20) of the judgment are relevant to note:-

“Although, from the above circumstances, it cannot be held that the accused used to demand dowry but these circumstances clearly show that accused was dissatisfied with his wife and although, he was newly married, he did not try to fulfill the aspiration and ambitions of his newly wedded wife. The reason for his callous attitude towards his wife are not difficult to find, admittedly, the in-laws of the accused were not very well off. In fact, they had four daughters and one son and they belonged to lower middle income group and have been depending upon the meager income earned by them by selling the oil extracted from crushing the oil seeds in their ‘kolhoo’. The meager income, in my opinion, was hardly sufficient to meet their day-to-day demand and under these circumstances, it was beyond their means to have given sufficient dowry to their daughter in her marriage. Consequently, the accused had felt dissatisfied when his wife had not brought sufficient dowry in her marriage. It was evident from the testimony of PW-6 Wahidan and PW-7 Abdul Aziz that accused used to demand scooter, Fridge, T.V. and ₹50,000/- in cash and when they failed to fulfill their demand, their daughter used to be beaten by him. In fact, it was made clear by PW-6 Wahidan, the mother of deceased that her daughter used to show abrasions and other injuries which were inflicted on her as a result of beating given to her by the accused. The accused had

visited the house of his in-laws about 1½ months prior to the incident and had taken the deceased with him and at that time, he had even threatened the parents of the deceased that he will not send their daughter to their home in future. Perhaps the accused was desperate to get his dowry demand fulfilled and when he could not do so, he had even tried to black-mail the parents of the girl by threatening that he will not send their daughter to their home in future. It is also evident that the accused had taken his wife from her parent's house to his native place at Hapur and thereafter, he had taken her to his house at Raghubir Nagar, Delhi, where, she had resided with him for 25 days. Although, no evidence could be brought on record that during this period, the accused had committed any cruelty on his wife or not and although, PW-2 Ram Dhan and PW-1 Kamrul Islam, who were the immediate neighbours of accused have not stated adversely to the accused and had not seen the accused quarrelling with his wife but from the conduct of accused, it was quite evident that he had no sympathy with his wife and perhaps he was not feeling repentance and remorseful at the tragic death of his newly wedded wife. Admittedly, accused was sleeping on the roof of his house when this incident took place, it is but natural that his wife must have cried when she was engulfed in fire. In natural circumstances, he would have been the first person to arrive at the scene on hearing the shrieks of his wife. Although, PW-2 Ram Dhan and PW-1 Kamrul Islam were woken up on seeing the smoke coming from the roof of the house which was made of asbestos sheet but accused had continued to sleep while, his neighbours were woken up and tried to extinguish the fire. There is nothing on record to suggest that neither any efforts were made by the accused to extinguish the fire or to shout for help. The fact that deceased had sustained deep burns over her entire body and had sustained 100% burn clearly suggest that she had continued to burn for a pretty long time and nobody had come forward to her help. Although, the prosecution could not prove whether it was homicidal

death or not but these circumstances clearly suggest that accused had general apathy towards his wife and had scant regard and respect for her in the inner core of his heart. Perhaps, he had developed contempt for his wife as his wife used to object regarding his consuming liquor and also having illicit relations with some woman which the accused was finding difficult to digest. Since, the deceased was not having good family background and belonged to poor family and had not brought sufficient dowry and since, she found her husband habitual drinker and womanizer, perhaps she could not digest the said unbecoming behavior of her husband and could not tolerate his willful misconduct which forced her to take her life which she found to be without charm and happiness. Consequently, in my opinion, from the testimony of PW-6 Wahidan, PW-7 Abdul Aziz as well as from the conduct of accused, it was quite evident that he had committed cruelty upon his wife in connection with the demand of dowry. Since, the deceased had met with a tragic death within 7 years of her marriage, a presumption can be raised under Section 113 (B) of the Indian Evidence Act that the accused has caused dowry death. Consequently, in my opinion, the accused was guilty for the offence punishable under Section 498 A as well as under Section 304-B IPC.”

4. From the perusal of the above findings recorded, it reveals that the Trial Court itself was not sure if soon before death Ishrat was subjected with cruelty for or in connection with dowry demands. The impugned judgment is based upon surmises and conjectures. The prosecution is required to prove the very case it alleges and the court cannot substitute its own opinion and make out a new case. It is relevant

to note that the deceased's younger sister was married to the accused's younger brother and it has come on record that she was never subjected to cruelty and was living happily in the matrimonial home. The prosecution did not examine her to ascertain the conduct and attitude of the appellant towards the deceased during her stay at village Hapur. The allegations regarding the demand of dowry are vague, unspecific and uncertain. No specific date has been mentioned as to when any specified dowry article was demanded by the appellant from the deceased or her parents. PW-7 (Abdul Aziz) in the cross-examination admitted that Ishrat was kept well by the accused for one year and thereafter she was not treated well. Allegations have been leveled against the appellant that he used to have illicit relations with a lady. However, the Investigating agency could not reveal with whom the appellant had illicit relations and whether that was the provocation for the deceased to take the extreme step. The entire case of the prosecution is based upon the testimonies of PW-6 (Wahidan) and PW-7 (Abdul Aziz), the parents of the deceased, who have leveled allegations only after the deceased committed suicide. Prior to that, they had no complaint whatsoever against the appellant and his family members. During her stay at Raghbir Nagar, Delhi, she was not treated with cruelty. The Investigating Officer did not examine any witness at

Hapur to prove cruelty or harassment on account of dowry demands. Admittedly, the appellant used to do his job/service in Delhi and the deceased used to live at Hapur before shifting to Delhi for about one and a half month prior to the occurrence. The prosecution has, thus, failed to establish beyond reasonable doubt that there was direct nexus between the cruelty and the suicide. The Investigating Officer did not collect the surrounding circumstances which prompted Ishrat to commit suicide. The appellant was sleeping on the roof of the house at the time of occurrence. Nothing has come in the evidence that he had instigated Ishrat to commit suicide at that moment. The evidence is lacking at this material aspect.

5. Observations of Supreme Court in case '*Gangula Mohan Reddy vs. State of Andhra Pradesh*', 2010 (1) SCC 750, are relevant to note :

"In State of West Bengal v. Orilal Jaiswal and Anr. : (1994) 1 SCC 73, this Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given

society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

6. In the light of above discussion, the prosecution has failed to prove its case beyond reasonable doubt. Benefit of doubt is given to the appellant and he is acquitted. The appeal is accepted. Conviction and sentence of the appellant are set aside. Bail bond and surety bond stand discharged.

7. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

JANUARY 06, 2014

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