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

+ **CRL. A.504/2001**

RANJEET SINGH

.....Appellant

Through: Ms. Charu Verma, Amicus Curiae
Advocate

versus

THE STATE

....Respondent

Through: Mr. Mukesh Gupta, Additional
Public Prosecutor for Respondent-
State

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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ORDER

06.01.2014

1. Appellant is the husband of deceased who was tried for the offence of dowry death in FIR No.657/92 initially registered under Section 498-A of IPC at P.S. Tilak Nagar, Delhi and later on charge-sheet under Section 304-B of IPC was also filed. Vide impugned judgment of 19th May, 2001, appellant has been convicted for the offences under Section 304-B of IPC and under Section 498-A of IPC. Trial court vide impugned order of 21st May, 2001 has sentenced appellant to rigorous imprisonment for seven years with fine for the offence under Section 304-B of IPC and to rigorous imprisonment for three years with fine for the offence under Section 498-A of IPC and both the substantive sentences are made to run concurrently.

2. The factual background of this case and the evidence recorded stand noted in the impugned judgment, which needs no reproduction.

The bare facts which need to be taken note of are that appellant was married with *Paramjeet Kaur* six years prior to this incident. On the night of 11th November, 1992, *Paramjeet Kaur* wife of appellant had sustained 80% burn injuries while cooking food in kitchen at her matrimonial house and she was immediately taken by appellant to the hospital. On the next day in the afternoon, SDM (PW-4) had ascertained fitness of appellant's wife from concerned doctor and thereafter, had recorded her statement Ex. PW-4/A and after making endorsement on it, had directed for registration of FIR for the offence under Section 498-A of IPC. It would be worthwhile to reproduce the initial statement Ex.PW-4/A made by appellant's wife to SDM (PW-4) on 12th November, 1992. Its official translation reads as under: -

"Q: What is your name?

Ans: Paramjeet kaur.

Q: How did you catch fire?

Ans: My husband harassed me and quarreled with me. He said, "whatever clothes you have worn till today belong to us. And what have you brought with you from your maternal home? See, how many things people give their daughters! What have your parents given you? Nothing at all!" Prior to catching the fire, a quarrel had ensued due to the tearing off a scarf (chunni). I said that we would take a new one. After that he told me that the suit was also given by him. And he began to say, "go away from here." My husband quarreled with me even prior to that. Being harassed by the same thing, I set myself on fire while preparing meal. Even before that those duo mother son kept saying different kinds of things.

Q: Where were your husband and your mother in law when you caught fire?

Ans: My husband was in the room and my mother-in-law was sitting outside and I was in the kitchen.

Q: Did any one set you on fire while holding you?
 Ans: No. I, myself, set myself on fire.
 Q: Did you convey to anyone your intention regarding the same?
 Ans: No.
 Q: Did your husband quarrel with you regarding the dowry which you had brought with you at the time of marriage?
 Ans: Yes, my husband often quarreled with me regarding the dowry.
 Q: (after hearing the statement), do you want to say only this?
 Ans: Yes. I want to say only this.
Recorded in my hand at Burn Ward (Bed no.15, Ward No.26) on 12.11.92 at 04.40 hours.
Sd/- illegible
SDM (P.B.)

3. It has not come on record as to under what circumstances second statement (Ex. PW-4/C) of appellant's wife was recorded by SDM (PW-4) on the next day i.e. on 13th November, 1992. It is important to note as to what was said by appellant's wife in her second statement (Ex.PW-4/C). Its official translation reads as under: -

"Q: (After reading over the statement dt.12.11.92), what do you want to say further?
 Ans: I was coerced yesterday and due to the same coercion I stated that I, myself, had set myself on fire. But in real, I was forced to do so. Yesterday, he had quarreled with me and during the quarrel, he picked the sewing machine lying on the bed and started hitting me and said that he would kill me. Even prior to that when we quarreled one day on the roof, he lifted me up and started hitting me.
 Q: How did he start hitting you?
 Ans: He started dropping me from the roof that his brother came and stopped him.

Q: Did your mother-in-law or anyone else among the in-laws harass you also?

Ans: My mother-in-law used to say, "She knows nothing. Leave her." She used to say the same all the time. And she left me with no option. She always harassed me.

Q: (After hearing the statement), do you want to say only this?

Ans: Yes, I have and everything is correct."

4. On 19th November, 1992, appellant's wife had unfortunately died of septicaemia developed due to fire burns sustained by her. Thereafter, statement of parents and brother of the deceased was got recorded from SDM (PW-4). By treating the afore-referred two statements of appellant's wife (*hereinafter referred to as deceased*) to be dying declaration and on the basis of the statement of parents and brother of the deceased, appellant and his mother were put on trial for committing the offence of dowry death.

5. To prove the prosecution case, deposition of eight witnesses was recorded. Apart from the deposition of parents (PW-1 and PW-2) and brother (PW-3) of the deceased, there is deposition of SDM (PW-4), two more witnesses, who have proved the cause of death of appellant's wife, and the remaining two witnesses are the Investigating Officer (PW-8) and the Head Constable (PW-7), who had recorded the FIR of this case. The stand taken by appellant in his statement under Section 313 of Cr.P.C. before trial court, as noticed in the impugned judgment, is as under: -

"The defence of both the accused in brief is that deceased Paramjit Kaur was short of temper and used to quarrel on petty matters. It is also the case of the accused

that the deceased wanted to have separate kitchen and wanted to live separate from her in-laws but accused Ranjeet Singh who was only a labourer working in a private firm and getting a small salary could not afford to have separate kitchen. According to the accused, deceased used to threaten that she would end her life but they took it lightly and tolerated her short temper and never said anything to her."

6. Appellant had got his friend (DW-1) and his brother (DW-2) examined in his defence before the trial court. Thereafter, the trial concluded with conviction of appellant and acquittal of appellant's mother.

7. It was emphasized by learned counsel for appellant that nature of offence committed by appellant is not so grave as has been made out by trial court. It was asserted by learned counsel for appellant that upon taking prosecution case at its best, the offence made out would be of appellant abetting commission of suicide by his wife which would come within the ambit of *Section 306 of IPC and not of dowry death punishable under Section 304-B of IPC*. To contend so, reliance was placed upon decision in *Rafiq-ur-Rehman and Others v. State* 2008 Legal Eagle (DHC) 1414. Lastly, it was submitted that first dying declaration is the initial version of deceased which ought to be relied upon and her subsequent tutored version in her second dying declaration be discarded and by altering appellant's conviction from under 304-B of IPC to Section 306 of IPC, the substantive sentence deserves to be reduced to the period already undergone i.e. of about four years as appellant has not remarried and has brought up two children born out of this wedlock and has family responsibilities to shoulder.

8. Learned Additional Public Prosecutor for Respondent-State had supported the impugned judgment and submitted that second dying declaration (Ex. PW-4/C) is in continuation of first one and when both the dying declarations are read as a whole, coupled with deposition of parents and brother of the deceased, conviction of appellant deserves to be maintained and since minimum sentence has been awarded, therefore, there is no scope for reduction of substantive sentence.

9. Upon scrutiny of the evidence on record, impugned judgment and upon hearing both the sides, this Court finds that even trial court has found that oral testimony of witnesses is an improvement as the initial prosecution version is silent about the dowry demands. The finding returned by trial court on this aspect is as under: -

"As noted above in the dying declarations there is no reference of demand of Rs.10,000/-. I am, therefore, not inclined to accept the version given by parents of the deceased and her brother that demand of Rs.10,000/- was raised by the accused, yet their statements lend corroboration to the dying declarations made by the deceased that she was being continuously maltreated and harassed for having brought insufficient dowry"

10. Trial court further holds as under: -

"Even if we ignore oral testimony of parents of the deceased and her brother, the two dying declarations made by deceased Paramjit Kaur are sufficient to record conviction for causing dowry death by accused Ranjeet Singh."

11. To reconcile the two dying declarations, trial court has proceeded on the following premises: -

"In fact second dying declaration (Ex. PW4/C) is

continuation of her first dying declaration Ex. PW4/A. The only difference is that in her second dying declaration the deceased had given details of the events which led her end her life."

12. The penultimate finding returned by trial court to convict appellant for the offence of dowry death is as under: -

"The evidence available on record though is clinching as against accused Ranjeet Singh and the prosecution has established beyond any reasonable doubt that accused Ranjeet Singh harassed, illtreated, taunted and subjected deceased Paramjit Kaur to cruelty for or in connection with demand of dowry and by his willful conduct drove deceased Paramjit Kaur to commit suicide, but there is no conclusive evidence as against accused Balwant Kaur, mother in law of deceased Paramjit Kaur, Smt. Swaran Kaur (PW1) mother of the deceased, Sh. Gurbachan Singh (PW2) father of the deceased and Harjeet Singh (PW3) brother of the deceased have not alleged that the mother of the accused had raised any demand or personally talked to them about insufficiency of dowry."

13. When the two dying declarations are objectively read, it becomes amply clear that second dying declaration (Ex. PW-4/C) cannot possibly be said to be in continuation with the first one. Had it been so, then in the answer to the first question deceased as prudent person ought to have said that yesterday when first dying declaration was recorded she had forgotten to state certain important things or she wanted to elaborate what has been stated in the first dying declaration. To say the least, tenor of second dying declaration (Ex. PW-4/C) leads to irresistible conclusion that it is tutored one. Trial court has gravely erred in implicitly relying upon second dying declaration (Ex. PW-4/C) while ignoring the fact that

mother (PW-1) of deceased has categorically stated in her deposition that deceased had never complained of insufficiency of articles/items given to her after marriage nor deceased had told her mother that she was being taunted by her in-laws about the insufficiency of dowry. What has been disclosed by mother (PW-1) of deceased in her deposition needs to be reproduced. It reads as under: -

"My daughter used to visit me alongwith both her children. She did not complain about insufficiency or taunts given by her in-laws about those gifts (volunteered-we had given enough on those occasions)."

14. Pertinently, it was suggested on behalf of appellant to mother (PW-1) of the deceased that deceased was short tempered and had got unnecessarily enraged and in a fit of rage, she had ended her life. Even father (PW-3) of deceased in his deposition had stated that deceased had not been telling him about her being harassed on account of insufficient dowry as she did not want to upset him but she had disclosed about it to her mother (PW-1). In normal course of events, mother of deceased ought to have told her husband about their daughter being harassed on account of bringing insufficient dowry. But what father (PW-2) of deceased had to say in his deposition on this vital aspect, is as under: -

"My wife did not complain to me that she was not properly treated on her visits to matrimonial home of our daughter"

15. Even brother (PW-3) of deceased had made substantial improvements in his deposition and when confronted, he in his deposition had lamely deposed that he had stated to police what he had deposed before the court but it was not recorded by police. In any case,

trial court has already ignored the oral testimony and had chosen to rely upon two dying declarations of the deceased.

16. In the considered opinion of this Court, the second dying declaration (Ex.PW-4/C) has to be excluded out of consideration and even in the first dying declaration, suggestive question ought not to have been put to deceased. The suggestive question put to deceased in first dying declaration is as under: -

"Q. Kya apka pati se shaadi mein laaye dahej ko lekar aksar jhagda hota tha?"

17. In any case, even if first dying declaration is made the basis of conviction, still the tone and tenor of first dying declaration reveals that cruelty or harassment *"soon before her death"* to deceased was not of such a grave nature which would compel any prudent person to commit suicide. On the day of the incident, the dispute over tearing of *Chunni* by deceased and appellant reacting to it by remarking that the clothes which she was wearing were given by his family, does not bring offence within the ambit of dowry death nor justifies raising of presumption under Section 113-B of *The Evidence Act*. Once the essential ingredient of cruel treatment or harassment *"soon before her death"* is found to be missing, it renders appellant's conviction for the offence of dowry death unsustainable. However, upon reading first dying declaration as it is, it becomes evident that appellant is liable to be convicted for the offence under Section 306 of IPC and not for the offence of dowry death.

18. Aforesaid view is taken as it is settled legal position that there must be existence of a proximate and live-link between the effect of cruelty

based on dowry demand and the concerned death. In the case of *Hira Lal and Others v. State (Govt. of NCT) Delhi* reported in 2003 (7) JT (S.C.) 596 the necessary ingredient of subjecting the deceased to cruelty soon before her death was missing and the Apex Court had observed as under: -

“On the facts of the case even though it is difficult to sustain the conviction under Section 304B IPC, there are sufficient materials to convict the accused-appellants in terms of Section 306 IPC along with Section 498A IPC.”

19. In the case of *K. Prema S. Rao v. Yadla Srinivasa Rao* reported in AIR 2003 S.C. 11, the Apex Court has held that although the accused was charged for offence under Section 304B/498A of IPC, but still he could be convicted and sentenced under Section 306 of the IPC. In a recent decision, Apex Court in *Rajeev Kumar Vs. State of Haryana* 2013 (13) SCALE 410 has reiterated the afore-noted dictum of Apex Court in *K. Prema S. Rao (Supra)*, and ruled that mere taunt for dowry does not make out case of dowry death but a case of abetment of suicide and reduced the substantive sentence to three years.

20. In light of aforesaid legal and factual position, appellant's conviction is altered from one under Section 304-B of IPC to Section 306 of IPC. While maintaining the sentence of fine, substantive sentence also stands altered from seven years to the period already undergone by him. Nominal Roll of appellant on record indicates that appellant had undergone sentence of three years, two months and eleven days as on 2nd November, 2001. Substantive sentence of appellant was suspended on 20th May, 2002 i.e. after a period of five months or so. Thus, in all,

appellant has already undergone substantive sentence of three years and nine months or so. Appellant is on bail since May, 2002. In the totality of the circumstances of this case, the substantive sentence awarded to appellant is reduced to the period of three years and nine months or so, already undergone by him.

21. To the aforesaid extent, this appeal is allowed.

(SUNIL GAUR)
JUDGE

JANUARY 06, 2014

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