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

+ **CRL.A. 237/2014**

JAI SINGH

..... Appellant

Represented by: Mr.Hirender Kumar and
Mr.Dewan Singh, Advocates.

versus

THE STATE & ORS

..... Respondents

Represented by: Ms.Aasha Tiwari, APP for the
State with ASI Mukhtyar
Singh, PS Narela.
Mr.Raghav Kapoor, Advocate
for Respondent Nos.2 to 8.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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21.07.2014

1. By the present appeal, the appellant, father of the deceased Sheela challenges the judgment dated December 14, 2013 whereby respondent Nos.2 to 8 have been acquitted for offences under Section 304B/302 IPC and the order on sentence dated December 18, 2013 whereby on conviction of respondent No.2 Ashok Kumar for offence under Sections 498A/306 IPC, a sentence of rigorous imprisonment for a period of five years has been awarded, which according to the appellant is an inadequate sentence.
2. At the outset, it is to be noted that the remedy of an appeal available to the Complainant/victim under the proviso to Section 372 Cr.P.C. is available against any order passed by any Court acquitting the accused or convicting for lesser offence or imposing inadequate compensation. As

regards an appeal seeking enhancement of sentence, the remedy is not available to a victim. Thus, this Court is restricting the present appeal qua acquittal of respondent Nos.3 to 8 and qua respondent No. 2 for acquittal under Sections 302 and 304B IPC.

3. Respondent No.2, who is in custody, has been produced in Court today. Since he has been convicted for offences punishable under Sections 306 and 498A IPC, this Court inquired from him whether he has challenged the said judgment by way of an appeal. Respondent No.2 states that he has neither filed the appeal nor he intends to file one. Even respondent No.5 Mange Ram, father of respondent No.2 states that no appeal has been filed against the impugned judgment. Hence, we proceeded to hear the present appeal.

4. Learned counsel for the appellant submits that the fact of marriage of deceased Sheela with Ashok on February 19, 2007 and her death on June 18, 2011 i.e. within seven years of her marriage is not disputed. Further the fact that she died due to endosulphan poisoning is also proved from the post-mortem report. According to the learned counsel for the appellant, the learned Trial Court erroneously held that the third ingredient of offence under Section 304B IPC that the deceased was treated with cruelty for demand of dowry by her husband and the relative of her husband soon before death has not been proved by the prosecution.

5. It is also stated that in view of the evidence of the witnesses, the learned Trial Court ought to have raised presumption under Section 113B of the Evidence Act, which presumption has not been rebutted by respondent Nos.2 to 8.

6. The prosecution case in nutshell is that Sheela was admitted in the

hospital by her husband on consuming poison and was declared dead at 4.22 PM on June 18, 2011. Subsequent thereto statement of PW-1 Jai Singh, father of the deceased, was recorded on June 20, 2011, who stated that after two-three months of the marriage her daughter started complaining that her husband and in-laws used to beat her demanding dowry. They used to demand a vehicle or bike or money. He had also given a complaint in PS Narela, which was registered vide DD No.67B dated February 28, 2010.

7. During the course of trial, the prosecution examined three material witnesses i.e. PW-1 Jai Singh, PW-8 Bimla Devi, mother of the deceased and PW-12 Lalit Kumar, brother of the deceased.

8. Jai Singh deposed before the Court that on June 18, 2011 at about 7.20 PM, Ramesh Kumar uncle of the accused Ashok telephoned him that his daughter Sheela was not feeling well and had consumed something. She was admitted at SRHC Hospital in Narela. On reaching there he got to know that his daughter had died and the dead body had already been removed. According to him his daughter used to complain that her husband and family members demanded motor bike and used to give beatings due to non-fulfilment of the demand of dowry. He further stated that sometimes he demanded motorcycle and sometimes car. He further stated that all the family members besides the husband i.e. mother-in-law, brother-in-law, sister-in-law and cousin of Respondent No.2 used to torture her and gave her beatings due to non-fulfilment of demand of dowry. He also exhibited a complaint earlier lodged by the deceased Ex.PW-2/A.

9. Similar is the testimony of Bimla Devi and Lalit Kumar. Bimla Devi also stated that the demand of ₹50,000/- was made by respondent No.2 for purchase of new vehicle but the same was not fulfilled. This witness

admitted that two-three months prior to the incident, her daughter was sent in a rented house at Saboli Road, Rajiv Colony with her husband where her husband did not keep her properly. According to Lalit Kumar, his sister was a vegetarian however, her in-laws insisted her to take non-vegetarian items and they did not pay heed to the request of his sister not to cook non-vegetarian items in the utensils in which she prepared her vegetarian food. He further stated that respondent No.2 used to take liquor and after few months of marriage, he left his work. During the days of his unemployment, respondent No.2 used to pressurise his sister to bring food items in addition to dowry articles. This witness also admitted that two-three months prior to the incident, his sister and Ashok took a house on rent and lived separately. Further a perusal of the complaint Ex.PW-2/A also shows that the grievance of the deceased was against her husband only.

10. It is thus evident that as regards respondent Nos.3 to 8 no specific time and date as to when they demanded dowry, what they demanded and how they tortured has been deposed. Thus the allegations against them are vague. As noted above even in the earlier complaint Ex.PW-2/A there is no specific reference to respondent Nos.3 to 8 except that her mother-in-law, father-in-law, brother-in-law and sister-in law were also associated with the respondent No. 2. In AIR 1995 SC 1863 Salamat Ali & Anr. vs. State of Bihar dealing with a similar situation it was held-

“3. By the conviction of Salim Ahmed, it stands confirmed that the deceased met a suicidal death and that Salim Ahmed was responsible for it, whether by himself or conjointly with others. The only point to be examined is whether there is clear and cogent evidence to involve the parents in the demands of dowry made or were they otherwise responsible for inflicting

any cruelty on the deceased. We have been taken through the relevant portions of the evidence led by the prosecution. Uniformly every witness has said that the family members of the husband, i.e. Sasuralwale had been making demands of dowry in the form of television and scooter. The nature of the demand is some indication. The demand of scooter predominantly must have been raised by the husband. It cannot be expected that the father-in-law would be demanding a scooter for himself or that the mother-in-law needed it for her use. Different considerations, however, could, in certain events, apply to the television demand, but here again, it is predominant that the husband wanted it more than his parents. Evidence of PW-1 is clear on this point that there were frequent quarrels, but only between husband and wife. In other words, the parents had no part to play in the quarrels between the spouses. PW-7, the father of the deceased also had said that his daughter had told him that the demand had been made by the husband, but he had then not taken it seriously. Thus, the allegations against the appellants are general in nature attributed to the husband's family. They have been identified because they were members of his family. It is not clear on the record as besides them who else were members of the family. It thus appears to us that in the absence of clear and pointed evidence it would be unsafe to maintain the conviction of the parents, on vague allegations that the demand of dowry was made by the husband's family members. In this view of the matter, we would record their acquittal."

11. The contention of learned counsel for the appellant that the presumption under Section 113B ought to have been raised by the learned Trial Court is erroneous. Even for raising presumption, the prosecution is not absolved of discharging the initial burden of proving its case and it is only after the initial burden is discharged by the prosecution that the onus shifts on the accused to rebut the presumption which the accused can rebut by way of cross-examination or leading defence evidence.

12. As regards the respondent No.2 Ashok though there are allegations for demand of motorcycle or car or ₹50,000/- however, none of the witnesses have stated as to when he demanded all these things. A perusal of the complaint and the evidence of the witnesses show that the basic grievance of the deceased against Ashok was for harassment on account of the fact that he was not earning and after taking liquor he would beat her. It is also alleged that he did not co-operate in the vegetarian eating habits of the deceased. Considering the evidence on record, we find no infirmity in the impugned judgment convicting the respondent No.2 for offence under Section 498A/306 IPC and awarding the sentence.

13. As regards the offence of 302 IPC, the onus is on the prosecution to prove the case. No evidence has been led that the death was homicidal in nature much less having been committed by any of the respondent Nos.3 to 8.

14. We find no infirmity in the impugned judgment acquitting the respondent Nos.3 to 8 of the charges under Section 302/304B IPC.

15. Appeal is dismissed.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

JULY 21, 2014
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