

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

Judgment Reserved on: August 11 , 2014
% *Judgment Delivered on: August 14 , 2014*

+ **CRL.A. 278/2012**

Mukesh Kumar Appellant
Represented by: Mr. Ashish Garg, Advocate.

versus

State NCT of Delhi Respondent
Represented by: Mr. Varun Goswami, APP for the
State with Inspector Mahesh Kasana,
ATO/Sangam Vihar.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The present case reveals the tale of an unfortunate father who married his two daughters to two brothers and lost both of them. He could file complaint only for death of Lalita and not the younger daughter Poonam, so as to save the life of Lalita but eventually lost out on that count as well. Mukesh the husband of the deceased Lalita stands convicted for offence punishable under Sections 304B/498A IPC. He has been directed to undergo rigorous imprisonment for life for offence punishable under Section 304B IPC and rigorous imprisonment for 3 years and a fine of Rs.10,000/- and in default of payment of fine to undergo simple imprisonment for 6 months under Section 498A IPC.

2. Mukesh assails the judgment on the ground that there are material improvements in the statements of the witnesses before the Court. There is

no allegation that either Mukesh raised any demand or the same was fulfilled. No prior complaint was made. There is no allegation that soon before the death, there was demand of dowry or that in relation thereto the deceased was subjected to cruelty. Hence the appellant be acquitted.

3. The explanation rendered by Mukesh in his statement under Section 313 Cr.PC is of plain denial and that a false case has been registered against him. No specific plea has been taken nor any defence evidence led.

4. The investigation was set into motion on receipt of DD No.13A at about 2.30 pm on April 10, 2009 at PS Sangam Vihar by Mukesh himself informing that his wife committed suicide by strangulation. SI B.N.Yadav PW-11 reached the spot at H.No.124, Gali No.9, G-Block, Sangam Vihar where he found Lalita hanging to a ceiling fan. Since Lalita died within seven years of her marriage, Alok Sharma, Executive Magistrate, Kalkaji PW-3 was called, who examined Babu Lal, the father of the deceased on 11th April, 2009.

5. Babu Lal got his statement recorded revealing that he was a washer man by profession. On January 22, 2006 he had married his daughter Lalita to Mukesh S/o Samar Mal as per Hindu Rites. He gave dowry as per his capacity. After marriage, Mukesh and his family started demanding cash and a motorcycle. He paid a sum of ₹70,000/- and ₹80,000/- on their demand. He purchased a motor cycle to fulfil the said demand which was still lying at his house. Lalita gave birth to two daughters aged about two years and two months respectively. Apart from Lalita, he had married his other daughter Poonam to Narender, brother of Mukesh on the same date. Poonam was killed by her in-laws on February 20, 2007 but he did not lodge any complaint for the well being of the other daughter i.e. Lalita. On April

10, 2009 he came to know that Lalita had died due to strangulation and she had been killed by her in-laws.

6. Babu Lal PW-1 deposed on the same lines. According to him, initially Mukesh and Lalita and Narender and Poonam were jointly residing in the same house for one year. Lalita was kept properly after the marriage. After one year of the marriage, Mukesh started living separately in a rented house along with his daughter Lalita. Once, when he had visited at the rented house of Mukesh, he raised a demand of ₹50,000/-. Prior thereto he had given ₹20,000/- and ₹30,000/- to him as he used to raise demand of money from him and his daughter Lalita and for that demand he used to harass his daughter. At the time of Raksha Bandan, his daughter came to their house and remained with them for about 2/3 months. Since Mukesh refused to take Lalita, he sent her back to the house of Mukesh along with his sister and her husband. Thereafter, Mukesh started demanding motorcycle or ₹50,000/- for the motorcycle. He promised his daughter that he would give motorcycle at the time of birth of second child. He further stated that on 10th April, 2009 at about 7.00/8.00 am he received a call from his daughter Lalita, who stated that his husband was harassing for demand of motorcycle/money on which Babu Lal stated that he would come to Delhi within 1-2 days. The call was thereafter disconnected. On the same day, at about 2.30 pm father of Mukesh informed him that Lalita had committed suicide by hanging. He also asked him whether he may call police or not. Babu Lal told him that it was his desire. When he reached the house of Mukesh, he found the police there and the dead body of his daughter was already removed by the police. Next day he went to police station and got his statement recorded.

7. Learned counsel for the appellant has laid a lot of emphasis on two facts that the deceased and Babu Lal had a talk on the telephone on April 10, 2009 at 7-8 am and that he did not desire to call the police. Thus, the conduct of Babu Lal showed that there was no maltreatment to his daughter. No doubt, Babu Lal has not stated to the SDM in his statement Ex.PW-1/B that on April 10, 2009 at about 7-8 am he had a talked with Lalita who stated that Mukesh was harassing her for motorcycle/money and that he promised to come in a day or two. However, this improvement would not by itself result in discarding the entire testimony of this witness as the version of this witness on the count that there was a demand of motorcycle is consistent and he had promised to give the same at the time of birth of the second child is duly corroborated. It may be noted that at the time of death of the deceased, the younger child was only 2 months old and Babu Lal has produced documents to show that he had already purchased a motorcycle to be given to Mukesh.

8. Narender PW-7 brother of the deceased has stated about the conduct of Mukesh and family members at the time of marriage and that the articles of furniture were taken by the in-laws of his sister only when Mukesh started living with her sister separately. He also deposed that his younger sister Poonam was also married to Narender, younger brother of Mukesh and expired after one year of marriage. According to him, Mukesh demanded ₹25,000/- after about 8 months of marriage which was given by his father. Mukesh also demanded ₹50,000/- from his father to purchase Maruti Van. He used to harass his sister as his demand of ₹50,000/- was not fulfilled. Keeping in mind the persistent demand of Mukesh, his father had purchased a motorcycle for Mukesh but before the same could be given to Mukesh, his

sister died at her matrimonial home. This witness has also explained that his other sister Poonam who was married to younger brother of Mukesh died in April, 2007 due to fall from the roof at her matrimonial home. According to him, they made no complaint about the death of his sister Poonam for the reason that his other sister was also married in the same family and they apprehended harassment to her in case complaint was made.

9. Even PW-9 Murti Devi, mother of the deceased has deposed on the same lines and affirmed that she had put her thumb impression on the complaint PW-1/A made by her husband. PW-8 Laxman Singh, a relative of Babu Lal also appeared in the witness box and deposed that on May 18, 2009 he had accompanied Babu Lal to PS Sangam Vihar where they handed over the documents to the police relating to motorcycle vide memo Ex.PW-8/A. This witness has not been cross-examined. The documents are the registration certificate of motorcycle Splender Plus bearing No.RJ025K6906 dated April 6, 2009. The receipt dated March 25, 2009, invoice dated March 31, 2009 and insurance cover note etc. Even though Babu Lal has improved on his statement about the call made to him by his daughter on the morning of April 10, 2009, however rest of his testimony stood corroborated by the version of other witnesses including the purchase of motor-cycle to be given to Mukesh.

10. The contention of learned counsel for the appellant that there was no allegation of demand of dowry soon before death is wholly unsubstantiated. The allegations show that the deceased was continuously harassed for demand of money and later for demand of motorcycle/vehicle which was duly bought by the father of the deceased. However, before the same was delivered, the deceased committed suicide. "Soon before" is a relative term

to be considered in accordance with the circumstances of each case. The prosecution must prove that there was a proximity and live link between the effect of cruelty based on dowry demand and the consequential death. Proximity and live link can also be established from the persistent demand and repeated harassment on that count. In (2000) 5 SCC 207 Kans Raj Vs. State of Punjab it was held –

“15. It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to be cruelty or harassment by the husband soon before her death. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straight jacket formula can be laid down by fixing any time limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long before the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances sowing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be soon before death' if any other intervening circumstance showing the non existence of such treatment is not brought on record, before the alleged such treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.”

11. In view of the aforesaid discussion, we find no infirmity in the impugned judgment convicting Mukesh for offence punishable under Sections 304B/498A IPC and the order on sentence.
12. The appeal is dismissed.
13. T.C.R. be returned.
14. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 14, 2014
‘v mittal’