

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

% *Judgment reserved on: 05.02.2014.*
Judgment delivered on: 11.02.2014.

+ CRL.A. 81/2006
PHOOL WATI & ANR. (IN J.C.) Appellant
Through Mr. Satish Tamta, Advocate.

versus

STATE Respondent
Through Ms. Kusum Dhalla, APP along
with SI Kapil Kumar.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1. The appellant is aggrieved by the impugned judgment and order of sentence dated 23.1.2006 and 28.1.2006, wherein Phool Wati (since deceased) and Smt. Usha (appellant) have been convicted for the offence under Sections 498A and 304-B IPC; appellant had been sentenced for the offence under Section 304-B IPC to undergo RI for a period of 7 years with a fine of Rs.10,000/-, in default of payment of fine, to further undergo RI for 1 year; for the offence under Section 498A IPC to undergo RI for 3 years with a fine of Rs.5,000/-, in default of payment, to further

undergo RI for 6 months.

2. This judgment is the subject matter of appeal before this Court.
3. On 08.7.1999, Smt. Meenu, wife of Rajneesh had sustained injuries; she had succumbed to her death on the same day. The death had occurred in the matrimonial home of the victim, i.e. on the first floor of F-20, Mansarovar Park, Delhi.
4. Version of the prosecution was unfolded in the testimony of Permeshwari Devi, PW-1 (mother of the victim). In her statement (Ex.PW-1/A) she deposed that Meenu (Victim) was treated with cruelty by Phool Wati (mother-in-law) Rajneesh (husband), Rakesh (brother-in-law), Shiv Kumar (brother-in-law) and Nita (sister-in-law). They used to demand dowry. Her brother-in-law (Naresh), who lived abroad quarreled with the victim for dowry whenever he used to come to her matrimonial home.
5. Two days prior to the incident, i.e. 06.7.1999, the victim had come to her parental home and told that her in-laws was demanding a sum of Rs.2 lac and a house in Delhi; her parents were unable to meet this demand.
6. On the morning of 08.7.1999 at about 3 AM, a telephone call was

received by her informing that Meenu had received burn injuries.

On reaching her matrimonial home, she found Meenu dead.

7. Investigation was marked to ASI Aishbir Singh (PW-17). He has deposed that at about 4.15 AM, he was on patrolling duty when D.D.No.54B (Ex.16/A) was assigned to him; and he along with Constable Shiv Kumar (PW-7) reached the matrimonial home of the victim. On the ground floor, all the afore-noted accused persons except Anita were present. On query, it was learnt that the incident had taken place on the first floor. The dead body of the victim was lying at a place just in front of the stair case; there were the burn marks on the entire dead body of the victim; her fingers were closed tightly; her tongue was protruding in between the teeth; few scalp hairs were burnt; pieces of flesh as also the burnt cloths were also in the room. Outside the room, one plastic cane, bottom of which was burnt, one tin and a match box were also lying. The SHO was summoned as was also the SDM, Prakash Chander (PW-10) who recorded the statement of the mother of the victim Parmeshwari Devi (PW-1) and her brother Raj Kumar (PW-2) as also the statement of other brothers,

Deepak Kumar and Ashok Kumar. Deepak Kumar and Ashok Kumar were not examined by the prosecution.

8. The dead body was sent to the mortuary of GTB Hospital for post-mortem. Dr. Gautam Bishwas (PW-18) had conducted the post-mortem on the body of the victim; the post-mortem report was proved as Ex.18/G and rigormortis was noted all over the body. The following external injuries were noted:-

“Superficial to deep antemortem fresh burn wound covering 95% of the body surface area sparing both soles and palms and part of scalp. Most of the burn wounds are superficial with blackening present. Erythema seen at places. Singeing of scalp hair, pubic hair and axillary hair present. Skin parchment like at places. Smell of kerosene present in scalp hair. Peeling off of skin present at places.”

9. On internal examination, it was noted that:-

“Head and Neck: Scalp and skull NAD. Brain weight 1250 gram congested. Neck-structure- intact. Treachea-walls congested, soot particles present admixed with mucus.

Chest:

Lungs: Right-weight 400 grams

Left-weight 350 grams, congested, soot particles present at bronchioles admixed with mucus.

Heart: Weight 350 grams NAD.

Abdomen and others:

Stomach: About 75 ml. of digested food material present. Walls congested and haemorrhagic.

Liver: Weight 2200 grams congested and enlarge.

Spleen: Weight 250 gram congested.

Kidneys: Right weight 200 grams.

Left weight 200 grams, both congested.

Uterus: Empty and NAD.

Urinary Bladder: Empty.

Viscera preserved for chemical analysis under the seal of AKT.

Preservative used-saturated solution of common salt. Pieces of charred clothes with hair band and scalp hair preserved.”

10.The opinion on the cause of death was as under:-

“Opinion : Time since death about half day. Cause of death will be given after receiving the chemical analysis of viscera.”

11.In the course of the investigation, the statements of the neighbors

Dev Das (PW-4), Rishi Pal (PW-5), Jagbir Singh (PW-7) and

Shyam Singh (PW-12) were recorded. The neighbors did not

support the version of the prosecution.

12. Bhushan Azad (PW-19) was the second Investigating Officer.

He had filed the supplementary chargesheet.

13. In the statement of the accused persons recorded under Section

313 of the Cr.P.C, they had pleaded innocence; submissions being

that the allegations leveled against them by Meenu’s mother and

brothers are false; no dowry demand was made; Meenu was never

harassed and no cruelty inflicted upon her; she was undergoing

gynecological problem that she was not able to bear a child and

also that her husband was suffering from mental ailment; it was her own depression which had led to this incident.

14. In defence, 12 witnesses were examined. Kishan Lal (DW-1) was a neighbor. He had deposed that the marriage of the parties was simple and on the date of the incident, he had gone to extinguish the fire. Rama Mishra (DW-3) was a family friend and he had deposed that no dowry was demanded at the time of marriage. The Mediator who got the marriage performed between Meenu and Rajneesh was Ashok Kumar (DW-2); he had deposed that neither the deceased nor her family members ever complained him about Meenu being harassed for dowry. Two doctors, Dr. Anita Garg (DW-5) and Dr. Usha Mohan (DW-6) had treated Meenu as a patient. They had deposed that Meenu was suffering from a gynecological problem and was unable to bear a child; two years had passed since her marriage. Dr. K. Adarsh (DW-7) had also treated Meenu. Two other doctors, namely, Dr. R.A. Singh (DW-8) and Dr. Sharad Mathur (DW-9) have been summoned from the IBHAS and they had deposed that the husband of Meenu was taking medicine for his mental ailment. His condition was not

disputed. Rajinder Singh (DW-10) was a witness to the defence that the husband of Meenu, namely, Rajneesh was admitted in the Air Force Hospital, Hindon, Ghaziabad from 06.7.1999 to 10.7.1999, that is the period when the incident had occurred. The prosecution does not dispute this fact also.

15. On the afore-noted evidence pleaded by the prosecution both oral and documentary, the accused Phool Wati and accused Usha have been convicted for the offence as aforesaid and sentenced accordingly. Phool Wati, the mother-in-law had since expired; appeal qua her has abated; the appellant filed the appeal before this Court against Usha alone.

16. Usha was the elder sister-in-law of the victim Meenu. Her husband was in Army and used to be posted outstation. It is also an admitted position that Usha was living on the ground floor of the matrimonial home of the victim, that is House No.F-20, Mansarovar Park, Delhi, with mother-in-law, Phool Wati; the first floor was in occupation of Meenu and husband Rajneesh and after marriage of two years, they had no child. It is also admitted that on efforts by the married couple to bear a child, Meenu was

unable to do so; and versions of DWs- 5, 6 and 7 that Meenu was suffering from a gynecological problem is not challenged. The fact that the husband of Meenu, namely, Rajneesh was suffering from a mental instability has also not been disputed by the prosecution.

17. On behalf of the appellant, arguments have been addressed in detail. It is pointed out that the appellant was living on the ground floor with her mother-in-law; nothing has come out either in the statement of PW-1 or PW-2 to assign any role to the appellant; if at all any role has been assigned, it is to Phool Wati, mother-in-law of the victim; there are no specific allegations against the appellant; and bald and general allegations by this Court are not sufficient to nail the accused for an offence of this nature.

18. Attention has been drawn to the version of PW-1 and PW-2; no other earlier status given before the SDM; it is pointed out that none of the four neighbors i.e. PWs-4, 5, 7 and 12 have supported the version of the prosecution; they have admitted the true picture that they had seen Meenu in flames; it was to the fact that they

had gone to the house of Meenu when they had noticed flames coming out from the first floor of the residence of Meenu; which was opposite their houses and on knocking the door, which was opened by Phool Wati and Usha; all went up stairs where they found Meenu lying dead with burn injuries all over her body.

19. Submissions being that the members of the ground floor of the house were unaware of what was happening on the first floor where Meenu was residing with her husband; it was out of a sense of frustration and extreme depression that she had taken her own life by burning herself to death; not only for the reason that she could not conceive a child but also for the reason that her husband was mentally instable and she could not see a future ahead for herself; there was no dowry demand made by any member of the family and especially by the appellant from the family of the victim; this is borne out from the evidence of the prosecution; the evidence in defence also substantiated that the marriage of Meenu and Rajneesh was simple and no dowry was either demanded or given. To support his submission, learned counsel for the appellant has relied upon 2013(4) SCALE Indrajit Sureshprasad

Bind & Ors. Vs. State of Gujarat. It is pointed out that where there are gaps in the evidence of the prosecution and the testimony of the witnesses is faulty, the accused cannot be nailed. Reliance is also being placed on 2013(13) SCALE Bhola Ram vs. State of Punjab to substantiate the same submission; submission being that she was living on the ground floor and not in the same residence as that of the victim.

20.Arguments have been refuted by learned counsel for the State; it is stated that the impugned judgment does not call for any interference; for the reason that the judgment has relied upon the reliable version of PW-1 and PW-2. There was no reason whatsoever for the victim to have killed herself but for the fact that there was extreme cruelty by the demands of dowry made upon her by the appellant and her mother-in-law. The judgment calls for no interference.

21.Arguments have been heard and records have been perused. I have noted *supra* that the appellant has been convicted under Section 304B of the IPC; but for the accused to be held guilty under the afore-noted provisions of law, the prosecution is

required to prove that the deceased has been subjected to cruelty and harassment by the accused. The prosecution has to establish by evidence that the victim had been subjected to cruelty in connection with demands of dowry. Section 304B of the IPC in fact, postulates the following two ingredients to be established by the prosecution:

- (i) The death of a woman has been caused under unnatural circumstances within seven years of marriage;
- (ii) Soon before her death, she was subjected to cruelty or harassment by her husband or any relative of husband or in connection with any demand for dowry.

22. Thus the criminal liability under Section 304B of the IPC is attracted not just by a demand of dowry but by the act of cruelty or harassment by husband or any relative of her husband in connection with such a demand; this act of cruelty or harassment has to be caused by the accused to the deceased soon before her death in connection with the demand of dowry. Unless and until all these ingredients are established by the prosecution, the accused cannot be held liable for the offence of dowry death

under Section 304B of the IPC.

23. Similarly, under Section 498A of the IPC, the act of cruelty to a woman by her husband or any relative of the husband would be punishable and would be come within the meaning of Clause A and B in the Explanation of Section 498A of the IPC. The Explanation of Section 498A of the IPC defines cruelty and reads herein as under:

“Explanation – For the purpose of this section, “cruelty” means-

- (a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*
- (b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”*

24. PW-1 is the mother of the victim. In her first complaint, that is before her statement before the SDM (Ex.PW1/A), she had stated that her daughter Meenu was married to Rajneesh; all her in-laws used to trouble her for dowry. She had named her husband, Rajneesh, brothers-in-law, Rakesh, Shiv Kumar and Naresh,

sisters-in-law, Usha and Anita and her mother-in-law, Phool Wati; submission being to the fact that she should bring a house in Delhi; two days prior to the incident, i.e. 06.7.1999, Meenu had come to that house and had stated that a demand of Rs.2 lac was being made by her in-laws or else a house should be given to them. Further submission being that Meenu's brother-in-law, Naresh, who was living out of station also used to quarrel with her and harass her; they used to beat her as well. On 08.7.1999, in the morning at about 3 AM, a telephone call was received, wherein she was informed that her daughter had sustained severe injuries. On reaching her matrimonial home, she had found her lying dead. This statement (Ex.PW-1/A) was recorded on the next day at 12.30 PM. The SDM, Chander Prakash (PW-10) had recorded the statement of the family members of the victim i.e. PW-1 and PW-2.

25. On oath in Court, PW-1 deposed that whenever Meenu used to come her parental house; she used to complain that Phool Wati, her mother-in-law, Rakesh and Shiv Kumar (brothers-in-law) and Rajneesh, her husband used to ill-treat her. On 06.7.1999, she

told that an amount of Rs.2 lac had been demanded by her mother-in-law, Phool Wati; she stated that mother-in-law had also demanded a house; PW-1 was not able to meet these demands. In cross-examination, she admitted that dowry was given at the time of marriage, which included fridge. She denied the suggestion that the fridge was purchased by her in-laws. She admitted that her daughter had separated since the last about 6 months and was then living at the first floor of the premises. She further admitted that Naresh (brother-in-law) lives in London and Rakesh, husband of Usha is employed in the Army. She further deposed that her daughter had told Rajneesh (husband) is mentally unsound.

26. PW-2 has deposed on the same lines as his mother (PW-1). He has stated that whenever his sister used to come to her parental home, she told them about being ill-treated by her husband, Rajneesh and brother-in-law, Shiv Kumar for dowry; the mother-in-law also used to harass her; on 06.7.1999, she informed about the dowry demands being made by her in-laws; PW-2 was unable to meet these demands. In cross-examination, he admitted that the statement has been recorded by the SDM.

27. These two witnesses i.e. PW-1 and PW-2 are the most relevant witnesses; as no other family members have been examined; they deposed that the victim was being harassed for demand of dowry. In the entire version of PW-1, on oath in Court, there is no whisper of the appellant, Usha (*jethani*) having harassed her for any dowry. Version of PW-1 is that, on 06.7.1999, Meenu had come to her parental house and told them that a demand of dowry of Rs.2 lac had been made by her mother-in-law; further version being that mother-in-law had also demanded a house. The name of Usha did not find a mention.
28. The name of the appellant has only appeared in the version of PW-2 which was to the effect that the victim had disclosed that her in-laws which included Rakesh, Shiv Kumar and Usha used to ill-treat her for dowry demands. No detail of any such ill-treatment has been given. This general allegation against Usha has been clubbed along with Rakesh and Shiv Kumar (brother-in-laws) of whom Shiv Kumar was acquitted and Rakesh was not even charged. Role of Usha in this version of PW-2 is equivalent to the role of the other two.

29. Thus this bald and general allegation by PW-2 by itself that whenever his sister used to come to her parental house, she used to tell them that she was being harassed by her in-laws for dowry demands or that on 06.7.1999, when his sister had come to her parents' house, she had stated that a demand for Rs.2 lacs and a house was made without detailing as to who had made this demand and when read along with the version of PW-1, it is clear that this demand of Rs.2 lacs and house was made by her mother-in-law Phool Wati only. There was no role of Usha.
30. It is these two versions of PW-1 & PW-2 which have been relied upon by the Trial Judge to hold that the harassment to the victim was made by Usha and Phool Wati soon before her death and this harassment and cruelty was made in connection with the dowry demands.
31. This Court is not in agreement with this fact finding returned by the Trial Judge. The Trial Judge has gone on surmises and conjectures and has dealt with imaginative situations, which do not find mention in the versions of the witnesses. It is the evidence on record which has to lead to the judgment. The

evidence on record which is the depositions of PW-1 and PW-2 has been discussed *supra*; PW-1's version did not find any mention about the appellant having made any dowry demand upon her sister-in-law (Meenu); PW-2 made a general statement that the accused persons including Usha had made dowry demand; on this version which being general and having roped in two other relations Rakesh and Shiv Kumar of whom as already noted *supra* Shiv Kumar was discharged and Rakesh was not even charge-sheeted, it would be wholly illegal to hold that the prosecution has been able to establish that the appellant Usha had harassed and meted out cruel treatment to Meenu in connection with dowry demands.

32. There is no doubt that the victim Meenu has died an unnatural death. She has died due to burning. The death has also taken place within 7 years of her marriage. However, there is absence of any definite allegation by PW-1 and PW-2 or any other family member that any dowry demand was made from Usha or that Usha had treated Meenu in a humiliating manner as to become a conspirator along with her mother-in-law to cause her dowry

death.

33. The foundation of the case not having been laid down by the prosecution and the essential ingredients of Section 304B of the IPC not having been established, the presumption of Section 113B of the Evidence Act could not be availed of by the prosecution. All unnatural deaths will not necessarily take into net all family members of the husband.
34. The Supreme Court in 2013(4) SCALE Bharat Bhushan & Anr. Vs. State of Madhya Pradesh while reiterating the law on Sections 304-B and 498-A had observed as under:

“Section 304B Indian Penal Code provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband, or in connection with, any demand for dowry, such death shall be called 'dowry death' and such husband or relative shall be deemed to have caused her death. Hence the criminal liability under Section 304B Indian Penal Code is attracted not just by the demand of dowry but by the act of cruelty or harassment by the husband or any relative of her husband in connection with such demand; thus, unless such an act of cruelty or harassment is proved to have been caused by the accused to the deceased soon before her death in connection with the demand of dowry, the accused cannot be held to be liable for the offence of

dowry death under Section 304B Indian Penal Code. Similarly, Section 498A Indian Penal Code provides that the act of cruelty to a woman by her husband or his relative would be punishable and would be attracted only if the husband or his relative commits an act of cruelty within the meaning of Clauses (a) and (b) in the Explanation to Section 498A Indian Penal Code.”

35. In Vipin Jaiswal vs. State of A.P. 2013(3) SCALE, the following observations of the Apex Court in the facts of that case are relevant:-

“In our considered opinion, the evidence of DW1 (the Appellant) and Ext. D19 cast a reasonable doubt on the prosecution story that the deceased was subjected to harassment or cruelty in connection with demand of dowry. In our view, onus was on the prosecution to prove beyond reasonable doubt the ingredient of Section 498A, Indian Penal Code and the essential ingredient of offence under Section 498A is that the accused, as the husband of the deceased, has subjected her to cruelty as defined in the Explanation to Section 498A, Indian Penal Code. Similarly, for the Court to draw the presumption under Section 113B of the Evidence Act that the Appellant had caused dowry death as defined in Section 304B, Indian Penal Code, the prosecution has to prove besides the demand of dowry, harassment or cruelty caused by the accused to the deceased soon before her death. Since the prosecution has not been able to prove beyond reasonable doubt this ingredient of harassment or cruelty, neither of the offences under Sections 498A and 304B, Indian Penal Code has been made out by the prosecution”

36. The testimony of the neighbors is also relevant. That testimony will be better appreciated if the site plan (Ex.17/A) is perused.

Ex.17/A shows the matrimonial home of the victim; she was living on the first floor; her charred dead body was lying outside in the terrace area on her first floor; along with dead body, her burnt cloths, a match box, half broken plastic cane have also been depicted. The dead body was lying as already noted *supra*; this dead body was lying in the terrace area and away from the room and kitchen. The neighbors who have been examined, namely, PWs 4, 5, 7 and 12 are living as per the site plan in Houses No. F-21 (F-21 again on F-7).

37. PW-4 has deposed that on the fateful day, he saw that the house of the accused caught fire and he came down stairs to his house and raised an alarm. On knocking the door, Phoolwati and Usha opened the door and they went up stairs. They found that Rajneesh was sleeping and his wife Meenu was in flames. He did not support the prosecution version to the fact that Phoolwati had not tried to save Meenu. Relevant would it be to say that even a public prosecutor has not given any suggestion to this witness about the present role of the appellant.

38. PW-6 was another neighbor. He was residing in front of the

accused persons, House No.F-7, Mansarovar Park. While sleeping in his roof, he heard the cry of the victim; on going to the house of the accused and on knocking the door; the door was opened by Phoolwati and Usha; they all went to the first floor where the victim was found lying in flames. All of them tried to save her. This witness was also declared hostile. He denied the suggestion that Phoolwati did not try to save Meenu. Relevant would it be to state that no suggestion has been given to this witness either about the role of Usha.

39. PW-7, Jagir Singh was yet another neighbor. He also noticed flames in the house of the accused; on knocking the door; the door was opened by Phoolwati and Usha; they all went to the first floor where the victim was found lying in flames. This witness was also declared hostile. He denied the suggestion that Phoolwati did not try to save Meenu. Relevant would it be to state that no suggestion has been given to this witness either about the role of Usha. No suggestion has been given to this effect that Usha has also any role in not trying to save the victim from flames.

40. PW-12, Shyam Singh was the 4th neighbor. He was sleeping on the roof of his house, in front of the house of the accused; the first floor of the house of the accused was burning; he knocked the door of the accused; Phoolwati and Usha opened the door; they went up stairs and found that Meenu was lying in flames. This witness was also cross-examined by the learned public prosecutor. No suggestion has also been given about the role of Usha that she had not tried to save Meenu from burning.
41. The statements of these neighbors show that even as per the version of the prosecution; when these neighbors had noticed flames from the first floor of the house of the accused, they all had gone there and knocked the door; the ground floor door was opened by Phoolwati and Usha; all of them had clearly stated that both Usha and Phoolwati were down stairs at that time; they both accompanied the neighbors to the first floor where the victim was lying in a burnt condition. This version of the prosecution itself establishes that the appellant and Phoolwati were in fact in their own residence and had gone up with their neighbors when they had noticed the flames on the first floor.

42. The defence witnesses, i.e. DW-5,6 and 7 and their reports have all established that Meenu had gynecological problem; she could not conceive a child after two years of her marriage, although efforts were there to conceive.
43. DW-6, Dr. Usha Mohan has stated that the patient may remain under depression if she is unable to conceive after two years of her marriage. Ex.DW-5/A-C shows the fact that the victim was undergoing treatment in order to bear a child. OPD Card Ex.7/A also shows that treatment was going on.
44. The fact that the husband of the victim was not well has also been established in the version of DWs9 and 10, who were both doctors from IBHAS and the documents Ex.DW9/A-D evidenced that the medicines prescribed to Rajneesh (husband of Meenu) were tranquilizers and caused the patient to sleep; if taken for a long duration, this also may cause sexual dysfunction. DW-10, Rajinder Singh had produced discharge slip of Rajneesh, husband of the victim, showing that he was being treated from the Air Force Hospital and he in fact, remained in hospital for the reason that he was undergoing depression and was suffering from mental

instability. It was the additional cause of a depression for the victim.

45. This defence is by and large substantiated not only from the line of cross-examination adopted by the defence counsel but also from the stand of the accused in their statements recorded under Section 313 of Cr.P.C. and thereafter again by producing witnesses in defence.
46. Versions of DW-1 and DW-2 had also established that the marriage of the parties was simple and not only the Mediator but even the neighbors had stated that the victim had never been harassed by the accused for any dowry. The fact was that the victim and her husband were living separately since the last 6 months; which fact has been admitted by PW-1 herself.
47. Further at the time when the death of the victim had taken place on her first floor residence; neither Usha and Phoolwati were present. The incident had occurred at 3 AM in the morning. It is clearly a case where the victim had committed suicide not because of any harassment or cruelty meted out by the appellant but because of her mental state.

48. The Supreme Court in 1994 (1) SCC 73 State of West Bengal v. Orilal Jaiswal in the context of a victim of suicide had noted that where it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court could not be satisfied for holding anyone else responsible for such an act.
49. The impugned judgment convicting the appellant in this background clearly suffers from an illegality. It is accordingly set aside.
50. Appeal is allowed. The appellant is acquitted. Her bail bond is cancelled; surety is discharged. File be consigned to record room.

INDERMEET KAUR, J

FEBRUARY 11, 2014
KA