

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

RESERVED ON : 10th MARCH, 2014

DECIDED ON : 08th JULY, 2014

+ CRL.A.555/2011

UMED SINGH & ORS. Appellants

**Through : Mr.S.S.Gandhi, Sr.Advocate with
Mr.Manish Sharma & Mr.Sunil
Upadhyay, Advocates.**

Versus

THE STATE, N.C.T. OF DELHI Respondent

Through : Mr.M.N.Dudeja, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Umed Singh (A-1), Pradeep Kumar (A-2), Mahender Singh (A-3) and Shanti (A-4) impugn a judgment dated 01.04.2011 of learned Addl. Sessions Judge in Sessions Case No. 95/08 arising out of FIR No. 211/08 PS Nangloi by which they were convicted under Sections 498A/304B/34 IPC. By an order dated 07.04.2011, A-1, A-3 and A-4 were sentenced to undergo RI for fourteen years with fine ₹ 10,000/- each under Section 304B IPC and RI for three years with fine ₹ 5,000/- each under Section 498A IPC. A-2 was awarded RI for seven years with fine ₹

10,000/- under Section 304B IPC and RI for three years with fine ₹ 5,000/- under Section 498A IPC. The substantive sentences were to operate concurrently.

2. Shorn of details, the prosecution case as stated in the charge-sheet was that after marriage Rajni (deceased) lived at her matrimonial home at E-40, Laxmi Park, Nihal Vihar, Nangloi, New Delhi. She committed suicide on 26.03.2008 in the matrimonial home. Since the death had occurred otherwise than normal circumstances within seven years of the marriage, inquest proceedings were conducted by PW-5 (B.P.Mishra), SDM, Punjabi Bagh. After recording statements of Rajni's parents and brothers, he lodged First Information Report pursuant to which the appellants were arrested. Post-mortem examination of the body was conducted. Statements of the witnesses conversant with the facts were recorded. After completion of the investigation, a charge-sheet was submitted against the appellants; they were duly charged and brought to trial. The prosecution examined twenty-one witnesses to bring home the appellants' guilt. In 313 statements, they pleaded false implication and denied their complicity in the crime without examining any witness in defence. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, the appellants have preferred the appeal.

3. I have heard the learned counsel for the parties and have examined the record. Appellants' counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of the close relatives of the deceased without independent corroboration. The Trial Court without valid reasons ignored vital discrepancies and improvements in their statements. There was no demand of dowry at any stage by any of the appellants and they were not instrumental in the death of the victim. Ingredients of Section 304B IPC were lacking and the prosecution miserably failed to establish if 'soon before death', the victim was subjected to cruelty for or in connection with demand of dowry. Learned Addl. Public Prosecutor urged that the death occurred within one year and three months of the marriage of the victim in the matrimonial home and no explanation has been offered by the appellants as to what had prompted or forced Rajni to take the extreme step to put an end to her life. PW-1 (Surender Singh), PW-2 (Sarla Devi), PW-3 (Vijay Verma) and PW-4 (Ajay Verma), have consistently and categorically deposed about harassment caused to the victim on account of non-fulfillment of dowry demands. They had no ulterior consideration to falsely implicate the appellants.

4. Undisputedly, the victim Rajni was married to A-1 on 13.12.2006 and within seven years of her marriage, her unfortunate death occurred on 26.03.2008 under suspicious circumstances. After the marriage, Rajni lived at the matrimonial home at E-40, Laxmi Park, Nihal Vihar, Nangloi, New Delhi, in the joint family. It is also not in dispute that about four months prior to death, she had got admission for a Nursing course at Sirsa and used to stay in a hostel there. The prosecution witnesses have admitted that no complaint whatsoever was ever lodged either by the deceased or any of them against the appellants any time for harassment to the deceased on account of dowry demands. They also admitted that no 'panchayat' was ever organized to resolve any differences between the parties. The victim was never taken for any medical examination during her stay in the matrimonial home. Certain visible injuries on the deceased's body were noticed by her parents to infer appellants' involvement in her murder. They were also of the view that on the pretext to take Rajni for medical aid by a doctor, the appellants had gone to dispose of her body.

The post-mortem examination (Ex.PW-19/A) of the body was conducted on 27.03.2008 by PW-19 (Dr.V.K.Jha). He observed following external injuries :

- “1. Scratch abrasion multiple over right and left side of neck.*
- 2. Bruise on right elbow 3 cm x 2 cm and on left elbow 2 cm x 2 cm.*
- 3. Ligature mark present on right side of the neck 15 cm in length, 1 cm in breadth, obliquely placed.”*

Cause of death was kept pending till chemical analysis report of viscera was received. PW-19 was of the view that post-mortem findings were consistent with ‘assault’ before death. Medical Board consisting of Dr.Anil Aggarwal, Dr.Vinay Kumar Singh and Dr.Vijay Dhanker was constituted to give opinion regarding the injuries found on the body of the victim. In its report (Ex.PW-20/A), the Board made following observations :

- “1. Multiple scratch abrasions over right and left side of neck. Comments – No such injuries are visible in the close-up photographs of the neck submitted (Photographs no.1, 2 and 3).*
- 2. Bruise on both elbows. Comments – Both the contusions are small, similar sized and placed on the bony prominences. Such injuries are likely to have been produced during a fall, rather than in an assault.*
- 3. Obliquely placed, parchmented, ligature mark over right side of neck. Comment – Likely to have been produced by ante-mortem hanging.”*

Medical Board was of the opinion that there was nothing to suggest it a case of homicidal hanging or strangulation; also there was no evidence of ‘assault’ before death. The prosecution accepted and relied

upon the medical opinion. PW-20 (Dr.Anil Aggarwal), prosecution witness, testified that there was no evidence of 'assault' before death. Apparently, the victim was not subjected to physical 'assault' before she committed suicide.

5. No independent public witness was associated or examined at any stage of investigation to ascertain if at any time, the victim was physically or mentally tortured or subjected to harassment by the appellants in connection with non-fulfillment of dowry demands. The Investigating Officer did not examine any neighbour of the victim to find out the conduct and behaviour of the appellants towards the victim during her stay in the matrimonial home or to infer if any quarrel ever took place on that count. At no stage, the victim reported the incident to the police or to her close relatives. Mahender Singh, mediator in the marriage, was not examined during investigation. Neither the victim nor her family members ever lodged any complaint to him against the appellants for harassment or cruelty meted out to the victim. It is on record that the parents and brothers of the victim used to remain in touch on phone with the deceased. However, no such call details were collected during investigation. PW-2 (Sarla Devi) claimed that a few days before the incident, Rajni in

telephonic conversation had requested her to send her clothes through her father.

6. Admitted position is that the deceased's in-laws had got Rajni admitted in a Nursing course at Sirsa where she used to stay in a hostel and all her expenses were met by them. PW-1 (Surender Singh), victim's father had no time to see Rajni at Sirsa despite her requests and was unaware as to when she joined the course. Admittedly, Rajni was in constant touch on phone from Sirsa with the family. The victim stayed for about four months in Sirsa but the Investigating Officer did not conduct any enquiry / investigation to find out her mental condition there. On the day of incident, she was to go back to Sirsa to continue her course.

7. PW-1 (Surender Singh), PW-2 (Sarala Devi), PW-3 (Vijay Verma) and PW-4 (Ajay Verma) parents and brothers of the victim have given conflicting and inconsistent statements about demand of dowry and harassment to the victim on that score. None of them gave any specific date when any particular amount / article was demanded by any of the appellants or if any such demand was adhered to. The allegations are unspecific, uncertain and vague. The accusations are omnibus in nature and have been made without any specific instance to involve the entire family and that too after the death of the deceased. The evidence led by

the prosecution regarding harassment on account of dowry demands is lacking in details. PWs have given conflicting version about Rajni's participation in the marriage of her cousin. PW-2 (Sarla Devi) admitted that Rajni came from Sirsa and returned after attending the said marriage. PW-1 (Surender Singh), PW-2 (Sarla Devi) and PW-3 (Vijay Verma) did not disclose if any of the appellants had participated in the marriage. PW-4 (Ajay Verma) introduced a new version deposing that A-1 and one of his friends had picked up quarrel in the said marriage with him and his brother. It is unclear if any of the appellants had participated in the said marriage. The prosecution witnesses did not give any explanation as to why Rajni had returned to Sirsa without visiting her matrimonial home. No report regarding any such quarrel was lodged.

PW-2 (Sarla Devi), deceased's mother admitted in the cross-examination that after Rajni's marriage in 2006, Pradeep used to live in a hostel in Rajasthan. When failed in the examination, he started living in Rajni's matrimonial home. The other details regarding the duration of his stay in the matrimonial home have not come on record. Pradeep himself did not appear to elaborate if during his stay in the matrimonial home, he was a witness to any such incident in which Rajni was beaten or treated with cruelty regarding dowry demands. No such incident was conveyed

by him to his parents or the police. Had the attitude of the appellants been cruel towards the deceased, Pradeep would not have opted to stay at the matrimonial home of his sister.

8. PW-1 (Surender Singh), deceased's father made vital improvements in Court statement and was confronted with the statement (Ex.PW-1/A) given to the SDM soon after the incident. No explanation was offered by him (PW-1 Surender Singh) as to why all these facts disclosed for the first time before the Court were omitted in the statement (Ex.PW-1/A). Similarly, PW-2 (Sarla Devi), PW-3 (Vijay Verma) and PW-4 (Ajay Verma) were confronted with their statements (Ex.PW-2/A, Ex.PW-3/A) & (Ex.PW-3/DA), and (Ex.PW-4/A), respectively where the material facts stated before the Court were omitted. The prosecution witnesses have introduced new facts in their statements before the Court and all these material improvements go to the root of the case and make their statements highly suspect. Prosecution witnesses have given divergent versions as to when the appellants started harassing the victim. As per PW-1 (Surender Singh), victim suffered harassment on account of dowry demands after about one and a half month of the marriage. PW-2 (Sarla Devi) without disclosing any particular / exact date deposed that the victim was beaten after a few days of the marriage. PW-4 (Ajay Verma)

alleged that during her visits to matrimonial home once or twice from Sirsa, she was harassed for dowry and threatened to be killed or abandoned. He recalled that her forearm was cut with a blade once or twice and she was forced to swallow "Allout". No such fact has been spoken to by any other witness.

9. On 15.03.2008, Rajni came at her parents' house after having conversation with her mother. After two days therefrom A-2, A-4, Hitesh and A-3's friend visited the victim's parents' house at 09.00 P.M. and requested them to send Rajni to the matrimonial home. Next day, at about 02.00 P.M., A-1 brought back Rajni to her matrimonial home at Nangloi. There are no allegations if A-1 raised any dowry demands at that time. Rajni lived thereafter at her in law's house till her death on 26.03.2008. Admitted case of the parties is that on 24.03.2008, Rajni had made a telephone call to her parents asking them to send her wearing clothes which she had left behind. PW-1 (Surender Singh) delivered clothes to A-3 at Bus Stand Nangloi as planned. The victim's father Surender Singh, a driver at Peeragarhi Bus Depot at a nearby distance from the victim's matrimonial home, did not go to her in-laws' house to hand over the clothes. Apparently, Rajni had no complaint against any of the appellants on 24.03.2008 when she had requested her mother to send her clothes.

Those clothes accordingly delivered at Bus Stand were taken by her father-in-law. Had there been any suspicion about the conduct and attitude of the appellants towards the victim, PW-1 (Surender Singh) must have visited Rajni at her matrimonial home. On 26.03.2008 when she was to return to Sirsa, Rajni committed suicide by hanging.

10. It is true that the death under suspicion circumstances occurred at the matrimonial home during presence of her in-laws and they did not furnish any cogent and plausible explanation as to what forced / prompted the victim to commit suicide suddenly. It was incumbent for the investigating agencies to find out and ascertain the surrounding and attending circumstances as to what was the compelling reasons for the victim to put an end to her life or if it was due to instigation / abetment or provocation at the hands of the appellants. No such investigation was carried out and it remained mystery / suspense as to why Rajni committed suicide when she was to report back to Sirsa on that day.

11. A conjoint reading of Section 113B of the Evidence Act and Section 304B shows that there must be material to show that soon before her death, the victim was subjected to cruelty or harassment for or in connection with any demand of dowry. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or

danger to life, limb or health of the woman are required to be established to bring home the application of Section 498A IPC. The evidence adduced by the prosecution to establish the guilt under Sections 498A/304B IPC is highly scanty. The investigation is defective and no attempt was made to find out the true reasons for the unfortunate death within one year and three months of her marriage at the matrimonial home. The statements given by the prosecution witnesses are full of contradictions, discrepancies and improvements which affect the core of the prosecution case particularly when all these allegations have been leveled only after the unfortunate incident of death. It is certain that the prosecution was unable to bring on record cogent and reliable testimony to establish that the appellants were solely responsible or were instrumental in her death.

12. 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....."

13. It is pertinent to note that Hitesh, victim's brother-in-law was sent for trial before Juvenile Justice Board in this FIR. By an order dated 26.07.2011, he was acquitted of the charges. State did not challenge the said acquittal.

14. In the light of above discussion, the prosecution has failed to prove its case beyond reasonable doubt. Benefit of doubt is given to the appellants and they are acquitted. The appeal is accepted. Conviction and sentence of the appellants are set aside. Pending application (if any) stands disposed of. The appellants be set at liberty forthwith if not required to be detained in any other case.

15. Trial Court record be sent back immediately with the copy of the order. A copy of the order be sent to the Superintendent jail for information.

(S.P.GARG)
JUDGE

JULY 08, 2014 / tr