

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

RESERVED ON : 9th JULY, 2014

DECIDED ON : 27th AUGUST, 2014

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CRL.A.598/2012

NAVEEN

..... Appellant

Through : Mr.Chander M.Maini, Advocate.

VERSUS

THE STATE (GNCT OF DELHI)

..... Respondent

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

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Challenge in this appeal is to a judgment dated 18.04.2012 of learned Addl. Sessions Judge in Sessions Case No.53/2008 arising out of FIR No. 236/2005 PS Kanjhawala by which the appellant – Naveen was held guilty for committing offences punishable under Sections 498A/304B IPC. By an order dated 25.04.2012, he was awarded RI for three years with fine ₹ 25,000/- under Section 498A IPC and RI for ten years under Section 304B IPC. Both the sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that Neelam (since deceased) was married to the appellant – Naveen on 26.11.2004. After the marriage, she started residing at her matrimonial home at House No.109, village Qutubgarh in a joint family consisting of her husband – Naveen, Rajender Singh (father-in-law), Krishna Devi (mother-in-law) and Navneeta @ Parvesh (sister-in-law). On 28.09.2005, Neelam committed suicide in the matrimonial home by hanging. Daily Diary (DD) No.47B (Ex.PW-12/A) was recorded at 10.10 P.M. at PS Kanjhawala after getting information from Const.Sri Krishan duty constable at Maharishi Balmiki Hospital where Neelam was brought ‘dead’. The investigation was assigned to ASI Dharambir Singh, who with Const.Bhartari went to the hospital. The body was got photographed. At the spot, the Investigating Officer summoned the crime team and informed the Sub Divisional Magistrate about the occurrence. On 29.09.2005, statement of Angoori Devi, mother of the deceased was recorded by SDM – Sh.Kedar Nath. In her statement, she implicated victim’s in-laws and Surinder Kumar (brother-in-law / jija) for committing her murder on account of non-fulfilment of dowry demands. She disclosed to the SDM that the in-laws of the deceased and Surinder Kumar used to subject Neelam with cruelty on account of non-fulfilment

of their demands for a car and ₹ 50,000/- cash. They were compelled to give motorcycle make 'Hero Honda' and ₹ 10,000/- to meet their unreasonable and hefty demands. Allegations against Surinder Kumar were that he used to instigate the in-laws of the victim to demand dowry. On the basis of the statement, a case under Sections 498A/304B IPC was registered. Post-mortem examination of the dead body was conducted. Naveen, Rajender Singh and Krishna Devi were arrested. On 03.10.2005, Angoori Devi lodged a written complaint with the SDM levelling more allegations of dowry demands. Section 406 IPC was added. During further investigation, statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against Naveen, Rajender Singh, Krishna Devi, Navneeta @ Parvesh and Surinder Kumar. All of them were duly charged and brought to trial. The prosecution examined thirteen witnesses to substantiate the charges. In 313 statements, the accused persons denied their complicity in the crime and pleaded false implication. It was stated that the deceased was not happy to live in the matrimonial home due to lack of basic amenities therein. They examined DW-1 (Rajbir Singh), DW-2 (Rekha Kataria) and DW-3 (Balbir Singh) in defence. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the

impugned judgment, acquitted all the accused persons except Naveen (the appellant) of all the charges. Naveen (the appellant) was acquitted of the charge under Section 406 IPC. It is pertinent to note that the State did not challenge their acquittal.

3. I have heard the learned counsel for the parties and have examined the record. Undisputedly, Neelam was married to Naveen on 26.11.2004. Her parents had given various dowry articles to her at the time of marriage. PW-5 (Angoori Devi) disclosed that the dowry articles given to her at the time of marriage included cooler, washing machine, double bed, almirah, box, sofas, colour TV, mixi, press, sewing machine, gas, chulha, clothes, jewellery and 170 utensils. PW-1 (Kartar Singh), victim's father elaborated that the gold and silver ornaments given weighed 150 grams and 500 grams, respectively. It is apt to note that, there was no 'demand' of any dowry article at the time of marriage by the appellant and his family members. PW-1 (Kartar Singh) fairly admitted that dowry articles were voluntarily gifted by him to her daughter at the time of marriage. Some of these dowry articles were recovered during investigation and handed over to the victim's parents. It is also not in controversy that on 28.09.2005 Neelam committed suicide by hanging in the matrimonial home. She was taken to Maharishi Balmiki Hospital

immediately, where PW-4 (Dr.Yudhvir Singh) medically examined her by an MLC (Ex.PW-4/A) at 10.00 P.M. and pronounced her 'brought dead'. MLC (Ex.PW-4/A) does not depict any visible injury on the body. The MLC records that victim was admitted in the hospital with the alleged history of hanging by Rajinder. Duty constable at the hospital, recorded DD No.47B (Ex.PW-12/A) at 10.10 P.M. The police machinery swung into action and ASI Dharmbir Singh went to the hospital immediately. Parents of the deceased were informed and the dead body was shifted to SGM Mortuary Hospital for its preservation for 72 hours by an application Ex.PW-12/B. PW-10 (Kedar Nath), SDM, Saraswati Vihar was duly intimated on telephone and he recorded the statement of Angoori Devi (Ex.PW-5/A) at her residence next day. He forwarded the statement to PS Kanjhawala for taking necessary action as per law vide his endorsements at 'Y' and 'Y1' on Ex.PW-5/A. It is relevant to note that initially the victim's parents had suspected that Neelam was murdered by her in-laws on account of non-fulfilment of dowry demands and it was not a case of suicide. PW-2 (Dr.Ravinder Kumar Kataria), deceased's uncle on getting information about the incident reached Maharishi Balmiki Hospital at 11.30 P.M. on 28.09.2005 where all the accused persons along with other villagers were present. As per his deposition, he along with his

wife and Ram Chander (elder son-in-law of Kartar Singh) went to the house of the accused and did not find any sign to infer that Neelam had committed suicide. He recorded his statement (Ex.PW-2/A) before the SDM on 29.09.2005. During investigation, no such evidence could be collected to find out if it was a case of culpable homicide. Accordingly, all the accused persons were charge-sheeted under Sections 498A/406/304B IPC. PW-9 (Dr.Ashish Jain) conducted post-mortem examination on the body and proved the post-mortem report (Ex.PW-9/A). In his opinion, the cause of death was asphyxia as a result of neck pressure subsequent to hanging. Apparently, it was a case of suicide.

4. Appellant's conviction is primarily based upon the oral testimonies of PW-1 (Kartar Singh) and PW-5 (Angoori Devi), parents of the deceased without any independent corroboration. No witness from the neighbourhood of the victim was examined to find out as to what was the conduct and attitude of the accused persons towards the victim during her stay or if there was any sort of disharmony among them. The victim was an educated lady. During her stay in the house, she never lodged any complaint regarding any harassment on account of dowry demands to the police or any other authority during her life time. Even her parents did not lodge any such complaint for causing mental or physical cruelty to the

victim. Balbir Singh was admittedly mediator in the marriage. At no stage, any grievance was raised before him by the victim or her parents regarding dowry demands. Contrary to that, DW-3 (Balbir Singh) in defence deposed that he was never informed by the deceased or her parents if she had any difficulty at the matrimonial home. In the cross-examination, nothing was suggested to him if any time he was informed about the ill-treatment given to the deceased. No Panchayat was ever convened or held to sort out the differences (if any). No medical evidence emerged to infer if at any time, the victim was taken to hospital for physical beatings allegedly given to her. It has come on record that the deceased used to remain in touch with her parents on telephone. However, no such call details have been collected and placed on record.

5. Ocular testimonies of PW-1 (Kartar Singh) and PW-5 (Angoori Devi) are in conflict with medical evidence. In their statements lodged with the police after the occurrence, it was alleged that the deceased had marks of injury on her 'elbow'. PW-4 (Dr.Yudhvir Singh) who medically examined the victim at 10.00 P.M. on 28.09.2005 did not notice any visible injury on her body in MLC (Ex.PW-4/A). Post-mortem examination of the body was conducted on 30.09.2005 by PW-9 (Dr.Ashish Jain) who found three external injuries in the shape of

abrasions / bruises over elbow, left forearm and left toe. However, post-mortem report (Ex.PW-9/A) is silent as to the nature of the injuries and the manner in which these injuries were caused by any sharp or blunt object. It also does not record the duration of the injuries. The cause of death was asphyxia as a result of neck pressure subsequent to hanging. It is unclear as to how and under what circumstances, the injuries reflected in the post-mortem report (Ex.PW-9/A) emerged.

6. Deceased's parents did not lodge any complaint with the police soon after arrival in the hospital despite presence of police officials. On the next day i.e. 29.09.2005 purportedly SDM – Sh.Kedar Nath along with Investigating Officer went to the village of the parents of the deceased and recorded statement of PW-5 (Angoori Devi). Use of various 'words' in Hindi and English in the exhaustive statement Ex.PW-5/A rules out if it was the statement given by PW-5 (Angoori Devi), an illiterate lady. It appears that statement (Ex.PW-5/A) was recorded after due deliberations. Again, supplementary statement (Ex.PW-5/B) is stated to have been made to the SDM on 03.10.2005, in which more allegations regarding dowry demands including that of gold chain were levelled. PW-1 (Kartar Singh) filed a written complaint (Ex.PW-1/C) with the police on 05.10.2005. No reasonable explanation has been given by the parents of

the deceased for delay in lodging the complaint with the police and also of making supplementary statements / complaints to the police.

7. Perusal of the statements given to the police at various stages and in the Court reveals that the witnesses have made vital improvements. Both the witnesses have given conflicting and inconsistent statements. No specific date was given when the victim was subjected to cruelty on account of dowry demands. They did not attribute any definite and specific role to each of the accused persons in causing harassment to the deceased. Vague and unspecified allegations have been levelled against all the accused persons without specifying their individual role. All the family members staying in the matrimonial home were implicated. Surinder Kumar, appellant's brother-in-law who lived far away at Narela was roped in for allegedly instigating the victim's in-laws to demand dowry and to divorce her. It is pertinent to note that on the same set of evidence, all the accused persons except the present appellant – Naveen were acquitted of the charges by the Trial Court. There was no definite and specific allegation against the present appellant alone to segregate his case from others. The statements of all the witnesses are omnibus and generic in nature. If the deposition of the prosecution witnesses were not good enough to convict the appellant's parents, sister and brother-in-law,

and they could be given benefit of doubt, conviction on the same set of evidence qua the appellant becomes suspect.

8. PW-1 (Kartar Singh) never claimed that her daughter – Neelam ever suffered from any ailment and was deprived of proper treatment. PW-5 (Angoori Devi) testified that whenever Neelam fell sick, she was not taken to the hospital and the accused persons used to drop her at their house for treatment. It was, however, not revealed as to when Neelam fell sick and was treated by them for any duration at any specific hospital in her village. Contrary to that the accused persons have examined DW-1 (Rajbir Singh) from AIIMS who proved OPD card (Ex.DW-1/A) and CT Scan report (Ex.DW-1/B). These documents reflect that on 09.04.2005 Neelam was taken to AIIMS where she got treatment till 13.04.2005. PW-1 (Kartar Singh) did not level any allegation of demand of gold chain by the appellant after the marriage. PW-5 (Angoori Devi) alleged that Naveen had demanded a gold chain of two tollas on his birthday and the demand was met. No particulars have been given as to when the demand was raised and met. It is not unusual to gift an article on the birthday of a close relation.

9. Admitted position is that on 19.08.2005, the appellant and the victim had visited the parents' house of the deceased on 'Raksha

Bandhan'. PW-5 (Angoori Devi) deposed that Neelam told her that 'the accused persons except Surinder Kumar had given her beatings on the previous day and asked her to demand a car and ₹ 50,000/- from her father.' PW-1 (Kartar Singh) did not corroborate her version. No injury was noticed on victim's body on 19.08.2005 to infer if she was beaten on the previous day. It is not believable that after giving beatings a day prior to 'Raksha Bandhan', the appellant would take the victim to her parents' house and they would send her back with him without ensuring her safety. No complaint whatsoever was lodged against the appellant or his family members on that day or prior to her death. Nothing has come on record if during intervening period any of the family members of the victim visited her at the matrimonial home. On 28.09.2005 immediately after the occurrence, the victim was taken to a hospital and her parents were duly informed. When they reached within half an hour in the hospital, all the accused persons were present there. None of them tried to abscond. The deceased did not inform her parents after return to matrimonial home on 19.08.2005 about any cruelty, physical or mental.

10. There are no specific and definite allegations as to which of the accused persons demanded car or cash ₹ 50,000/-. It is also not clear when these demands were raised. The appellant has not denied that

motorcycle make 'Hero Honda' was given to him after the marriage. He has given a reasonable explanation that the motorcycle was to be given as a gift at the time of marriage but because of availability of motorcycle of black colour only, it was not given considering it a bad omen. When the motorcycle of mehroon colour was available for delivery, it was given to him. The complainant did not produce any document to show as to when the motorcycle in question was booked and its delivery was given to the appellant. It is not certain as to when ₹ 10,000/- were given in lieu of demand of ₹ 50,000/- as alleged. The Trial Court did not find cogent evidence to base conviction qua other accused who were roped in for similar allegations.

11. It is true that Neelam's death occurred inside the matrimonial home. Where an offence in secrecy inside a house is committed, the initial burden to establish the case would undoubtedly be upon the prosecution. Under Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. In the instant case, the evidence adduced by the prosecution to establish the guilt under Sections 498A/304B IPC is highly scanty. No attempt was made by the investigating agency to find out the true reasons for the unfortunate death of the victim within a year of her

marriage at the matrimonial home. The death under suspicious circumstances occurred during presence of her in-laws at the matrimonial home and the accused persons did not furnish any cogent and plausible explanation as to what forced / prompted the victim to commit suicide suddenly that day. It was incumbent upon the investigating agency 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 / provocation at the hands of the appellant. No such investigation was carried out and it remained mystery / suspense as to how Neelam died. However, the burden remains upon the prosecution to establish a nexus between the demand of dowry, cruelty or harassment, based upon such demand and death. A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC 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 a 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 lacking in this regard. The

Supreme Court in '*Gangula Mohan Reddy vs. State of Andhra Pradesh*', 2010 (1) SCC 750, observed 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. In the instant case, it has come on record that Neelam was MA pass. She was highly educated and had number of diplomas in other fields. She was good looking. She enjoyed all the basic amenities at her parents' house in the city. Admitted position is that the victim was married in a village which did not have basic amenities of life. She was unable to get job. Appellant's plea is that the victim was not happy with her marriage and perhaps that was the reason for her to take the extreme step. Merely that Neelam committed suicide, no such inference can be drawn that it must be an outcome of a cruel or torturous act caused by the appellant.

12. In the light of above discussion, the findings of the Trial Court convicting the appellant under Sections 498A/304B IPC cannot be sustained. The appellant's appeal is accepted and conviction and sentence awarded by the Trial Court are set aside. He shall be set at liberty forthwith if not required to be detained in any other criminal case. 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

AUGUST 27, 2014 / *tr*