

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

% *Judgment reserved on :11.08.2014*
Judgment delivered on :14.08.2014

+ CRL.REV.P. 621/2009 & CrI.M.A.No.13514/2014
ASHOK BANSAL

..... Petitioner

Through Ms. Rebecca M. John, Sr. Adv.
with Mr. Kanwal Chaudhary,
Adv.

versus

STATE

..... Respondent

Through Mr. Navin K. Jha, APP for the
State along with SI Devinder
Singh.
Mr. Tanveer A. Mir, Adv. for the
complainant.

+ CRL.REV.P. 635/2009 & CrI. M.A. No.13788/2009
CHETAN BANSAL

..... Petitioner

Through Ms. Rebecca M. John, Sr. Adv.
with Mr. Kanwal Chaudhary,
Adv.

versus

STATE

..... Respondent

Through Mr. Navin K. Jha, APP for the
State along with SI Devinder
Singh.
Mr. Tanveer A. Mir, Adv. for the
complainant.

+ CRL.REV.P. 169/2010 & CrI.M.A. Nos.5296/2011 &
15976/2012
O P DAWAR & ANR

..... Petitioners

Through Mr. Tanveer A. Mir, Adv. for the
complainant.
versus
STATE & ORS
Through Respondent
Mr. Ravi Nayak, APP for the
State along with SI Devinder
Singh.
Ms. Rebbecca M. John, Sr. Adv.
with Mr. Kanwal Chaudhary,
Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The order impugned before this Court is the order dated 29.08.2009 wherein charge under Sections 306/498-A/406 of the IPC was ordered to be framed against Rajiv Bansal. Against Ashok Bansal, charge under Sections 406/498-A of the IPC and against Chetan Bansal charge under Section 498-A of the IPC was directed to be framed. Karan Bansal, Anjali Bansal and Suminder Pal Singh stood discharged.

2 Both the parties i.e. the complainant as also the accused are aggrieved by this impugned order.

3 Record shows:-

(i) On 16.02.2003, Pooja had been married to Rajiv Bansal. They had been married according to Hindu rites. It was an arranged marriage.

(ii) On 19.12.2003, Pooja moved out of the house; she started living in her parents' house. The contention of the accused is that she moved out on her own whereas the family of the victim alleged that she had been forced to go back to her parents' house.

(iii) On 09.01.2004, a complaint was made by Pooja at Crime Against Women (CAW) Cell, Nanak Pura. Allegations in this complaint related to demand of dowry made by her husband and his family and the harassment suffered by her at their hands.

(iv) On 22.07.2004, the parties i.e. Rajiv Bansal and Pooja entered into an agreement (which was drawn out in writing) and in terms of this agreement, the parties had amicably settled their disputes. This document was witnessed by Chetan Bansal, the brother of Rajiv Bansal as also by O.P. Dawar, the father of the victim.

(v) On 24.07.2004, a letter was written by Pooja Bansal to the Investigating Officer seeking dropping of the proceedings relating to her complaint dated 09.01.2004.

(vi) On 02.11.2004, Pooja was admitted in the Hospital as she had taken an overdose of sleeping pills. She was administered aid. She was discharged from the hospital. Admittedly at that time, she was living in

her parents' house.

(vii) On 04.11.2004, the present FIR i.e. FIR No.964/2004 was registered against Rajiv Bansal under Section 498-A of the IPC; this was pursuant to the incident of 02.11.2004.

(viii) On 22.12.2004, the unfortunate incident (which is the subject matter of this present revision petition) occurred. Pooja died by hanging. This was in her parental home i.e. B-178, Shivalik Malviya Nagar, New Delhi where she was living with her parents since 19.12.2003. This incident was reported vide DD No. 7-A in the local police station.

(ix) FIR No.964/2004 which had initially been registered under Section 498-A of the IPC was converted to an FIR under Sections 498-A/406/306/304-B/34 of the IPC. Apart from Rajiv Bansal, five other persons were arrayed as accused i.e. Ashok Bansal (father-in-law), Kailash Bansal (mother-in-law and since deceased), Chetan Bansal (eldest brother-in-law) and Karan Bansal (middle brother-in-law) and Anjali Bansal (sister-in-law).

(x) During the course of investigation, a suicide note dated 22.12.2004 running into almost two pages written by the deceased was found in her diary.

(xi) On 23.12.2004, the statements of the parents of the victim O.P. Dawar and Sushma Dawar were recorded before the SDM. Allegations of dowry demands were made.

(xii) The trial Court on the basis of the aforementioned evidence has passed the aforementioned order and which is now the subject matter of revision before this Court.

4 Arguments have been addressed by both the respective parties.

5 On behalf of petitioners Ashok Bansal and Chetan Bansal, submission is that the charges under Sections 498-A and 406 of the IPC are not made out as the suicide note which is admittedly in the hand-writing of the victim is only focussed upon the role of the husband i.e. Rajiv Bansal; this suicide note which is the primary evidence with the prosecution does not mention anything about any dowry demand made by any of the aforementioned two petitioners; the question of entrustment could not arise. To substantiate this argument, attention has been drawn to the record including the compromise agreement dated 22.07.2004 entered between Rajiv Bansal and Pooja wherein also at the time of the agreement to withdraw the allegations made by Pooja in her complaint dated 09.01.2004, there is not a whisper of any dowry demand made by

the petitioners. Submission being that the supplementary statements of the parents of the victim recorded on 23.12.2004 for the first time had done paddings in the FIR and these supplementary statements which were later in time and not in consonance with the earlier allegations made by the victim herself, cannot be looked into; they are liable to be ignored. Accordingly charges under Sections 498-A and 406 of the IPC against petitioners Ashok Bansal and Section 498-A of the IPC against Chetan Bansal are liable to be dropped. To support her submissions, learned senior counsel for the petitioners has placed reliance upon 1996 CrL.L.J.1026 Smt. Rani & Others Vs. The State, 78 (1999) DLT 385 Parvinder Kaur Vs. Ms. Kanwaljit Kaur, 2007 (8) AD (Delhi) 528 D. Malik Vs. State & Ors. and (2002) 2 SCC 135 Dilawar Babu Kurane Vs. State of Maharashtra. Submission being that if there are two versions available one of which is the narration of the deceased herself (which in this case is the suicide note) and the other narrative being the version of her parents (which are supplementary statements recorded on 23.12.2004), the latter necessarily cannot be looked into as they are contrary to the version given by the victim herself. Thus, in the absence of any particular or specific allegations against the petitioners, they are

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entitled to be discharged.

6 On behalf of the complainant, arguments have been concluded and additional submissions have been made in detail. The primary submission of the learned counsel for the complainant being that charge under Section 304-B of the IPC was liable to be framed against all the accused and to substantiate his submission attention has been drawn to the definition of 'dowry death' as contained in Section 304-B of the IPC. Submission being that record clearly makes out a prima-facie case not only against the husband of the victim but also against both the petitioners as also against Karan Bansal and Anjali Bansal (brother-in-law and sister-in-law) both of whom have been discharged. Qua the role of Suminder Pal Singh, learned counsel for the complainant after an initial submission; being bordered on the role attributed to Suminder Pal Singh in the suicide note of the victim, has not pressed this argument any further.

7 The role attributed to Suminder Pal Singh has been mentioned in the suicide note of the victim. This note is dated 22.12.2004. Suminder Pal Singh's name finds mention at two places. At the first point of time, Suminder Pal Singh (an acquaintance of Rajiv Bansal) told Pooja to

withdraw her cases against Rajiv Bansal and only then would he take the victim back in the matrimonial home; at a later point of time, the suicide note discloses that when Rajiv had gone to America, Suminder Pal Singh had told the victim that he (Rajiv) will not bend as he has an ego problem.

8 By no stretch of imagination can this version in the suicide note attribute any kind of offensive role to Suminder Pal Singh. Thus, Suminder Pal Singh having been discharged is an order which suffers from no infirmity.

9 Record further discloses that on 09.01.2004, the first complaint had been made by Pooja before the Joint Commissioner of Police, CAW Cell, Nanak Pura. In this complaint, the names of Rajiv Bansal, Ashok Bansal, Kailash Bansal, Karan Bansal and Anjali Bansal have been arrayed. This complaint categorically discloses that after her marriage, the victim was harassed for not bringing sufficient dowry during her marriage; it was recited that her parents had done the marriage to the best of their ability but her husband and her in-laws were not satisfied; the names of Kailash Bansal (mother-in-law), Ashok Bansal (father-in-law) and Karan Bansal and Chetan Bansal (brothers-in-law) as also wife

of Karan Bansal (Anjali Bansal) found mention; they used to torture her. Her husband was having illicit relations with another person. Her mother-in-law used to instigate her husband to ill-treat her. Even on festive occasions like Diwali, Holi, Karwa Choth, Raksha Bandhan, her husband and his family misbehaved with her on account of bringing insufficient gifts and not according to the standard of the family of Rajiv Bansal. On one occasion, Chetan Bansal instead of taking her to the doctor, dropped her back at her mother's house.

10 On 22.07.2004, a compromise was entered into between Rajiv Bansal and Pooja wherein Pooja had agreed to withdraw all her complaints and other pending cases. This was largely to bring end to the matrimonial dispute and with the hope her husband would take her back to the matrimonial home. The letter dated 24.07.2004 addressed by Pooja to the Inspector of CAW Cell was to this effect; her statement being that she wished to unconditionally withdraw her complaint against her husband and his other family members; this being a voluntary act on her part.

11 The trial Judge had rightly noted that the agreement dated 22.07.2004 and the consequential letter dated 24.07.2004 were written

by Pooja with the hope and expectation that she would be again taken back to the matrimonial home. Submission of the learned senior counsel for the petitioners that in none of these complaints, the role of in-laws or any dowry demands have been mentioned, is negated by the complaint dated 09.01.2004 wherein the role attributed to father-in-law, mother-in-law (since deceased), Chetan Bansal, the second brother-in-law (Karan Bansal) and his wife (Anjali Bansal) is clear and categorical beside the role of her husband for demands of dowry and the victim being harassed for bringing insufficient dowry.

12 Admittedly, the victim was living away from the matrimonial home w.e.f. 19.12.2003. It is not necessary, at this stage, for this Court to deal with the allegations and counter allegations as to whether the victim moved out of the matrimonial home on her own or she was forced to leave it. Be that as it may, the unfortunate incident had occurred on 22.12.2004 i.e. almost one year from her physical separation from her husband. The incident had also taken place at B-178, Shivalik Malviya Nagar, New Delhi which is the residence of her parents. However certain other intervening things (apart from the complaint dated 09.01.2004 and its subsequent withdrawal on Crl. Rev.Nos. 621/2009, 635/2009 & 169/2010

24.07.2004) are also relevant. On 02.11.2004, the victim had been admitted to the hospital with an overdose of sleeping pills; she wanted to end her life but she got saved. On 04.12.2004, FIR No. 964/2004 was registered against Rajiv Bansal under Section 498-A of the IPC. This related to the acts of cruelty meted out by the husband to the victim during their matrimonial life reiterating her earlier woes. 20 days after the incident of 02.11.2004, a suicide note was penned down by the victim (which was later on discovered during the course of investigation). By that time, Pooja had killed herself by hanging. The suicide note runs into two pages. This note is in her own handwriting. A 22 year old girl who admittedly being well educated (having got a diploma/degree from a reputed fashion designing Institute) had taken her own life. This note was largely addressed to Rajiv Bansal; the sad and woeful experiences of the victim during her matrimonial life had been disclosed. It had been disclosed that Rajiv was having illicit relations with another woman and that is why he did not care for her and was not willing to share any kind of relationship with her despite all her best efforts.

the husband. There was no mention of any dowry demand or dowry harassment by either Rajiv Bansal or his family member. To that extent, the submission of the learned senior counsel for the petitioners is correct that this note by itself may not make out a case under Section 304-B of the IPC. However, the other evidence collected by the prosecution cannot be given a go-by; it cannot be ignored. The first complaint given by Pooja in the CAW Cell on 09.01.2004 i.e. about two weeks after her separation from her husband (19.12.2003) is telling. This complaint before the CAW Cell speaks of nothing but dowry harassment meted out to her by her husband and the husband in turn being instigated by his parents i.e. the victim's father-in-law, mother-in-law, brothers-in-law and Anjali Bansal.

14 It is not as if the complaint being withdrawn on 22.07.2004 had ended the disputes. The complaint was withdrawn only in the hope that the husband of the victim would restart his life with the victim. But this did not happen. At this point, this Court would like to point out that it was a joint family where Rajiv Bansal was living with his two brothers i.e. Karan Bansal and Chetan Bansal. Chetan Bansal was eldest of the family and Karan Bansal was middle brother. Anjali Bansal is the wife

of Karan Bansal. The in-laws i.e. Ashok Bansal, father-in-law and Kailash Bansal mother-in-law of the victim were also living in the same house.

15 It is in this backdrop that the evidence collected by the prosecution has to be marshalled and which this Court notes is at the stage of framing of the charge.

16 On 02.11.2004, also the victim had made an attempt to commit suicide; she failed; FIR No. 964/2004 had been registered under Section 498-A of the IPC against Rajiv Bansal. Contents of this FIR have also been perused. In this FIR, the complainant had reiterated that she had given her complaint to the CAW Cell on 09.01.2004 but she withdrew the same hoping that Rajiv would improve and he would take her back to the matrimonial home. The supplementary statements of the parents of the victim i.e. O.P. Dawar and Sushma Dawar recorded by the SDM on 23.12.2004 have also clearly recited that their daughter was being pressurized by her father-in-law, mother-in-law, brother-in-law and sister-in-law for bringing insufficient dowry. The statement of O.P. Dawar coupled with the statement of Sushma Dawar has recited their role. Sushma Dawar has clearly stated that Pooja used to tell her that her

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father-in-law, mother-in-law, both the brothers-in-law Chetan Bansal and Karan Bansal and his wife Anjali Bansal used to harass her that she did not get enough dowry in her marriage and her father being a property dealer should buy a flat for Rajiv in Delhi. On 19.12.2003, Rajiv brought Pooja to their house and left her there stating that she would be taken back only after a flat and a Honda City car was given to him. After that Sushma Dawar spoke to family and even went to their home but they kept on repeating that unless a flat and a car was given to Rajiv, their daughter would not be taken back. Anjali Bansal also used to torture their daughter both physically and mentally on the pretext of dowry and it was because of these acts of these persons that their daughter was forced to hang herself.

17 Learned senior counsel for the petitioner has placed reliance upon AIR 2001 SC 2828 Satvir Singh and Others Vs. State of Punjab and another to support her submission that one of the essential ingredients of Section 304-B is that the cruelty must have been meted out to the victim 'soon before death'. Submission being that in this case the wife was living separately from her husband for the last more than one year and the question of 'soon before death' would not arise. To counter this

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submission, learned counsel for the complainant has placed reliance upon (2005) 12 SCC 104 Devinder Singh and Others Vs. State of Punjab. Submission being that the statements of the parents of the victim, at this stage, are prima-facie sufficient to show that there was cruelty and harassment on account of demand of dowry. Additional submission being that it was a continuing act of the petitioners which had led to the instant case.

18 This Court is in agreement with the submission of the learned counsel for the complainant. There is no doubt that the victim was living separately from her husband since the last one year and the intervening acts as detailed, which include the complaint made by her before the CAW Cell on 09.01.2004 which was withdrawn on 22.07.2004 hoping for a reunion by Pooja with her husband but with no response from him, are admitted facts. The incident of 02.11.2004 when the victim had taken overdose of sleeping pills to end her life and FIR registered pursuant thereto (FIR No.964/2004) had reiterated her allegations contained in her first complaint dated 09.01.2004 (largely based on the dowry demands) all show that the victim was suffering cruelties at the hands of her husband and his family on account of bringing insufficient

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dowry. It is also not the case of the petitioner that the victim was suffering from any mental insufficiency or illness.

19 In this factual scenario, it cannot be said that the incident of 22.12.2004 when the victim had committed suicide by hanging was not an act 'soon before her death'. The physical, mental, emotional and physiological trauma suffered by Pooja right from her physical separation from 19.12.2003 was a continuous period of trauma which was embodied in her mind and soul. The contents of her suicide note in fact reflect the torture which she was suffering. It is heart rending. At the cost of repetition, there is no doubt that this suicide note had addressed most of its grievances against the husband for not allowing the victim to join him in the matrimonial home but the other evidence collected in the course of investigation cannot be belittled. This was a clear instance of dowry demands made not only by the husband Rajiv Bansal but also by his other family members including his father, mother (since deceased), eldest brother Chetan Bansal, middle brother Karan Bansal and Anjali Bansal, wife of Chetan Bansal. Parties were all living together; the Court has been informed that it was a 125 square yards plot where the petitioners and the victim were sharing a common

kitchen in their joint family.

20 The words 'soon before her death' referred to the perceptible nexus between the death of the victim and dowry related harassment and the cruelty inflicted upon her. No straitjacket formula can be laid down and the time period as to what would qualify as 'soon before death' depends upon the facts and circumstances of each case.

21 The three essential ingredients for establishing the offence punishable under Section 304-B of the IPC are (i) that there must be a demand of dowry and harassment by the accused, (ii) the deceased had died and (iii) the deceased had died in unnatural circumstances. The definition of 'dowry' as mentioned in Section 304-B of the IPC has the same meaning as contained in Section 3 of the Dowry Prohibition Act, 1986; this includes 'giving' or 'taking' dowry and there is a penalty for a demand of dowry. The presumption contained in Section 113-B of the Indian Evidence Act is also attracted.

22 The impugned order in this background, suffers from an infirmity. Additional charge under Section 304-B of the IPC is liable to be framed against all the accused persons. Charge under Section 498-A also be framed against the accused Karan Bansal and Anjali Bansal.

23 With these directions, the petition is disposed off.

INDERMEET KAUR, J

AUGUST 14, 2014

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