

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

% *Judgment Reserved on: August 28, 2014*
Judgment Delivered on: September 02, 2014

+ **CRL.A. 69/2014**

OMKAR NATH Appellant
Represented by: Mr.Azhar Qayam, Adv.

versus

STATE & ORS Respondents
Represented by: Ms.Aashaa Tiwari, APP
Mr.Kapil Singhal, Adv. for R-2 to 5.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Omkar Nath father of deceased Savita is aggrieved by the impugned judgment dated August 8, 2013 acquitting respondents Balbir (father-in-law), Beermati (mother-in-law), Rajiv (husband) and Rekha (sister-in-law/nanad) for the offences punishable under Sections 304B/498A/34 IPC.
2. Learned counsel for the appellant contends that the Trial Court failed to appreciate the material fact that the death of Savita was unnatural as she had hanged herself on October 22, 2003 and had suffered hypoxic brain damage due to partial hanging which resulted in her death on November 05, 2003. The version of Dr.R.K.Verma PW-2 that cerebral oedema can occur due to various reasons including disease that can lead to natural death was a general question put and the same could not be the basis to acquit the respondents. The factum of the offence was sought to be concealed by Rajiv

the husband of Savita when he gave a wrong history to Dr.Vinod PW-9 and only when Dr.Vinod noticed mark on the left side of the neck of Savita that Rajiv changed the history. The finding of the learned Trial Court that the prosecution has failed to prove on record that respondents No.2 to 5 made a dowry demand is contrary to the record and the judgment impugned being perverse and illegal is required to be set aside and respondents No.2 to 5 be thus convicted.

3. A brief exposition of the facts is that Savita was married to respondent No.4 Rajiv on December 06, 2001. As per the statement of complainant Omkar Nath PW-2 after the marriage Savita resided at her matrimonial home at Modi Nagar with her husband, father-in-law Balbir, mother-in-law Beermati and brother-in-law Rinku. After a few days of her marriage all the accused persons used to torture Savita in connection with demand of dowry for which he used to receive phone calls from his daughter and her husband. They used to demand ₹50,000/- for construction of a house. Omkar Nath showed his inability to pay the said amount on which Rajiv told him that he should borrow the money from his friends and give it to him. On refusal to give the said amount Rajiv used to beat his daughter and Beermati used to tell that she would not allow his daughter to live with them, though Balbir Singh did not beat his daughter. On October 22, 2003 his other daughter Radha had gone to Chuna Bhatti, Modi Nagar to see a plot for construction, where she came to know that Savita was hanged and she informed Omkar Nath on the telephone. On this information he along with his wife, two sons and daughter-in-law went to Lok Priya hospital, Modi Nagar. Police was also informed. From that hospital their daughter was referred to GTB hospital. Their daughter remained at GTB hospital till October 31, 2003 and

in their absence Savita was got discharged from the hospital and taken away by the accused persons to their house. On November 04, 2003 at about 10.30 PM he brought his daughter from her matrimonial home to his house with the help of Police and on the same day she expired. (*Jab Ghar Tak Le Ke Aye Who Khatam Ho Chuki Thi, Brain Hamrage Tha*). On the next day he informed to the Police and got recorded his statement and post-mortem of Savita done. On December 26, 2003 Omkar Nath gave a written complaint to the SDM Ex.PW-2/A on the basis of which FIR was registered.

4. Similarly, Ram Dulari PW-1 deposed on the same lines and the crux of her allegations are that accused persons demanded ₹50,000/- from them through their daughter few days before her death, which demand had started after 4-5 months of the marriage. It is specifically stated that accused Rajiv used to harass her daughter and her daughter used to tell her how she was tortured and harassed by him.

5. Radha PW-5 the elder sister of the deceased has also deposed in sync with her parents. She also deposed that accused persons used to demand ₹50,000/- from her sister for which she was subjected to cruelty. She stated that on October 22, 2003 she had gone to see a plot at Chuna Bhatti when she found a gathering at the house of accused persons. She came to know that the accused persons had killed their daughter-in-law by strangulation. She informed her mother. In the meantime her sister was removed to hospital. When she went to the hospital she was not allowed to enter inside the ICU but she noticed some injury marks on the neck of Savita. On October 31, 2003 Savita was shifted to GTB hospital, however on October 31, 2003 her in-laws brought Savita to their house from hospital. After 2 days her father brought Savita to Delhi for her treatment but on the way she

died.

6. From the evidence of these witnesses it is amply clear that the marriage between the parties was performed on December 06, 2001 and the deceased died on November 05, 2003 i.e. within less than two years of the marriage. She was subjected to harassment for demand of dowry particularly by Rajiv the husband who used to torture and beat her. There being a continuous cause of harassment for demand of ₹50,000/- the same fulfils the second ingredient for offence punishable under Section 304B IPC that deceased was subjected to harassment in relation to demand of dowry soon before the death.

7. This brings us to the third ingredient for offence punishable under Section 304B IPC which is the bone of contention in the present case i.e. whether the death of Savita was natural or not. To evaluate the same it would be appropriate to reproduce the testimony of 3 doctors i.e. Dr.Vinod PW-9 who admitted Savita at GTB hospital and prepared her MLC Ex.PW-9/A, Dr.Mahesh Kumar Lal PW-12 who had examined the patient Savita and proved the discharge summary Ex.PW-12/A and Dr.R.K.Verma PW-2 the doctor who conducted post-mortem report vide Ex.PW-2/A and gave the subsequent opinion vide Ex.PW-2/B.

8. PW-9 Dr. Vinod, PG Medicine GTB Hospital deposed as under:

“On 22.10.2003 I was posted as Post Graduate (Medicine) on that day at about 21.59 hours patient Smt. Savita wife of Rajiv Verma of aged about 21 years brought by her husband with alleged history of sudden lose of consciousness at 4 pm on 22.10.03. I examined the patient and prepared her MLC vide MLC No.C2986 which is Ex.PW9/A which bears my signatures at point A. At the time of examination of patient she was unfit for statement and under observation. On 24.10.03 I again

examined the patient at the time her husband Rajiv Verma also present and he again change alleged history finding patient unconscious with sari around her neck. Earlier her husband gave the alleged history sudden loss of consciousness abdominal pain and fever. I mentioned all the fact in my MLC.

On examination patient was unconscious and vitals were stable. Her pulse was 96 per munit and blood pressure was 130/70. Popil were samidilated not reacting to light. During examination of the neck a mark was noticed on left side of her neck so history was reevaluated from the husband. He told that he found patient in unconscious condition with Sari around her neck. The patient was kept in emergency and later on she was taken to Ward No.26 after giving preliminary treatment.

XXXXX by Sh.A.K. Singal counsel for all the accused persons.

It is correct that the size of mark on the neck of the patient has not been mentioned in MLC. It is also correct that it is also not mentioned whether the said mark was old or fresh. It is also correct that the treatment given to her is also not mentioned in MLC. Vol: It is mentioned in treatment chart. It is also correct that the treatment chart is not available on record. It is correct that it is not mentioned in MLC for how long she was kept under treatment and when she was discharged nor it has been mentioned when she regained her conscious.

RO & AC

Sd/-”

9. PW-12 Dr.Mahesh Kumar Lal, Medical Specialist, Safdarjung Hospital deposed as under:

“On 31.10.2003 I was working as Sr.Resident in GTB hospital. I have seen the patient discharge summary in respect of Savita, female about 21 years R/o Ghaziabad. I had examined the patient along with my team and at the time of discharge, her condition was satisfactory. The final diagnosis as per the discharge summary was partial hanging with hypoxic brain damage. Patient was advised to take medicine as prescribed

and was advised to attend the neurology OPD. Discharge summary was prepared by team and the same is ex. PW12/A which bears my signature at point A. I can give the detail about the health of patient at the time of discharge only after seeing the case-sheet. Further examination in chief is deferred since the witness wants to see the case-sheet of the patient for further deposition.

RO & AC

Sd/-

PW 12- Dr.Mahesh Kumar Lal, Recalled for further examination.

On S/A

(GTB hospital, case sheet of the patient is produced before the court)

On 25.10.03 there was improvement in the sensorium (consciousness) of the patient with normal urinary output of the patient. Till discharge on 31.10.03 there was no further improvement but the blood pressure was normal. The X-ray cervical spine was normal. Patient was discharged on the directions of Dr.S.B.Mathur. Photocopy of the case sheet is Ex.PW12/B collectively (24 pages). Original case sheet is seen by the court.

XXXXXX examination by A.K. Singhal, Ld. Defence counsel for all accused.

It is correct that at the time of discharge condition of patient was satisfactory. Cerebral oedema occurs in many conditions i.e. meningitis (brain fever), and encephalopathy. It can also occurs in case of hanging. In this case I along with the other team members after examining the patient clinically, could not reach any particular opinion about cerebral oedema during the period the patient remained in the hospital and at the time of her discharge. I was junior at that time and the decision for discharging the patient was taken by Dr.S.B. Mathur who is available in GTB hospital as per my knowledge.

RO & AC

Sd/-”

10. PW-2 Dr.R.K.Verma, Professor Department of Forensic Medicine GTB Hospital, Delhi deposed as under:

“On 6.11.2003, when I was working at GTB Hospital, conducted postmortem examination on dead body of one lady namely Savita Verma aged 22 years female got an identified by Const.Subir No.424/NE of P.S. New Usman Pur.

On examination it was a body of a weak poorly built female wearing red kamiz and yellow salwar rigor mortis in passing face, P.M. staining on back, no sign of decomposition with mark pallor (anaemia). Details of injuries are: -

Darkly stained area (scar mark) linear presently horizontally over the thigh right cartilage size 4 x 0.5 c.m. Placed 8 c.m. above sterna lotch.

Internal examination brain weight 1420 grams congested oedematous with uncal and tonsillar herniations and petechial haemorrhages present throughout the brain substance, soft to touch both lungs were congested and oedematous. Viscera was preserved in saturated solution of common salt for chemical analysis. Time since death was about 30 hours and cause of death was kept pending for the want of report of chemical analysis of viscera. The postmortem report is Ex.PW-2/A and bears my signatures at point B.

On 21.2.2005, I received an application from SI Pramod of P.S.New Usman Pur along with the photocopy of CFSL Report bearing No.FSL-2004/C-1011 dtd.28.1.2005 pertaining to chemical analysis report of viscera in PMR No.1006/2003, that gave negative result for metallic poisons, ethanol and methanol alcohol, cyanide, phosphide alkaloids, barbiturates, tranquillizers and insecticides. After examination of the PMR No.1006/2003 and above cited CFSL report I was of the opinion that cause of death in this case appears to be cerebral oedema. The subsequent opinion dated 21.1.2005 is Ex.PW2/B which bears my signature at point C.

XXXXXXX by Shri Ashok Singhal Adv. for the accused.

It is correct that cerebral oedema can occurred due to various reasons including diseases that can lead to natural death.

R.O.&.A.C.

Sd/-

PW-2 Dr.R.K.Verma, Professor Department of Forensic Medicine, GTB Hospital, Delhi.

(recalled against accused Rekha)

ON SA

On 6.11.2003, when I was working at GTB Hospital conducted postmortem examination on dead body of one lady namely Savita Verma aged 22 years female got an identified by Const.Subir No.424/NE of P.S. New Usman Pur.

I was examined on 4.06.05 before this Hon'ble court.

My detail postmortem report is ex PW2/A (already exhibited) which bears my signature at point B. I gave my detail opinion vide Ex.PW2/B (already exhibited) which bears my signature at point C.

XXXXXX examination by Sh.Ashok Singhal advocate for accused Rekha.

It is correct that cerebral oedema can occurred due to various causes including diseases that can lead to natural death.

RO & AC

Sd/-”

11. A perusal of the testimony of these witnesses and the documents on record would show that before Savita was got admitted in the GTB hospital, Shahdara by her husband on October 22, 2003 she was treated at Modi Nagar as per the evidence of the witnesses. The MLC Ex.PW-9/A notes history of sudden loss of consciousness at 4.00 PM on October 22, 2003. The husband also got noted that the patient was having abdominal pain for 1 day and fever for 3 days. During examination of the patient on October 24,

2003 doctor noted a mark on the left side of the neck of Savita present. On this her husband changed the history and informed that he found the patient unconscious with saree around the neck which fact has been clearly noted by Dr.Vinod and proved by him vide MLC Ex.PW-9/A. Dr.Mahesh Kumar Lal who discharged Savita from GTB hospital and has exhibited the discharge summary as Ex.PW-12/A stated that he had examined patient along with his team on October 31, 2003. According to him the final diagnosis as per the discharge summary was partial hanging with hypoxic brain damage. The patient was advised to take medicines as advised and attend neurology OPD. Thus, the present was a case which was clearly diagnosed as a case of partial hanging with hypoxic brain damage. Subsequently on death of Savita Dr.R.K.Verma conducted the post-mortem and according to him after examining the FSL report the cause of death in this case appeared to be cerebral oedema. On a general question being put in cross-examination this witness gave the general answer that cerebral oedema can occur due to various reasons including diseases that can lead to natural death. This does not mean that death in the present case was natural. The Court is required to look into the circumstances leading the patient to suffer cerebral oedema, which in the present case was hypoxic brain damage due to partial hanging.

12. As per Modi's Medical Jurisprudence and Toxicology Twenty Second Edition, in hanging from a low point of suspension (partial) hanging, a comparatively little force, about 4.5 kg is enough to occlude blood vessels of the neck. The term 'partial hanging, is used for such cases in which the bodies are partially suspended, or for those in which the bodies are in a sitting, kneeling, reclining, prone, or any other posture. In all such cases, death is inevitable from slow asphyxia, if there is enough force upon the

ligature of constrict the neck.

13. As noticed by Dr.R.K.Verma the deceased's body was weak poorly built and had anaemia. Thus with this medical condition slight ligature on the neck due to partial hanging would have caused asphyxia resulting in hypoxic brain damage.

14. From the evidence on record it is proved beyond reasonable doubt by the prosecution that Savita died an unnatural death within 7 years of her marriage and was subjected to cruelty in relation to demand of dowry soon before her death. Since all the ingredients for offence punishable under Sections 304B/498A IPC are satisfied, we are of the considered view that the impugned judgment to the extent it acquits respondent No.4 Rajiv, the husband of the deceased Savita, is perverse and illegal and is required to be set aside. Consequently, Rajiv is convicted for the offences punishable under Sections 304B/498A IPC.

15. List the appeal for hearing of the accused on the quantum of sentence on September 09, 2014 when Rajiv i.e. respondent No.4 will be present in Court.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 02, 2014
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