

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : March 08, 2017

+ CRL.A. 442/2001
MUSLIM & ANR.

..... Appellant

Through: Mr. Sunil Dalal, Ms. Payal Juneja,
Ms. Garima Goel, Advocates for
appellant No.1.
Mr. Sheikh Israr Ahmad, Advocate for
appellant No.2

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. Present appeal has been filed by the appellants being aggrieved by the judgment of conviction dated 04.06.2001, passed by the learned Additional Sessions Judge, New Delhi, thereby convicting the appellant – Muslim for the offence punishable under Section 306/498-A of Indian Penal Code (hereinafter referred to as I.P.C.) and the appellant – Yusuf for the offence under Section 498-A of IPC. Consequent thereto, vide order on sentence dated 07.06.2001, the appellant – Muslim was sentenced to undergo rigorous imprisonment for 4 years with fine of Rs.100, in default of payment of fine, he was ordered to undergo further rigorous imprisonment for a week for the offence punishable under Section 306 of IPC and to undergo rigorous

imprisonment for 3 years with fine of Rs.100/- and in default of payment of fine, to further undergo rigorous imprisonment for one week for the offence under Section 498-A of IPC. Vide same order, the appellant – Yusuf was ordered to undergo rigorous imprisonment for one year with fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month for the offence under Section 498-A of IPC.

2. The prosecution case is, that a married lady had taken her life by hanging herself from an iron rod fixed in the ceiling of the first floor room of the house of the appellant. The incident was noticed by Chhoti Bano, the sister-in-law (nanad) of Sabri (deceased). The wire was cut with the help of a chhuri. An information was given to the police at Police Station Mehrauli, which was recorded vide DD No.11-A. The dead body of Sabri was found lying on the cot.

3. The present case was registered on the statement of one Usman (PW-5), father of the deceased Sabri. He stated in his statement that his daughter was married to Muslim and was blessed with a son Mustakeen. After her marriage, appellants – Muslim and Yusuf (brother of Muslim), alongwith his wife Maimoona used to taunt his daughter for bringing insufficient dowry. Appellant – Yusuf Khan and his wife Maimoona used to taunt the deceased that as her father had given nothing in the marriage, they would get the accused Muslim married gain with some other girl. It was further stated that after the birth of Mustakeen, appellant – Muslim left PW-5 Usman's daughter in his house. After about two or two and half years, both the appellants

visited PW-5's house to take back the deceased. They demanded Rs.20,000/- in cash and a motor cycle. It is further stated that at that time, Israel, Sarpanch, Chau Khan – Member Panjayat, Jasmat Hazi Chowdhary were present and the appellants raised this demand in their presence. He gave Rs.5,000/- to Muslim at the instance of Panchas and made a promise that he would give the remaining amount of Rs.15,000/- and a motor cycle on a subsequent occasion. His daughter was taken back by the appellants. Thereafter, about a month or quarter, later, an information of Natia Pradhan of Village chananhola informed that his daughter had died. He alongwith other persons of his village went to the house of the appellants where the police had already arrived. The dead body of his daughter was lying on a cot in a room. PW-5's statement was recorded by the police and he raised a suspicion that his daughter had been killed by appellants.

4. After recording the statement of Usman, the jewellery on the body of the deceased, one knife, one electric press and two wires were taken into police possession from the spot. Post mortem of the body of deceased was conducted. FIR was registered and after completion of the investigation, the appellants were charged with the offence punishable under Section 498-A/306/34 of IPC, to which they pleaded not guilty and claimed trial.

5. To prove the charges against the appellants, the prosecution examined 14 witnesses. They are, Head Constable Suraj Bhan (PW-1); Israil (PW-2); Head Constable Shabir Ahmed (PW-3); Head Constable Babu Khan (PW-4); Usman (PW-5), Chau Khan (PW-6); Head

Constable Pradip (PW-7); Dr. Rajesh Kumar, AIIMS Hospital (PW-8), Head Constable Satbir Singh (PW-9); Constable Rajbir Singh (PW-10); Constable Rajbir (PW-11), Constable Naresh Kumar (PW-12); Constable Paras Ram (PW-13), and Sub-Inspector R.P. Rao, Vide President House, Security Unit (PW-14).

6. After conclusion of prosecution evidence, all the incriminating material was put before the appellants and their statements under Section 313 Cr.P.C. were recorded. The appellant – Muslim in his statement under Section 313 deposed that his marriage with Sabri was first to be held on 07.06.1979, however no article was given to him. At that time, he was of 11 years old. Ayub alongwith four other persons of his village had obtained stay from the Civil Court restraining him from marrying Sabri. Thereafter, the complainant – Usman came to his father and uncle (Tau) Niyazu and requested that it was a matter of his prestige, therefore the marriage of Muslim with Sabri be performed and he put his turban in the feet of his father and uncle Niyazu. At that time, Razak son of Niyazu was a major, therefore it was agreed by the biradari people that marriage of Sabri be taken place on 07.06.1979. Accordingly Razak married with Sabri on 07.06.1979. Sabri had delivered a boy from the loin of Razak. He did not have any concern with the child. Razak was a drunkard and used to remain out of station. There used to be altercations between Sabri and Razak. Sabri had gone to her parent's house. He had no concern either with Sabri or the demand of dowry or the death of Sabri. He further deposed that after about 10 days prior to the incident, Usman

had come with his daughter to his village. He had gone to the house of his Tau – Niyazu, but Niyazu did not keep Sabri. Because of the village biradari Usman had left Sabri in our house as the people of the village used to say that Sabri was the married wife of him. He further deposed that the fact of the death of Sabri first came to his knowledge on 19.02.1991. He had also shown the stay order of the court to the Sub-Inspector R.P. Rao. He further stated that he was not on speaking terms with Niyazu for the last eight years on account of the ongoing litigation as well as this case. Regarding dowry demand, he had deposed that there had never been any talk of dowry etc.

7. In support of his statement made under Section 313 of Cr.P.C., the appellants led four witnesses, they are; Ayub Khan (DW-1), Ishaq Mohd. (DW-2), Naveen Rawat (DW-3) and Suleman (DW-4).

8. After considering the facts, evidence led on behalf of both the sides, and the material on record, the learned Additional Sessions Judge held the appellant-Muslim guilty for an offence punishable under Sections 498-A/306 of IPC and the appellant – Yusuf guilty for an offence punishable under Section 498-A of IPC, and vide order on sentence dated 07.06.2001, appellants were sentenced as indicated above. Hence, the appellants have filed the instant appeal against the judgment and order on sentence passed by learned Additional Sessions Judge.

9. The appellant – Muslim has categorically denied his marriage with the deceased Sabri and in support of his stand, he had deposed

four defence witnesses. He had contended that on 07.06.1979, though his marriage was to be solemnized with Sabri but on that particular date he was of 11 years of age and ultimately it was decided that Sabri be married with his first cousin Razak. The witnesses produced by the appellant – Muslim had stated before court that Sabri could not marry with the appellant Muslim because of the intervention of the court order, which was corroborated by the testimony from the four defence witnesses. Therefore, it is contended that the learned Additional Sessions Judge has erred in relying upon the testimony of the prosecution witnesses and convicted and sentenced the appellants for the offence and did not accept the testimony of the witnesses examined by the appellants in their defence.

10. Apart from the aforesaid, learned counsel for the appellants contended that there are material contradictions in the statement of witnesses on the point of alleged demand of dowry and also on the point of the alleged demand of money and motor cycle from the side of the appellants. It is further contended that despite the fact that his marriage with Sabri has been disputed, the prosecution had not been able to place on record any document to substantiate the fact that Sabri had infact married with Muslim. It is further contended that the Investigating Officer of the case had accepted in his cross-examination that the father of the deceased had promised that he would submit the Nikah Nama of the marriage of Sabri with Muslim, but he could not do so. Further, no proof with regard to any dispute of the family so referred to the panchayat, or for decision of the matter was taken to

fact. More so, the facts as placed before the court by the prosecution were grossly insufficient to attract the provisions of Section 306 of IPC.

11. So far as offence under Section 498-A is concerned, learned counsel for the appellant contended that no date, month or year has been given by the prosecution witnesses in their depositions, as to when the alleged act of cruelty or harassment was committed or any demand for dowry was made. Even the date or place for the alleged demand of money has not been given by any of the prosecution witnesses. In such circumstances, the appellants cannot be held guilty for the offence under Section 498-A of IPC merely on the statements of the witnesses, unless they are corroborated by other evidence. It is further contended on behalf of the appellants that no independent or disinterested witnesses have come forward with a view to prove the fact that Sabri had in fact married Muslim on 07.06.1979.

12. On the point of sentence, learned counsel for the appellant contended that the sentence awarded to the appellant – Muslim is very harsh and excessive as at the time of marriage the appellant was only 11 years of age and incapable of even understanding the meaning of dowry. The appellants urged that they are innocent and had young children at the time of the alleged offence. Further, there is no allegation of instigation for suicide either, by the appellants. Therefore, the impugned judgment and order on sentence is liable to be set aside.

13. In support of his contents raised in the appeal, learned counsel for the appellants relied upon the following judgments:

- a) Ramesh Kumar vs. State of Chhatisgarh, 2002(1) JCC 87;
- b) Shailender vs. State (NCT of Delhi), 2010 (2) JCC 1150;
- c) Nepal Singh vs. State of Haryana, AIR 2009 SC 2913;
- d) Anandamay Ghosh and Ors vs. State of West Bengal, 2006 Cri.LJ 4250;
- e) Gananath Pathnaik vs. State of Orissa, 2001 (1) JCC 430;
- f) Durga Prasad & Anr vs. State of Madhya Pradesh, JT 2010(8) SC 228;
- g) Dr. Sunil Kumar Shambhudayal Gupta and Ors. Vs. State of Maharashtra, JT 2010 (12) SC 287;
- h) State of Haryana vs. Ram Singh, 2002 (1) JCC 385;
- i) Raj Kumar Khanna vs. State (NCT of Delhi), 95 (2002) DLT 147 (DB);
- j) Mani vs. State, 2014 (3) MLJ (Crl.) 18;
- k) Sanjay @ Sanjay Singh Sengar vs. State of Madhya Pradesh, AIR 2002 SC 1998;
- l) V. Venkataraman vs. State, 2015 (3) MLJ (Crl) 669;
- m) Neera Singh vs. state, 2007 (138) DLT 152;
- n) Sanjeev Kumar Aggarwal and Ors vs. State and Anr., (2007) ILR 8 Delhi 109;
- o) Assoo vs. State of M.P., (2011) 14 SCC 448;
- p) Randhir Singh and Anr. Vs. State of Punjab, AIR 2004 SC 5097.

14. Per contra, learned Additional Public Prosecutor for the State has vehemently opposed the aforesaid contentions raised on behalf of the appellants and submitted that the offences with which the appellants have been charged are crimes against the society. In this case, a lady has been tortured and faced with cruelty and harassed on account of demand of dowry by the appellants due to which the victim ended her life in her matrimonial home by hanging herself, therefore, the judgment and order on sentence as passed by learned Additional Sessions Judge do not suffer from any irregularity or illegalities and is passed with a reasoned order, therefore, the same is not liable to be interfered with.

15. During pendency of the present appeal, the sentence imposed upon the appellants were suspended vide order dated 09.07.2001.

16. I have heard the submissions made on behalf of both the sides and also gone through the evidence as well as material placed on record. This court observes that the appellant – Muslim has primarily taken a stand that he was never married to Sabri (deceased) as he was only 11 years of age in 1979. He also led defence evidence in support of this statement. He had also said that in fact the marriage was solemnized between Razak and Sabri and 10 days prior to the incident, the complainant had left the deceased in his home. The appellant – Muslim has also raised a point that the father of the deceased did not place on record the Nikah nama in respect of the marriage between Muslim and Sabri but simultaneously, the appellant – Muslim has also not placed on record the nikahnama in respect of marriage of Sabri

with Razak, to strengthen his contention of his not being married with the deceased Sabri. Likewise, no electoral roll in respect of the deceased containing her name with Razak as her husband has been placed on record by the appellants.

17. On the contrary, this court further notes from the impugned judgment that the so called stay order dated 06.06.1979 simply bears the seal of the MM, Patiala House Courts and it is addressed to the SHO, Mehrauli, wherein the name of the girl is mentioned as Smt. Sowaro. Therefore, in the considered opinion of this court it is not possible to connect that order with Sabri, the deceased in the present case. So far as the contention regarding the appellant – Muslim being not married with Sabri (deceased) is concerned, the same has been perfectly dealt with by the learned Additional Sessions Judge in the impugned judgment and he has rightly held that Sabri was married with Muslim.

18. Now, coming to the issue of demand of dowry for establishing the offence under Section 498-A, IPC, there is clear and specific statement of father of the deceased, Usman (PW-5), who in his statement deposed before the court that his daughter was married to Muslim and was blessed with a son Mustakeen. After her marriage, appellants – Muslim and Yusuf (brother of Muslim), alongwith his wife Maimoona used to taunt his daughter for bringing insufficient dowry. Appellant – Yusuf Khan and Maimoona used to taunt the deceased that as her father had given nothing in her marriage, they would get the accused Muslim married again with some other girl. It is

further stated that after the birth of Mustakeen, appellant – Muslim left his daughter to his house. After about two or two and half years, all the appellants visited his house to take back his daughter. They demanded Rs.20,000/- in cash and a motor cycle. It is further deposed that at that time, Israel, Sarpanch, Chau Khan – Member Panjayat, Jasmat Hazi Chowdhary were present and the appellants raised this demand in their presence. He gave Rs.5,000/- to Muslim at the instance of Panchas and made a promise that he would give the remaining amount of Rs.15,000/- and a motor cycle on a subsequent occasion. His daughter was taken back by the appellants, thereafter.

19. The aforesaid statement of Usman (PW-5) is also corroborated by Israil (PW-2) who in his statement before the court deposed that the daughter of Usman was married to the appellant – Muslim about 8/9 years back. After the marriage, daughter of Usman had gone to her matrimonial home and two children were born out of their wedlock, one was a boy who is alive and the other a girl who had expired. When the daughter of Usman was living in her matrimonial home, accused persons used to harass her for dowry. The matter was raised by Usman in the Panchayat of his village which he attended alongwith the Sarpanch Israil, Chau Khan and other respectable persons. Panchayat had advised Usman to amicably resolve the differences and tell them ‘thoda bahut aur dey denge’ and that they should not harass his daughter. Thereafter, Usman went to the village of the accused persons and about a week thereafter, the appellants came to his village with Sabri, when panchayat was again called and accused demanded

Rs.20,000/- in cash and motor cycle as a condition to keep the daughter of Usman. Thereafter, they went back to their village leaving the daughter of Usman there and she stayed with her parents for three years. Thereafter Usman was asked by the village persons to go to the house of the appellants. Accordingly Usman went there and requested the appellants to take his daughter. The appellants came to their village and panchayat was once again called and they were requested to take back the daughter of Usman and the accused persons were given Rs.5,000/- by the residents of the village and were promised that after about one and half months they would be provided with a motor cycle and the remaining amount of Rs.15,000/-. During cross-examination, he deposed that he was present at the time of Nikah of Sabri and Muslim. He had specifically denied that Sabri was married to Mohd. Razak.

20. Chau Khan (PW-6) in his statement before the court also deposed that the daughter of Usman – Sabri was married to the appellant – Muslim 8-9 years before the death of Sabri. He further deposed that Sabri resided with her father at Village Raj Pura for about two years. A panchayat was held wherein the appellants made a demand for a motorcycle and some cash. Usman gave Rs.5,000/- to accused Muslim at the instance of the Panchayat and promised that he would give the remaining amount and the motor cycle on some subsequent occasion. Thereafter the appellants took back Sabri with them and after about one and half months Usman told him that his daughter Sabri had died at village Chananhola. He alongwith Usman

and Israil who was the Sarpanch of the village, came to the in-laws house of Sabri and found that the dead body of Sabri was lying in the house.

21. From the aforesaid deposition of PW-2, PW-5 and PW-6, the prosecution has been able to prove the charge under Section 498-A of IPC against the appellants, as all the witnesses have deposed in the same line, i.e. demand of Rs.20,000/- and a motor cycle and payment of Rs.5,000/- to the appellants. Therefore, this court does not find any infirmity in the impugned judgment whereby the appellants have been held guilty for the offence under Section 498-A of IPC.

22. For convicting the accused for the offence under Section 306 of IPC, in the considered opinion of this court, it is impossible to lay down any strait-jacket formula in dealing with such cases and each case has to be decided on the basis of its own facts and circumstances. For ready reference Section 306 is reproduced as under:

306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

23. The ingredients of abetment are set out in Section 107 of IPC which reads as under:

"107. Abetment of a thing - A person abets the doing of a thing, who-First- Instigate any person to do that thing; or

Secondly.- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing."

24. From the facts of the present case, this court finds that there is no direct evidence adduced by the accused-appellants having abetted Sabri into committing suicide. More so, as per the prosecution case, the death of the deceased Sabri is not within 7 years of marriage, therefore, Section 113-A of Evidence Act cannot be applied in the peculiar facts of the present case. Perusal of the depositions of relevant witnesses, i.e. Complainant (PW-5) which is duly corroborated by the depositions of PW-2 and PW-6 reveals that there was a demand of Rs.20,000/- and a motor cycle and payment of Rs.5,000/- to the appellants but there was not even a whisper in their depositions that they have abetted the deceased to commit suicide. In such a situation, holding the appellant - Muslim guilty for the offence punishable under Section 306 of IPC is wholly unjustified. Accordingly, the impugned judgment to the extent it holds the appellant – Muslim guilty for the offence punishable under Section 306 of IPC is set aside. However, the impugned judgment with regard to holding the appellants guilty for the offence punishable under Section 498-A of IPC is upheld.

25. Now coming to the order on sentence, this court observes that

the appellant-Muslim has been sentenced to undergo rigorous imprisonment for four years and appellant – Yusuf has been sentenced to undergo rigorous imprisonment for one year for the offence under Section 498-A of IPC. This court also finds a nominal roll of the appellant – Muslim on record, which reveals that he has already undergone the sentence for 3 years, 11 months and 7 days. Considering the fact that the appellants are on bail since 09.07.2001; and the appellant-Muslim is physically handicapped, has a family of two children, wife and aged parents to support; and that they have already faced the agony of trial of this case for about 26 years, this court is of the considered opinion that in the peculiar facts and circumstances of the present case, the ends of justice would be met if the sentence awarded to the appellants for the offence under Section 498-A of IPC, by the learned Additional Sessions Judge is reduced to the period already undergone by them. It is ordered accordingly.

26. Resultantly, the appeal filed by the appellants is partly allowed to the extent that the appellant – Muslim is discharged for the offence punishable under Section 306 of IPC. However, the conviction of both the appellants for the offence under Section 498-A is upheld. Consequently, the order on sentence imposed upon the appellant – Muslim is modified to the period already undergone by him.

27. The appellants are on bail. Their bail bonds and sureties are discharged. They are set free in the present case.

28. A copy of this order should be sent to the Trial Court for

information and necessary steps.

29. With aforesaid directions, the present appeal is disposed of.

(P.S.TEJI)
JUDGE

MARCH 08, 2017
pkb

