

**HIGH COURT OF JAMMU, KASHMIR AND LADAKH
AT JAMMU**

CRAA No. 52/2017

Reserved on : 14.12.2023
Pronounced on: 30.12.2023

State of Jammu and Kashmir th.
SHO Police Station Gagwal

.....Appellant(s)/Petitioner(s)

Through: Mr. Vishal Bharti, Dy.AG

Vs.

1. Yogesh Kumar *alias* Jyoti
2. Sandeep Kumar *alias* Shunga, both
sons of Late Amir Chand
3. Mst. Tripta Devi W/o. Late Amir
Chand
4. Sakander Kant *alias* Kaku S/o Late
Amir Chand
5. Mst. Madhu Bala W/o. Yogesh
Kumar *alias* Jyoti
All residents of Village Jatwal
Tehsil and District Samba

Through: Mr. R. K. Kotwal, Adv.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGEMENT

1. This acquittal appeal has been filed by the appellant against the judgment dated 11.06.2016 passed by the Principal Sessions Judge, Samba (hereinafter to be referred "as the trial court") in a charge sheet, titled, "State of J&K vs Yogesh Kumar @ Jyoti and orders", whereby the respondents have been acquitted of the charge in respect of commission of offences under sections 306 and 498-A RPC arising out of FIR No. 43/2011 registered with Police Station, Ghagwal.

2. The appellant has impugned the judgment on the ground that the learned trial court acquitted the respondents despite the fact that the prosecution had established the case against the respondents by adducing cogent evident.
3. Learned counsel for the appellant has vehemently argued that the learned trial court has ignored the statements of the mother, sister and the brothers of the deceased, who had categorically deposed in respect of the cruelty meted to the deceased by the respondents in respect of dowry demands, as such, the judgment impugned is not sustainable in the eyes of law.
4. *Per contra*, Mr. R. K. Kotwal, learned counsel appearing for the respondents has vehemently argued that the Investigating Officer, in his deposition, had admitted that there was unexplained delay in recording the statements of the prosecution witnesses. He further submitted that there was no evidence that the respondents had at any point of time after solemnization of marriage of the deceased with the respondent No. 2/husband, demanded any dowry and due to non fulfilment of such demands, the respondents treated the wife of respondent No. 2 with cruelty, that promoted her to take extreme step by ending her life.
5. Heard and perused the record.
6. The brief facts as they emanate from the prosecution story are that on 26.10.2011, complainant, namely, Ram Krishan, brother of the deceased-Pooja Devi submitted a written application with SHO Police Station, Ghagwal stating therein that his sister used to say that her in-laws would kill her and they continuously harassed her and kept her in confinement. On 26.10.2011 at about 1.30 PM, he had gone to the matrimonial house of his sister. She hugged him and started crying. After sitting half an hour, he came back and when he reached at Ghagwal, he stayed there for half an hour, when he received the

phone from the in-laws of his sister that they were in hospital and when he went there, he found that his sister had already died. The elder brother in law and sister in law, younger brother-in-law, husband of her sister and mother-in-law were involved in the crime as they had killed his sister because they used to harass her for dowry. On receipt of this information, FIR bearing No. 43/2011 for commission of offences under sections 498-A and 306 RPC was registered and the investigation of the case was handed over to the Uttam Chand, Sub Inspector. During course of the investigation and after recording the statements of the witnesses and obtaining medical opinion and FSL report, the charge sheet was laid against the respondents for commission of offences under sections 498-A and 306 RPC before the Court of Chief Judicial Magistrate, Samba, who vide order dated 24.12.2011 committed the charge sheet to the learned trial court. The learned trial court vide order dated 09.01.2012 framed the charge. Respondent Nos. 1 to 3 were charged for commission of offences under sections 498-A and 306 RPC vide order dated 09.01.2012 as the other respondents had already been proceeded under section 512 Cr.P.C. Subsequently they also appeared before the trial court. However, respondent Nos. 4 and 5 were not charged and despite that the prosecution continued to lead evidence. After conclusion of the evidence, learned trial court vide judgment dated 11.06.2016 acquitted the respondents.

7. In order to appreciate as to whether the learned trial court has rightly appreciated the evidence or not, it is appropriate to have a brief resume of the prosecution evidence.
8. PW-1 Ram Krishan(brother of the deceased) stated that the deceased was married to accused-Sandeep Kumar on 10.05.2011. He used to talk to his sister

on phone and she would often complain that the accused were telling that the dowry was not up to their satisfaction and bike was sub standard. On 26.10.2011 after he came on leave, he went to the matrimonial house of his sister to meet her. When he reached there, his sister hugged him and started crying. He asked the reason but she refused to divulge anything. He remained there and mother in law of his sister was also there. He asked the mother in law of his sister as to why the girl was crying. The mother-in-law told her what was the matter and then by gesture, his sister pointed towards him not to ask anything in front of her mother-in-law. He remained there for half an hour and while he was coming back, his sister accompanied him to the gate and then she told that the accused used to harass and beat her and were planning something. He told his sister that he would talk to his elder brother who had also come on leave. While he was returning back and was about to reach his home, he received a phone call from his brother. His brother enquired about his whereabouts and also asked him as to what had happened to their sister as she was lying in the hospital. He again went to the house of the accused where number of people had gathered and the children of elder sister-in-law of his sister were crying. He enquired from the mother-in-law of his sister, who expressed ignorance in respect of any incident. He reached the hospital and enquired from the brother-in-law of his sister, namely, Kaku Ram, who told him that Pooja Devi (deceased) was lying in the Mortuary Room and she was dead. He also deposed about the seizures affected on spot. However, he denied the contents of the seizure memo in respect of the dupatta. He also stated that in his presence, clothes of the deceased were not seized but he identified his signatures. During cross-examination, he stated that accused Sandeep Kumar

had not beaten his sister in his presence. He had told everything to the Police that the sister had told him that the accused had beaten her. He had no knowledge as to why that part of the statement was not recorded by the Police in his statement recorded under section 161 Cr.P.C. When he along with the Police had gone to the scene of occurrence, he had told the Police that it was not a case of suicide but a murder. He had no knowledge whether in the marriage of Pooja Devi, 7.5 Tola of Gold was given and his mother might be having the knowledge to that effect. The motor cycle given in the dowry was in the name of the accused Sandeep Kumar and was purchased by his elder brother from Canteen. He had no knowledge in respect of the documents of the motorcycle. Before the occurrence no panchayat was held in respect of the assault and harassment meted to the deceased and also no report was lodged in the Police.

9. PW Mohan Lal (brother of the deceased) stated that two months after the marriage, accused started harassing his sister and main role was played by the elder sister-in-law, elder brother-in-law, husband and mother-in-law. The accused used to say that sub-standard articles were given in the dowry and bike was also sub-standard. Accused used to taunt his sister that insufficient dowry had been given and on that pretext she was harassed. On telephone, she used to say that her in-laws taunted and harassed her. On the occasion of Diwali, his younger brother had gone to the house of the deceased. At about 5 PM, a phone call was received in his house and he heard that Pooja Devi was ill and they were asked to come to the hospital immediately. He did not know as to who made the call. When he reached the hospital, he found that Pooja Devi was dead and lying in Mortuary. He proved the seizure memo in respect of clothes

of the deceased and dead body. He also proved the receipt of the dead body. During cross examination, he stated that the documents which were shown to him in the court, were already prepared by the Police in Urdu and he had appended his signature on them. He further stated that when he went to the house of the accused, they had respected him. He remained there for 2-3 hours and then came back. He had taken tea, meals with the mother-in-law of the deceased. In his presence, accused never demanded jewellery. However, by gestures, they used to communicate that they wanted dowry.

10. PW Satpaul, Naib Tehsildar proved the resealing of two packets and the certificate (Ext- P 5). During cross-examination, he stated that he had not opened the packets, however, the Police had written in the letter that packet-A was having the ladies' underwear and packet B was containing the bed sheet.
11. PW-6 Neelam Kumari (mother of the deceased) stated that she had given motor cycle, washing machine and other articles in dowry to her daughter along with 7.5 Tola of Gold. Accused would often say that her daughter had brought less dowry and used to taunt her. The elder sister-in-law of her daughter also used to harass her. After marriage, her daughter was upset as the accused used to taunt her for bringing less dowry. After five months of the marriage, her daughter died and at that time, she was not at home but had gone for pilgrimage. During cross examination, she stated that her statement was recorded four days after the occurrence. In her statement, she had not mentioned that the accused used to demand extra dowry, however, she had stated that the dowry given was not of standard quality. In her statement recorded under section 161 Cr.P.C. she had not mentioned that the dowry was given to her daughter on demand of the accused.

12. PW-7 Raj Karni (sister-in-law of the deceased) stated that after the marriage, relations of the deceased with her in-laws were not cordial. Accused used to make complaint that the motor cycle, TV, cooler, fridge and washing machine were not good. When the deceased used to come to the parental house, she would often say that her in-laws harassed her on petty matters. One day deceased phoned in her parental house and told that the accused did not allow her to come out of the house. Brother of the deceased Ram Krishan went to the house of the deceased on the occasion of Diwali and he told that the deceased cried a lot. He told the deceased that he would ask her mother-in-law but the deceased stopped him and stated that on the occasion of Baiya Dooj, she would come to her parental house and would narrate the whole story. She expressed ignorance in respect of the cause of the death. During cross examination, she stated that from the date of occurrence till her statement was recorded, she remained in her home. In her statement under section 161 Cr.P.C, she never stated that accused used to demand dowry from the parents of the deceased. She further stated that in her presence, the accused had never demanded any dowry from the deceased or the parents of the deceased prior or after the marriage. She never made any statement to the Police that the accused jointly killed the deceased and to that extent her statement recorded under section 161 Cr.P.C. was not correct.
13. PW-8 Kanta Devi (sister of the deceased) stated that in the marriage of her deceased sister, one motor cycle, TV, fridge and jewellery were given as dowry. After the marriage, the relationship of the deceased sister remained cordial with her in-laws but thereafter they started harassing her by stating that she had three brothers but they had not given sufficient dowry in the marriage.

The deceased had phoned her once or twice in respect of that. Once she along with the deceased went to her in-laws' house, she remained there till evening, but she was not allowed to meet the deceased. She phoned her younger brother Ram Krishan and asked him to meet the deceased in her in-laws house. Ram Krishan told her that he met Pooja Devi who was crying and was mentally upset. She further stated that she was sure that the accused had jointly killed the deceased. During cross examination, she stated that from 26.10.2011 till 07.11.2011, she remained at home and during these days, the Police used to come to her house. After few days, her statement was recorded by the Police. She had narrated before the Police that the accused used to demand dowry and harass the deceased but that part of the statement was not found in her statement recorded under section 161 Cr.P.C.

14. PW-9 Har Gopal (Brother of the deceased) stated that he had given motor cycle TV, fridge, Cooler, washing machine and utensils and 10 tollas in dowry and clothes to all the accused. He further stated that one day his sister came to his house and he talked to her on phone. His sister told him that the accused were harassing and telling her that her brother was in the Army and demanded one more motorcycle. His sister told him that all the accused persons were harassing her for dowry. During cross-examination, he stated that from 29.10.2011 to 07.11.2011, the Police came to his residence on couple of occasions and all the other witnesses were present at home. In his presence, the accused never demanded any dowry from the deceased. Whatever dowry was given in the marriage was without any demand by the accused. The accused never demanded any dowry either before marriage, at the time of marriage or after marriage from them. In his statement recorded under section 161 Cr.P.C.

he had not mentioned that the accused used to harass his sister for dowry and for the first time, he was making that statement.

15. PW-13 Dr. Bharat Bhushan Verma stated that he conducted the autopsy. He proved the post-mortem report (ExT-P/13) and as per his opinion, the deceased died due to asphyxia. During cross-examination, he stated that the ligature mark was ante mortem in nature and it was not stated in the post mortem report that the ligature mark was hard or soft in nature.
16. PW-15 Sh. Manzoor Ahmed Qadri, Head Serology Division FSL proved the FSL report (ExT-P8). He further stated that no blood/semen stains were detected on exhibit No. MQ 21/2012 and no urine stains were detected in exhibit No. MQ22/2012.
17. PW-17 Uttam Chand stated that information was received at Police Station that Pooja Devi was brought to the hospital and was declared dead. When he went to Samba hospital, he saw the dead body lying in the mortuary room. On the second day, the post mortem of the deceased was conducted. Thereafter, body was handed over to legal heirs against receipt. Thereafter they went on spot and prepared the site plan and recorded the statements of prosecution witnesses. Site plan was prepared by him and so are the seizure memos (ExtP-17/1, ExtP-3, ExtP-3/1, ExtP-3/2, ExtP-3/3, ExtP-3/4 and ExtP-1/1. Fard surathal was also prepared by him. He also prepared the seizure memo of the photographs(ExtP-17/2). During cross examination, he stated that prior to that case, he never conducted investigation in case for commission of offence under section 306 RPC. In the present case, proceedings under section 174 Cr.P.C. were not conducted. This is correct that in the present case, proceedings under section 174 Cr.P.C. were required to be conducted. He never gave any information to

the Magistrate in respect of the occurrence. During investigation, none of the prosecution witnesses made statements that deceased committed suicide for the reason that the accused used to harass her for bringing less dowry. This is correct that during investigation, the witnesses told them that the deceased had been murdered by the accused, but during investigation, he could not prove or find any evidence against the accused. Therefore, the accused were implicated only for commission of offences under sections 306 and 498-A RPC. SHO without conducting proceedings under section 174 Cr.P.C, had registered the FIR against the accused. During investigation, none of the prosecution witnesses deposed that the accused used to harass the deceased in respect of the dowry and assault in their presence. He admitted that there was delay in recording the statements of the prosecution witnesses under section 161 Cr.P.C. and 164-A Cr.P.C. and no explanation for such delay, has been mentioned in the Case Diary. This is correct that during investigation, there was no evidence that the accused used to taunt the deceased for bringing less dowry and they used to demand more dowry, but it had come in the evidence that they used to taunt the deceased for bringing sub standard dowry. This is true that in the village of the accused, the real relatives of the deceased were also residing, but they did not make any statement that the accused used to harass the deceased in respect of dowry. He had also enquired from other people of the village of the deceased and they had stated that the accused after marriage never harassed the deceased in respect of dowry. This is correct that during investigation, it came to the light that the deceased was having mental ailment, however, he could not find any evidence regarding that.

18. From the evidence brought on record, it is evident that there is delay in recording the statements of the prosecution witnesses. Statement of the mother of the deceased i.e. Neelam Kumari, was recorded under section 164-A Cr.P.C. after 55 days of the occurrence, whereas the statements of other witnesses i.e. Raj Karni, Kanta Devi and Har Gopal were recorded after more than 10 days of the occurrence. The Investigating Officer has himself admitted that there is delay in recording the statements of the prosecution witnesses. He has further admitted that no explanation for delay caused in recording the statement, has been recorded in the case diary. Simply on the basis of delay in recording the statement of the witnesses during investigation, the prosecution case cannot be thrown away but when there is delay in recording the statement of related witnesses, then the cautious approach is required to be taken, while appreciating the evidence brought on record and if the evidence brought on record is shaky then certainly the delay in recording the statements without any explanation would be one of the factors tilting the scale in favour of the accused. So far as PW Ram Krishan is concerned, he is the complainant and the brother of the deceased, but he admitted in his cross examination that he had told the Police that the accused used to beat his sister and was planning something against her, but such statement was not reflected in his statement recorded under section 161 Cr.P.C.
19. PW- Madan Lal is the other brother of the deceased and he has admitted that when he had gone to the house of the accused, he was respected by the accused and at that time, his sister and mother in law were also there. He took tea and meals over there and also talked to them. He further admitted that in his

presence, the accused never demanded any jewellery, but by signs used to communicate that they wanted dowry.

20. So far as, PW- Neelam Kumari, mother of the deceased is concerned that her statement was recorded 55 days after the occurrence and during cross examination, she stated that in her statement recorded under section 161 Cr.P.C, she had not got recorded that the accused used to demand extra dowry, however, she had recorded that dowry, which was given, was of sub standard quality.
21. PW-7 Raj Karni, sister in law of the deceased stated that she did not know what was the cause of death of the deceased. She further admitted that in her statement recorded under section 161 Cr.P. C, she had never mentioned that the accused used to demand dowry from the parents of the deceased and further that the accused never demanded any dowry from her in her presence from the deceased or her parents prior to or after the marriage.
22. PW Kanta Devi, sister of the deceased stated that her statement was recorded before the Police and she had mentioned that the accused used to demand dowry and the deceased was being harassed by the accused, but it was not found to have been mentioned in her statement recorded under section 161 Cr.P.C. PW Har Gopal, brother of the deceased admitted in his statement recorded under section 161 Cr.P.C. that he had not mentioned that the accused used to harass his sister for dowry and for the first time, he was making the statement in the court.
23. From the evidence mentioned above, it is clear that some witnesses have made improvements in their statements and have made statements against the accused, which were not mentioned, while their statements were recorded

during the course of investigation. Some witnesses have categorically stated that the accused never demanded any dowry in their presence. There are material contradictions and improvements in the statements of the witnesses, who all are related to the deceased and coupled with the fact that there is delay in recording the statements of the most of the witnesses during investigation, the benefit is required to be given to the accused/respondents.

24. Further in order to convict an accused under section 306 RPC, it is incumbent on the part of the prosecution to prove that the person committed suicide because of the abetment of the accused person(s). In this context, it would be proper to take note of observations made by the Apex Court in **Bhagwan Dass v Kartar Singh and others, (2007) 11 SCC 205**, which read as under:

“15. In our opinion the view taken by the High Court is correct. It often happens that there are disputes and discords in the matrimonial home and a wife is often harassed by the husband or her in-laws. This, however, in our opinion would not by itself and without something more attract Section 306 IPC read with Section 107 IPC.

16. However, in our opinion mere harassment of wife by husband due to differences per se does not attract Section 306 read with Section 107 IPC, if the wife commits suicide. Hence, we agree with the view taken by the High Court. We, however, make it clear that if the suicide was due to demand of dowry soon before her death then Section 304B IPC may be attracted, whether it is a case of homicide or suicide.”

25. This Court has examined the judgment passed by the learned trial court and the learned trial court has taken note of the material contradictions in the prosecution evidence and has commented upon the quality of the evidence led by the prosecution. In the acquittal appeal, if the opinion formed by the learned trial court is possible on the basis of the evidence before the trial court, then simply because the other view is also possible on the same set of evidence, the judgment of acquittal cannot be reversed. This Court has examined judgement

in the light of the evidence led by the prosecution and does not find any perversity in the same. Accordingly, the instant appeal has no merit and the same is, accordingly, dismissed.

(RAJNESH OSWAL)
JUDGE

Jammu
30.12.2023
Rakesh

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No

