



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

% **Reserved on: 12th May, 2023**
Decided on: 26th June, 2023

+ **CRL.A. 1238/2018**

SANDEEP KUMAR Appellant
Represented by: **Mr.Alok Tripathi, Advocate.**

versus

THE STATE (GOVT OF NCT OF DELHI) Respondent
Represented by: **Mr.Prithu Garg, APP for State with**
ACP Arunendra Singh, PS Adarsh
Nagar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J.

1. By this appeal, the appellant challenges the judgment of learned Trial Court dated 31st October, 2018 as also the order of sentence dated 2nd November, 2018 whereby the appellant was held guilty for offence punishable under Section 304B of the Indian Penal Code, 1860 ("IPC") and was directed to undergo rigorous imprisonment for life along with fine of ₹10,000/- in default whereof simple imprisonment for 6 months; and was also held guilty for offence punishable under Section 498A IPC for which offence he was directed to undergo rigorous imprisonment for 3 years along with fine of ₹5,000/- in default whereof simple imprisonment for 6 months. The appellant was acquitted of charge under Section 302 IPC. Appeal filed by Padma Devi vide Crl.A.1196/2018 stood abated as Padma Devi passed away on 5th December, 2022. Another appeal filed by the complainant



Santosh Goel vide Crl.A.1359/2019 seeking conviction of Sandeep Kumar and Padma Devi for offence punishable under Section 302/34 IPC was dismissed as withdrawn vide order dated 9th May, 2023.

2. Brief facts of the prosecution case are that on 8th February, 2014 at about 6.55 PM information was received at PS Adarsh Nagar wherein the caller informed “*meri bhabhi jal gayi*” at C-7/3, Cottage Road, Adarsh Nagar which was recorded by ASI Sushil Kumar (PW-4) vide DD No.8A and the said information was conveyed to SI Sandeep (PW-23). SI Sandeep along with Ct. Anil went to the said spot and on reaching the second floor, marks of burn and a plastic *katora* were found. Kerosene was also found spread on the floor and burnt bunch of hair, pieces of cloth, one burnt matchstick and broken bangles were also found lying on the ground. He got to know that the injured had been shifted to LNJP Hospital where Pooja (“deceased”) was declared “brought dead” and the dead body of the deceased was preserved at the mortuary. During inquiry, it was revealed that the deceased married the appellant on 22nd February, 2009 and at the hospital, SI Sandeep met Suresh Goel, Santosh, Ravi Goel and also Sandeep Garg and Surender Kumar. In the meanwhile, IO/Insp. Aurendra Singh (PW-25) reached the spot and inspected the scene of crime. Crime team was called at the spot and the exhibits were also seized. Ms. Padma Goyal was found at her house and after interrogation, she was arrested vide memo Ex.P-3. At the police station, Sandeep Garg and Surender Kumar Garg were interrogated and were arrested vide memo Ex.P-5 and Ex.P-7 respectively and their disclosure statements Ex.PW-23/P59 and Ex.PW-23/P60 respectively were recorded.



3. Dr. Jyoti Barwa (PW-22) conducted the post mortem examination on the dead body of the deceased on 9th February, 2014 and tendered her report Ex.PW-22/P54. She opined:

“VI. EXTERNAL GENERAL APPEARANCE

Body of an adult female with average built and nourishment was received in a gunny bag. Height was 158 cm, weight was 58 Kg.

Eyes; Both eyelids were closed, corneae were hazy.

Natural orifices: The tongue was found protruded, clenched in between the teeth.

Blackish soot deposits were present over the anterior teeth and in the surrounding gums.

Others: A charred part of the right leg was present along with the body in the gunny bag which was examined and returned along with the body.

A burnt piece of cloth was present circumferentially around the left arm; it was removed and preserved in an envelope, then sealed and handed over to the I.O.

VII. POST MORTEM CHANGES

Hypostasis could not be ascertained due to presence of burn injuries.

Rigor Mortis was developed. No changes of decomposition were apparent due to burning and charring.

VIII. PROBABLE TIME SINCE DEATH:

About one day (body having been kept preserved in cold storage facility)

IX. EXTERNAL EXAMINATION

Dermo-epidermal burn injuries were present involving the scalp, face, front and back of neck, front and back of chest, front and back of abdomen, front of right arm, upper half of back of right arm, front of right forearm, front and back of left arm, front of left forearm, outer half of back of left forearm, both palms which showed degloving, front and back of right thigh and right leg, front and back of left thigh and left leg involving the foot. The superficial layers of burnt skin were peeled off revealing reddened base at places, the burnt unpeeled skin showed blackening. Charring of the skin was present on the front of chest and abdomen with blackish



discoloration. The sole of left foot was completely blackened and charred; bones of the foot were exposed which showed charring; the skin at the edges of the charred region did not show reddening. The lower part of right leg including the right foot was found missing; the stump was burnt and charred, exposing the charred muscles and bones (exposed length of bones measured 10 cm). The ends of the exposed bones were charred, calcined and were breaking off easily; the skin at the edges of the stump did not show reddening.

The scalp hairs, facial hairs and body hairs overlying the burnt skin were burnt and singed. Total burnt area was approximately 96% of the total surface of body. No smell of any inflammable substance could be appreciated. No mechanical injuries could be appreciated.

Examination of Charred lower limb part:

The lower limb part belonged to right side; the subcutaneous tissues and muscles were completely burnt and charred exposing the bones on the upper end; the ends of the exposed bones were charred, calcined and were breaking off easily. The limb part corresponds to the missing right lower limb part of the body of deceased.

OPINION:

The burn injuries on the body of deceased have been caused by flames of fire.

The findings are consistent with the deceased being alive when the fire started.

Burn injuries to both the feet are postmortem in nature. Rest of the burn injuries on the body of deceased show features of antemortem burns; however, the possibility of the injuries being peri-mortem in nature cannot be ruled out.

The Opinion regarding cause of death will be given after the receipt of viscera chemical analysis report.”

4. On completion of investigation, charge-sheet was filed against the appellant, Surender Kumar (father-in-law of deceased), Saurabh Garg (devar of deceased) and Padma Devi (mother-in-law of deceased). They were charged of offences punishable under Sections 498A/302/304B/34



IPC. To prove its case, the prosecution led 26 witnesses and on the other hand, to rebut the case of the prosecution, 11 witnesses were examined by the appellant and the other accused. By the impugned judgment, Surender Kumar and Saurabh Garg were acquitted whereas Sandeep Kumar and Padma Devi were convicted as above.

5. Learned counsel appearing on behalf of the appellant assailed the impugned judgment on the grounds that the case of the prosecution was that the appellant had demanded ₹5-7 lacs for starting a new business, however, it was contended that the same was only a vague allegation as neither it was brought on record as to when did the appellant receive the demanded money from the deceased nor it has come on record as to when the PW-2, PW-3, PW-10 and PW-11 were informed about such demand. Further, neither PW-2 nor PW-3 nor PW-11 had mentioned about such demand in their statements recorded by Tehsildar and thus, it is evident that the aforesaid allegation of demand of ₹5-7 lacs is a material improvement without any evidence for the same. Even otherwise, the appellant was running a business of Pharmaceutical Distributorship by the name of Pooja Pharma and there was no requirement of making any demand of ₹5-7 lacs to start new business. Furthermore, the version of PW-3 that Sandeep used to tell the deceased to ask for ₹5-7 lacs would be hearsay and not admissible in evidence. It was further contended that none of the prosecution witnesses has deposed about any specific act of cruelty against the deceased and PW-3 has merely made a bald assertion without any specifics that the appellant used to beat the deceased. Even otherwise, PW-2 and PW-11 have categorically admitted in their testimony that the deceased never informed



them about any cruelty meted out to her at the hands of appellant. The prosecution also relied upon an incident which took place on 2nd January, 2014 where when PW-2 and PW-3 came to the matrimonial house of the deceased and requested Ms. Padma to send the deceased with them, however, she refused and said that she will send the deceased after 4-5 days. It was contended that this incident, by no stretch of imagination, amounts to cruelty and no role whatsoever in this incident has been attributed to the appellant. It was further contended that there was no proximate and live link between the effect of alleged cruelty and the death of the deceased. It was further contended that the relationship between the appellant and the deceased was cordial which is also evident from the fact that the appellant got issued a passport for the deceased as they were planning to travel abroad and further the deceased was the nominee for every investment and savings of the appellant. Learned counsel for the appellant also pointed out various contradictions and variations in the testimonies of PW-2, PW-3 and PW-11 to substantiate the case of the appellant. It was also pointed out that even the post mortem report of the deceased does not suggest any physical injuries on her body and PW-2, PW-3 and PW-11 were unable to give any detailed account of the beatings inflicted on the deceased at the behest of the appellant. Thus, it was submitted that the impugned judgment of learned Trial Court is not based on proper appreciation of facts and circumstances of the case and is therefore, liable to be set aside. In alternative to the above submissions, the counsel for the appellant contended that in the absence of any cogent evidence for demand of dowry, by no stretch of imagination, the present case falls under the rare category of Section 304B so as to award



maximum punishment of life imprisonment and rather the sentence deserves to be modified to the minimum sentence of 7 years and the Trial Court wrongly failed to direct the sentence of the appellant to run concurrently and consequent sentence for offence under Section 498A of IPC is not justified.

6. Per contra, learned APP appearing on behalf of the State submitted that the present case is clearly fit to draw presumption of guilt against the appellant in terms of Section 113B of the Indian Evident Act and the defence had failed to discharge its onus of rebutting the presumption and in the presence of enough proof qua the charge of Section 304B and 498A IPC, the impugned judgment be upheld and the present appeal be dismissed. It was the case of the prosecution that the appellant and the deceased got married to each other on 22nd February, 2009 and that they both were living together on the second floor of the house No.C-7/3, Cottage Road, Adarsh Nagar. 5-6 days prior to the marriage, Surender Kumar called PW-2 and demanded an i10 Car which was also visible in wedding photographs. The appellant was not working and was unemployed at the time of marriage, though, the deceased's family was told that the appellant was doing his own business of electrical goods at Bhagirath Palace. It was also evident from the testimony of PW-2, PW-3, PW-10 and PW-11 that the articles given by them at the time of marriage were not liked by the family of the appellant for which she was taunted. Further, the deceased made a call to her parents on 2nd January, 2014 that she was not treated well on which PW-2 and PW-3 visited the matrimonial home of the deceased and requested appellant's mother to send the deceased with them, however, she refused the same. Further, on the occasion of *kuan puja*, as Ravi was blessed with a son,



Padma Devi demanded two gold sets and did not even send the deceased along with Ravi when he went to pick the deceased. Although, deceased was sent later to attend the function but as the gifts given to her were not of the liking of the appellant's family, the deceased was beaten by the appellant. Learned APP submitted that the deceased's family had cogently and consistently deposed regarding demand of dowry and harassment meted out to the deceased during the substance of her marriage. Even otherwise, it was the appellant's family who had the knowledge of the events and circumstances which led to her death and thus, the onus shifts on the appellant and his family to bring on record those facts which were within their exclusive knowledge. Furthermore, the defence taken on behalf of the appellant that the deceased committed suicide owing to psychological illness for which evidence in the form of testimony of DW-2 was adduced was without any merit as Dr. Ravi Kant Guglani (DW-2) is a BAMS graduate and not a Psychologist and during his cross examination, he was unable to properly answer the question with respect to how he prescribed allopathic medicine in the absence of necessary qualification. Even otherwise, there is nothing on record to show that the deceased ever attempted to commit suicide prior to 8th February, 2014. Learned APP further contended that no cogent evidence with respect to the alleged psychiatrist problem of the deceased was brought on record and thus, there remains no specific cause other than harassment on account of dowry for the deceased to have taken the drastic step of ending her life. Therefore, the demand of dowry along with harassment and cruelty by the appellant and his family members coupled with lack of cogent or reasonable explanation



of victim's death squarely brings the case within the ambit of Section 304 IPC. Reliance was also placed by learned APP on the decisions of Hon'ble Supreme Court in (2000) 5 SCC 207 Kans Raj vs. State of Punjab, (2011) 11 SCC 359 Bansi Lal vs. State of Haryana, (2021) 6 SCC 108 Gurmeet Singh vs. State of Punjab, (2015) 3 SCC 724 Sher Singh vs. State of Haryana, (2001) 8 SCC 633 Satvir Singh vs. State of Punjab and (2022) 5 SCC 401 State of MP vs. Jogendra.

7. Having heard the counsel for the parties at length and perusing the record, the following evidence emerges.

8. Suresh Goel (PW-2) deposed that his daughter/deceased was married to the appellant on 22nd February, 2009 and after her marriage, appellant and his mother Ms. Padma demanded dowry and used to beat her daughter/deceased. The deceased was not allowed to use the mobile phone and was beaten by the appellant who was unemployed. He further stated that about 5-7 days prior to the marriage, the appellant demanded an i10 Car which was given to the appellant in the marriage. The articles given by them at the time of marriage were not of the choice of the appellant and his family. In the month of November, 2009, a daughter was born to the deceased and the appellant and his family did not like the articles given by them even at that time. Before the marriage, he was informed that the appellant owned an electrical shop at Bhagirath Palace, however, after the marriage; he came to know that the appellant was unemployed and not earning anything. He further stated that even on birth of his grandson, his son Ravi went to the house of deceased to bring the deceased to his house; however, the deceased was not allowed to accompany Ravi. The deceased



was not allowed to call them, however, she used to call her mother secretly from landline and used to tell “*mai bahot pareshan hun aake baat kar lo*”. On 2nd January, 2014, he along with his wife went to the matrimonial house of the deceased and requested Ms. Padma to send the deceased with him, however, Ms. Padma refused and said she will send her after 4-5 days. On 8th February, 2014 at about 7.15 AM, he received a call from Surender Kumar who told him that they were taking the deceased to LNJP Hospital and on reaching the hospital, he got to know that the deceased had died due to burn injuries. SI Sandeep was already present at the hospital. From the hospital, he along with his wife and two sons were taken to PS Adarsh Nagar where his statement, statement of his wife and son Ravi were recorded by the Tehsildar. Thereafter, he was declared hostile as he was resiling from his previous statement and in his cross examination; he stated that he took loan to arrange i10 Car for the appellant. He further stated that the appellant told the deceased to bring ₹5-7 lacs so that he could start his own business. In his cross examination by counsel for the appellant, he stated that the appellant was running a company by the name of Pooja Pharma from D-2, Rana Pratap Road, Adarsh Nagar and he stood as guarantor before the Sales Tax Department for grant of TIN Number. He further states that the appellant was not doing any business and it was run by his younger brother Saurabh. He further stated that on 2nd January, 2014, the deceased made a call to her mother saying that she was harassed and for that reason they went to her matrimonial home. He further stated that SDM asked him to make his statement in brief as the post mortem was to be conducted and therefore, he did not tell all the facts. He was unable to tell



the time, date and month when his daughter/deceased was beaten, harassed and tortured by the appellant and his family. He further stated that there was no working kitchen on the second floor of the House No.C-7/3.

9. Santosh Goel (PW-3) is mother of the deceased and she corroborated the version of her husband (PW-2). She stated that the deceased was not allowed to talk to them on phone and that her daughter/deceased sometimes called her and informed her "*Sandeep ki paiso ki maang puri na hone par ye mujhe maarta peetta hai*" and that the appellant, Surender Garg, Padma, Saurabh and Sarita used to abuse, harass and beat her. On 28th October, 2012, on the occasion of *kuan puja* of her grandson in presence of her son Ravi, Padma told her daughter "*Iss baar do sone ke set agar nahi laye to dekhna ke ham tere saath kya karte hain*". Thereafter, she was declared hostile as she was resiling from her previous statement. She stated that she did not get her daughter medical examined as her daughter/deceased was residing in her matrimonial home and she further stated that she did not remember the date, month and year and the day and time when her daughter/deceased was beaten by the appellant and his family.

10. Ravi Goel (PW-11) was the younger brother of the deceased and in his testimony before the Court, he corroborated the version of his father.

11. Ram Niwas Gupta (PW-10) was the maternal uncle of the deceased and he was the person who approached Surender Kumar with the proposal of marriage of his niece/deceased with the appellant. He stated that at the time of agreeing for marriage, no demand of dowry was raised by Surender Kumar, however, 5-6 days before the marriage, Surender Kumar told him "*ladka nahi manta, i10 gaadi deni padegi*". He conveyed the same to his



sister Santosh and accordingly, an i10 car was given to the appellant at the time of marriage. After about 01 year of marriage, he came to know that the in laws of the deceased were not happy with the articles given in the marriage and the gifts given on various occasions after the marriage. Thereafter, about 3-4 years of marriage, the deceased told him that the appellant was not having any work to do and is asking for ₹5-7 lacs so that he could start some business. He further stated that his sister and brother-in-law gave the money to the deceased to be handed over to the appellant but was unaware of the amount given. As he was resiling from his previous statement, he was declared hostile and in his cross examination, he stated that the accused person used to taunt and beat the deceased with regard to demand of dowry. He further stated that the deceased told him that Saurabh used to say “*paise nahi laa sakti toh apne bacho ko lekar apne mayake kyun nahi chali jaati, kab tak meri kamai khayoge*”. He further stated that when he reached the hospital, Surrender told him that the deceased put herself on fire and he did not know the true facts at that time, he told the police that “*sasural walon ke vyavhar se tang aakar pooja ne yeh kadam uthaya*”. He further stated that he did not remember the date, month, year and occasion when the deceased personally told him that she was harassed and tortured by the accused persons.

12. SI Sandeep (PW-23) deposed that on 8th February, 2014, on receipt of DD No. 8A, he along with Ct. Anil went to second floor of H.No. C-7/3, Cottage Road, Adarsh Nagar where there were marks of burn and a plastic *katora* lying. Kerosene oil was also found spread on the floor and there were burnt bunch of hair, burnt pieces of clothes, one burnt matchstick and



broken bangles lying on the floor. Even at the main gate of the house, there were hair and burnt cloth pieces lying. He was informed that the deceased was shifted to LNJP Hospital and no eye-witness was found at the spot. Doctors at LNJP Hospital had declared the deceased dead. During enquiry, he got to know that the deceased got married to the appellant on 22nd February, 2009 and briefed about the facts to the SHO to inform the SDM. The dead body of the deceased was preserved in the mortuary, and at the hospital, he met Suresh Goel, Santosh and Ravi Goel as also Sandeep Garg and Surender Kumar. Thereafter, he went back to the scene of crime where IO/Insp. Aurendra Singh was present who took over the investigation of the case. Crime team was called at the spot and exhibits were lifted by the IO.

13. IO/Insp. Aurendra Singh (PW-25) deposed that on 8th February, 2014, he along with SHO Praveen went to the second floor at House No.C-7/3, New Cottage Road, Adarsh Nagar and corroborated the version of SI Sandeep (PW-23). He further stated that the crime team and FSL were called at the spot. He seized the exhibits from the spot and thereafter prepared the site plan (Ex.PW-25/P63). Thereafter, efforts were made to find out the apparatus and container of the kerosene oil however the same could not be found either at the scene of the crime or at the ground, first or second floor of the house. Padma Garg was found at the house and was interrogated and was afterwards arrested vide memo Ex.P-3 and her disclosure statement (Ex.PW-23/58) was recorded. At the police station, the appellant and his father were interrogated and were arrested vide memo Ex.P-5 and Ex.P-7 respectively, and their disclosure statements Ex.PW-23/P59 and Ex.PW-23/P60 respectively were recorded. Thereafter, the body



was sent to post mortem examination and the same was video-graphed. After post mortem examination, the dead body was handed over to the relatives of the deceased. Efforts were made to find out Saurabh Garg but he could not be found, however, on 1st April, 2014, Saurabh Garg came to the police station and after interrogation, he was arrested vide memo Ex.P-11. After completion of investigation, he filed the charge-sheet. In his cross examination, he stated that Saurabh resided on the third floor, Surender and Padma resided on the first floor and appellant and his wife/deceased resided on the second floor. The appellant was not employed anywhere and he was not engaged in any business. He further stated that no such fact of any mental ailment or psychological effect of deceased came to his knowledge during investigation. He further stated that no neighbour gave any statement regarding demand of dowry by the accused persons. He further stated that despite his request, no public person joined the investigation while he was seizing the case property from the scene of crime.

14. As per FSL (Chemistry) report (Ex.PW-19/P50), residue of kerosene/diesel/petrol could not be detected on the bunch of black hair (Ex.3) and as per report (Ex.PW-20/P51), residue of kerosene/diesel/petrol could not be detected on piece of white and black cloth (Ex.1).

15. In his statement under Section 313 of the Code of Criminal Procedure, 1973, the appellant admitted that he got married with the deceased on 22nd February, 2009 at RG Farm House and also admitted the marriage card (Ex.PW-2/P9) and the photographs (Ex.PW-2/P10). He stated that Ram Niwas Gupta was not the mediator of the marriage rather it was one Mr. Ram Kumar. He further stated that he and the deceased used to



reside separately from his parents and brother at C-7/3, Second floor, Cottage Road, Adarsh Nagar and was running a separate business in the name of Pooja Pharma at D-2, Rana Pratap Road, Adarsh Nagar. His father was residing separately at the ground floor and first floor and was running a separate business in the name of M/s. Surender Kumar Fair Price Shop at H-2/30, 31 DDA Market, Jahangirpuri. He further stated that on 8th February, 2014, he went for morning walk with Luxman Dass Singhla at 5.15 AM to Subhash Park and at about 6.20 AM one Satyanarayan came at Subhash Park and told him that his house was on fire on which he immediately rushed to his house and saw his wife/deceased caught in fire and unconscious. He put a blanket on her and sent Satyanaryan to call his brother from Shani mandir and thereafter, he along with his brother Saurabh took his wife/deceased to Shanti Kumad Hospital where the doctor referred his wife/deceased to trauma center where again they were referred to LNJP Hospital. At the LNJP hospital, his wife/deceased was declared “brought dead”. He further stated that he had proper love and affection for his wife and good relations with her and that they generally went out to celebrate holiday outside Delhi and that they were planning to go abroad for family world tour. He denied having made any demand from his in laws and denied having committed any cruelty due to such demand on his wife. He came to know that his wife/deceased was suffering from psychological disease as she was having suicidal thoughts, sleeplessness, irritability, headache, loss of appetite and that she used to murmur to go to her *dadi* who had already committed suicide. He stated that he consulted the doctor at Nirmal Hospital. He further stated that his wife had committed suicide due to



psychological condition. He further stated that maternal uncle of the deceased namely Ram Niwas demanded a sum of ₹25 lacs from his father in the presence of one Vijay Chauhan at LNJP Hospital for settling the matter but as his father showed inability to pay the amount, parents of the deceased threatened his father with dire consequences.

16. Ram Kumar Goyal (DW-1) stated that he got the marriage between the appellant and the deceased arranged. He stated that Surender did not put any demand in his presence and further stated that he met Suresh many times after the marriage and Suresh told him that his girl was happy in the matrimonial house. He stated that there was no demand of dowry. In his cross examination, he stated that he did not know what was spent in the marriage and what was given and taken in the marriage. He denied the suggestion that the demand of i10 car was made by the appellant 5-6 days prior to the marriage and that the said car was given by parents of deceased of their own sweet will.

17. Satyanarayan (DW-4) deposed that on 8th February, 2014, when he had gone to fetch milk from the corner of Cottage Road, he saw smoke coming out of appellant's house. He rang the bell and knock on the door and did not get any response and thereafter, he went to Subhash Park where he told the appellant that smoke was coming out from his house. Sandeep sat on his scooty and came home and on seeing smoke, appellant asked him to call his younger brother who was at Shani mandir. In his cross examination, he stated that he saw smoke coming out from the appellant's house at about 6.15 AM but he did not make any call to police or fire brigade.



18. Vijay Chauhan (DW-6) stated that on 8th February, 2014, he got to know from Surrender that his daughter-in-law had put herself on fire and that his children were taken the deceased to LNJP Hospital. He reached the hospital at about 8.30-9 AM there Ram Niwas met him who told him “*chori ne aag laga li*”. Thereafter, Ram Niwas told him that “*hamara shaadi mein kharcha hua hai, wo hame dilwa do*”, and thereafter, Ram Niwas told him that “*25 lacs rupaye dilwa do*”. When he discussed this with Surrender, Surrender told him that he was not in a situation to give this amount.

19. Thus, from the evidence of the family members of deceased, the three main allegations of demand of dowry and harassment in relation thereto are; firstly, that 5-7 days prior to the marriage, appellant demanded i-10 car in the marriage which they gave to the appellant in the marriage. Secondly; when Pooja was brought to matrimonial home by her brother for his son's Kuan Pujan, Padma Devi, mother of the appellant stated that at least two gold sets should be given; and thirdly; that the appellant was demanding ₹5-7 lakhs for starting a business, besides the vague allegation that in-laws were not satisfied by the gifts.

20. As regards the demand of two gold sets on 28th October 2012 is concerned, the same was made by Padma Devi, mother of the appellant whose appeal stands abated. As regards the allegation of demand of i-10 car is concerned, undoubtedly, the prosecution has proved that the i-10 car was given in marriage and though the case of the parents of the deceased is that the same was demanded 5-7 days prior to the marriage, however, in his cross-examination, Ravi Goel clearly stated that no demand of i-10 car was made from him one week prior to the marriage. In turn, the defence has



examined Ram Kumar Goyal (DW-1) who stated that he knew the parents of Pooja and Sandeep and he got arranged their marriage. He stated that he knew Prem Kansal, maternal uncle of the girl who was a Teacher, whereas, Ram Kumar Goyal (DW-1) was the retired Head Master and it was he, who had told father of the deceased about Sandeep, son of Surender. He also stated that he met father of the deceased many a times, who told that the girl Pooja was happy in the matrimonial home and there was no dowry demand. In cross-examination by the learned APP for the State, he denied that there was a demand of i-10 car by Sandeep and according to him, the car was voluntarily given by the parents of Pooja.

21. Thus, the only allegation surviving against the appellant is the demand of ₹5-7 lakhs made to start the business. It may be noted that in the FIR dated 8th February 2014 which is based on the statements of father, mother and brother of the deceased, there is no allegation of specific demand of ₹5-7 lakhs for starting a new business. As regards the allegation of ₹5-7 lakhs being demanded by the appellant to start a business is concerned, in his examination-in-chief, Suresh Goel (PW-2), father of the deceased did not level any such allegation, however, in his cross-examination by learned APP when a leading question was put, he stated that it was correct that Sandeep told his daughter to bring ₹5-7 lakhs from her parents, so that, he could start his business. However, in the cross-examination, he also stated that he made no efforts to arrange this ₹5-7 lakhs money. Further, though, in his examination-in-chief, Suresh Goel stated that Sandeep was not doing any business, however, in his cross-examination, he admitted that Sandeep was running a company in the name



of Pooja Pharma from D-2, Rana Pratap Road, Adarsh Nagar and that Suresh Goel stood as a guarantor before the Sales Tax Department for grant of TIN number. He however later stated in his cross-examination that Sandeep was not doing any business and the said business was run by younger brother of Sandeep namely Saurav. Further, Ravi Goel (PW-11), the brother of the deceased stated that he was told by his sister that the appellant used to demand ₹5-7 lakhs from her parents so that he could start his business. However, in his cross-examination, this witness admitted that Pooja did not tell him that the appellant had asked her to bring ₹5-7 lakhs from her parents. The appellant in turn examined DW-7 Tilak Chand in this regard who was working as LDC in the Department of Trade and Taxes, ITO, Vyapar Bhawan who brought the record of Pooja Pharma, D-2, Rana Pratap Road, Adarsh Nagar showing that it was a proprietorship concern registered under VAT and the proprietor of Pooja Pharma was Sandeep Garg. In his cross-examination, DW-7 stated that as per the records, Pooja Pharma was doing the business of pharmaceutical distributors and a licence has been issued by the Drug Control Department authorizing Pooja Pharma to sell, stock, exhibit, offer for sale or distribute wholesale drugs.

22. From the cross-examination of the prosecution witnesses and the evidence led by the defence, it has been proved that appellant Sandeep was running a proper business and further, the fact that demand of ₹5-7 lakhs was made for starting a business by the appellant was though not voluntarily stated by PW-2 but was brought out by the learned APP on a leading question. Further, the learned counsel for appellant confronted Santosh Goel (PW-3), mother of the deceased with various photographs and



documents showing that within five years of marriage, they had celebrated number of occasions including birthdays and marriage anniversaries. Even in respect of the allegation of not being satisfied with the dowry, Ravi Goel stated that he was never informed by Pooja and the same was always informed by Pooja to her parents. In cross-examination, the three witnesses stated that they could not tell the date, time and month when the deceased was harassed, beaten or dowry demand was made from her. Hence, in view of the evidence as discussed above, it has not been proved that harassment in relation to demand of dowry was meted out to the deceased soon before her death.

23. Further, the appellant had also led sufficient defence evidence by examining DW-4 Satya Narayan and other witnesses to prove that at the time when deceased caught fire, neither the appellant nor his brother were at home. DW-4 Satya Narayan stated that on 8th February 2014, he had gone to fetch milk from the corner of Cottage Road, Adarash Nagar and while he was going, he saw the smoke coming out from the house of Surender. He rang the bell of the house of Surender and knocked the door, but he did not get any response. So, he went to Subhash Park, where, Sandeep was present and he told Sandeep that smoke was coming out from his house. Then, Sandeep sat on his scooty and came home. On seeing the smoke, Sandeep called his younger brother who was praying in Shani Mandir. This version of Satya Narayan is supported by the number of witnesses namely Varun Kumar (DW-9), Malti (DW-10) and Laxman Dass Singla (DW-11). It is thus evident that when the deceased caught fire, she was alone in the house.



24. From the evidence as noted above, it can be safely inferred that there was no person at the home when Pooja caught fire which fact is further fortified by her post-mortem report which opines that the deceased was alive when the fire started, however, the burn injuries on both the feet were post-mortem in nature and rest of the burn injuries on the body of the deceased show features of ante-mortem burns, however, the possibility of injuries being peri-mortem in nature cannot be ruled out. The post-mortem Doctor who appeared in the witness box, during the cross-examination, answered that Pooja became unconscious after sustaining burn injuries and to clarify the nature of peri-mortem injuries, the learned Trial Court summoned the said witness again as CW-1 and sought the following clarifications:

“CW-1: Statement of Dr. Jyoti Barwa, Assistant Professor, Department of Forensic Medicine, Sri Dev Suman Subharti Medical College, Dehradun (recalled for examination in continuation from 16.09.2015 for the purpose of clarification)

On SA:

Q. Can you tell from the postmortem report of the deceased as to what peri-mortem injuries were found on the body of deceased?

Ans. Burn injuries on both the feet of the deceased were postmortem. Rest of the injuries were ante-mortem in nature, but possibility of there being peri-mortem in nature, cannot be ruled out.

Q. What are rest of the injuries as per the postmortem report?

Ans. Dermo-epidermal burn injuries involving the scalp, face, front and back of neck, front and back of chest, front and back of abdomen, front of right arm, upper half of back of right arm, front of right forearm, front and back of left arm, front of left forearm, outer half of



back of left forearm, both palms, front and back of right thigh and right leg and front and back of left thigh and left leg.

Q. What do the aforesaid injuries suggest?

Ans. Since the margins and the base of the burn injuries show reddening, they suggest of being ante-mortem in nature.

Q. Can you tell that there could be other injuries prior to the burning?

Ans. The other injuries could not be appreciated because of the burn injuries.

Q. What do the postmortem injuries on the feet suggest?

Ans. Since the bones were charred and blackened with easy fragility with absence of any reddening at the margins, they suggest of being postmortem.

Q. As per the postmortem report, right leg was separately produced in a gunny bag in a charred condition. Is it possible that the said leg was chopped off from the body before the death?

Ans. Since the edges of the right leg as well as the distal part of the right leg of the deceased was charred, it is not possible to comment if any sharp injury was inflicted.

Q. Is it possible that the right leg was separated from the rest of the body because of fragility of the bone?

Ans. It is possible that the right leg could have been separated due to extensive burn injuries.

Q. What do you say about the nature of injuries on the right leg separated from the body?

Ans. The injuries could be peri-mortem or postmortem.

xxx

xxx

xxx

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16.09.2015



*CW-1 Dr. Jyoti Barwa presently posted as Assistant Professor
Department of Forensic Medicine, Rohil Khand Medical
College, Bareilly, UP.*

ON S.A.

In my opinion perimortem injuries are those which are possible to have been inflicted immediately before death and also immediately after death. The said injuries can be said to have been caused during the intervening period of ante-mortem and postmortem injuries.

The intercellular changes on the body during this intervening period can not be commented upon as being ante-mortem or postmortem and hence are termed as perimortem.

25. A perusal of the MLC of Pooja Ex.P-21 does not note any smell of kerosene. The post-mortem of the deceased was conducted on 9th February 2014 i.e. the next day at 11.45 a.m., the same also does not note any smell of inflammable substance that could be appreciated and no mechanical injury was also found. Further, as per the FSL report Ex.PW-19/P50, from the burnt debris collected from the spot as also from the hair of the deceased, no residue of kerosene/diesel/petrol could be detected.

26. From the evidence of the post-mortem Doctor who appeared as PW-22 and CW-1, it is evident that when Pooja caught fire, she fell unconscious and as nobody rescued her at that stage, her whole body caught fire resulting in peri-mortem and post-mortem burn injuries. Further, the absence of smell/presence of kerosene/diesel/petrol being not stated in the MLC and ruled out in the post-mortem and the FSL reports as also nature of injuries suffered, the possibility of the deceased suffering an accidental fire cannot be ruled out and in view of no-one being present in house to save her, death ensued.



27. In view of the discussion aforesaid, it is evident that all the specific allegations purportedly leveled by the prosecution witnesses for demand of dowry and harassment in relation thereto, have not been proved as the witnesses in their cross-examinations itself partly controverted the same. Further, by leading defence evidence, the appellant has discharged the onus on him which got shifted under Section 113-B of the Indian Evidence Act.

28. Consequently, the impugned judgment of conviction and order on sentence are set aside. The appellant is acquitted of the charges framed. The appellant who is in custody is directed to be released forthwith, if not required in any other case.

29. Copy of the judgment be uploaded on the website of this Court as also be sent to the Superintendent Jail for intimation to the appellant, updation of records and necessary compliance.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

JUNE 26, 2023

‘vn/sk’