

\$~R-34 (Part-B)

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

Reserved on: 6th November, 2015
% **Date of Decision: 19th November, 2015**

+ CRL.A.213/2000

DHANI RAM & ORS. Appellants

Through Mr. Roopesh Sharma, Adv.

versus

STATE Respondent

Through Mr. Varun Goswami, APP

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

R. K. GAUBA, J:

1. The appellants challenge, through the appeal at hand, their conviction and order on sentence on the charge for offences of cruelty meted out to, and dowry death of, Har Pyari (wife of the first appellant) in the matrimonial home on 11.03.1995, primarily on the basis of findings returned accepting the testimony of the father and brother of the victim.

2. Har Pyari, daughter of Ramji Lal (PW-4) was married to Dhani Ram (the first appellant) on 26.05.1991. On 11.03.1995, she received burn injuries in her matrimonial home in Kamal Vihar, Kamalpur, Burari, Delhi within the jurisdiction of police station Timarpur ("the police station"), sometime around 3:30 PM. She was brought to Jai

Prakash Narayan Hospital (“the hospital”) at 5:00 PM by an official of Police Control Room (PCR). She died at 7:05 PM on the same day due to burn injuries, stated to be 100% all over the body. On the basis of statement (Ex.PW-4/B) of her father (PW-4), given on 24.04.1995, before Mr.Vijay Kumar (PW-7), the Sub-Divisional Magistrate (SDM), the FIR (No. 150/1995) was registered in the police station at 6:10 PM on 26.04.1995, pursuant to endorsement (Ex.PW-9/A) by Inspector K.S.Bhatnagar (PW-9), the SHO. The case was investigated from the perspective of offences punishable under Sections 498-A, 304-B and 34 of Indian Penal Code, 1860 (IPC). On conclusion of investigation, the report under Section 173 of Code of Criminal Procedure (Cr.P.C.) was submitted on 12.0.1995 seeking trial of Dhani Ram (the first appellant) and four members of his family including his mother Sukko (the third appellant), two brothers Gulab and Sita Ram (second and fourth appellant) and Draupadi (the fifth appellant) wife of Sita Ram.

3. The appellants were brought to trial in the court of Additional Sessions Judge (ASJ) in sessions case number 121/1997 which concluded with judgment dated 01.03.2000 holding all of them guilty on the charge for offences punishable under Sections 304-B and 498-A IPC. By order dated 09.03.2000, the trial court awarded imprisonment for life with fine of ₹20,000/- each for the offence under Section 304-B and rigorous imprisonment for three years with fine of ₹10,000/- each for offence under Section 498-A IPC. The order directed that in default of payment of fine, the appellants would have to further undergo simple imprisonment for two years and nine months

respectively on each count. The benefit of set off under Section 428 Cr.P.C. was granted.

4. Sukko, the third appellant, mother-in-law of the deceased woman died during the pendency of the appeal. Her death statedly occurred on 17.02.2014 and was confirmed by the respondent-State as noted in the order dated 10.09.2015. The appeal filed by her, thus, has abated.

5. The gravamen of the charge against the appellants essentially has been that Har Pyari died an unnatural death on 11.03.1995 on account of burn injuries suffered in the matrimonial home and that soon before her death she had been subjected by the husband (the first appellant) and his relatives (the other appellants) to cruelty and harassment in connection with demands for dowry. The FIR was registered with allegations to such effect on the basis of statement (Ex.PW4/B) made on 24.04.1995 by Ramji Lal (PW-4).

6. At the trial Ramji Lal (PW-4) deposed about the harassment of his daughter in the matrimonial home in the following manner:

“After one or two months of her marriage, my daughter was not treated well by the accused persons, for insufficient dowry. This fact was told to me by my daughter whenever she used to visit us. On this issue my daughter had been ousted from her matrimonial house by the accused persons on 8/10 times atleast, but all those occasions we used to send back our daughter after pacifying all the accused persons and after advising my daughter to bear it till the days turn good. Whenever I had talked with accused persons on this issue at my own house, then accused persons used to demand a scooter, coloured TV and a golden chain

for resuming the conjugal rights of my daughter. But I could not afford it, so I simply used to beg sorry and used to tell them that I am too poor man to fulfill these demands. Somehow, I used to send my daughter back to her matrimonial house on every occasion. However, I have never complaint to the police on these demands in order to let my daughter live peacefully at her matrimonial house. On last occasion i.e. about 2/3 months prior to her death Har Pyari was again thrown out of her matrimonial house and when accused Sita Ram and oné Manohar Lal-another Jeth and accused Dhani Ram had come to my house and had promised me all that they would keep my daughter happy, so I had then agreed to send her back.”

7. Raj Kumar (PW-5), brother of the deceased, similarly narrated the harassment allegedly meted out to his sister in the following words:

“After about 1-2 months from her marriage she was constantly harassed and beaten up by all the accused persons for not bringing sufficient dowry and on number of occasions she was left at her house by the accused persons, which happened on 10-15 occasions. Accused persons used to demand sometimes scooter, TV, golden chain and cash of ₹20,000/- for her rehabilitation, which were never paid since we were too poor. I had also with my father had advised them not to do so and had begged from them that they should allow our sister to live peacefully at her matrimonial house and so we manage to send our sister Har Pyari back to her matrimonial house on those occasions. Ultimately, about 1½ months prior to her death, again my sister was ousted from her matrimonial house by accused persons and when accused Sita Ram and Manohar Lal-another Jeth and accused Dhani Ram had come to my house and had promised us all that they would keep my sister happy so I had then agreed to send her back.”

8. Panna Lal (PW-2), another brother of the deceased, deposed about the above allegations as under:

“After marriage initially she led a peaceful life at her matrimonial house for about 2 months but after two months whenever my sister used to visit me at my house she used to complaint that she has been regularly quarrelled by her mother in law, Jeth etc., besides these two persons it were all of the accused persons today present in court who used to harass her for not bringing sufficient dowry. This fact of harassment was told by my sister to me. Besides taunting, all the accused persons also used to beat her for not bringing sufficient dowry. I cannot give the exact date or month on which my sister was subjected to harassment but it was on 10/15 occasions whenever my sister visited me she complaint constantly against these accused persons. Once in the presence of my father Dhani Ram accused has slapped my sister at her matrimonial house. Whenever accused Dhani Ram used to come to us in order to take my sister back we had advised him not to torture my sister and had shown our inability to met with their demands of dowry being poor people, but our advise used to fall on deaf ears, the moment my sister entered into her matrimonial house. Lastly, about 1 or 3 days before the marriage of accused Gulab, when at that time my sister was with us at Mathura at Kaushi Kalan; at that time her brother in laws Manohar, Sita Ram and husband Dhani Ram had come to take her back home, then again we advised them for not torturing our sister and at that time all these persons had promised us that they will not torture our sister any longer, so we send our sister with them.”

9. There is indeed no doubt as to the fact that Har Pyari was married to the first appellant on 26.05.1991 and that she died an unnatural death due to burn injuries on 11.03.1995. The circumstances further leave no scope for debate as to the fact that her death in all probability was suicidal inasmuch as the evidence vividly shows that

she received burn injuries in a room bolted from inside with no one present there except her. When the matter reached the notice of police, through DD No. 12 on 11.03.1995, pursuant to the admission of the victim in the hospital against medico legal record (not formally proved during trial) , the initial inquiry was made by SI Darshan Kumar (PW-8). Besides paying a visit to the hospital finding the victim unfit for statement, he had inspected the scene of incident. He also informed the SDM (PW-7) for inquest proceedings. During the course of his inquiry, the SDM had recorded the statement (Ex.PW-7/E), amongst others, of a neighbour Vishamber Dayal (DW-1). Though his word in this regard finds support from other statements gathered during the inquiry by the SDM on the same day, because of the somersault made by some of them, (i.e. the relatives on the parental side of the deceased woman), for the present, we restrict the scrutiny in light of the evidence of DW-1 alone.

10. The statement of DW-1, coupled with the description of the scene of incident coming forth during the testimony of PW-8, and corroborated by the seizure memo (Ex.Pw-8/A), it is clearly proved that the room where Har Pyari received the burn injuries was bolted from inside at the time of she catching fire. DW-1 proved, and the prosecution accepts this position, that attention of others had been drawn to the fire inside the room on smoke coming out. The material on record shows that, at the relevant point of time, the third appellant Sukku, mother-in-law and another daughter-in-law of the family were present though in a different room.

11. Har Pyari was never in a position to give any statement and, thus, her version is not available. Given the above noted facts, including the confirmation by PW-8 of the word of DW-1 that the door had to be broken open to attempt rescue Har Pyari while she was burning, there is no doubt that it was a case of self-immolation.

12. The post-mortem report Ex.(PW-3/A), proved by Dr.Yogender Singh Bansal (PW-3), proved that the death occurred due to shock consequent upon burn injuries which were extensive and 100% of the total body surface area.

13. The chronology of events noted above shows that no case was registered for investigation into a cognizable offence immediately. The reason is that no allegation implicating the appellants was made immediately or for more than a month thereafter. The SDM (PW-7) had conducted his enquiry on 13.03.1995. Ramji Lal (PW-4), the father of the deceased and her brothers Panna Lal (PW-2 and PW-5) are residents of village Kausi Kalan, Tehsil Chhatta, Distt. Mathura (UP). Their evidence suggests that they had learnt about the incident, and the death, on the same day and had arrived on the same night, the request for post-mortem examination was made formally by the father (PW-4) on 13.03.1995 by his signed application (Ex. PW-4/A) made to the SDM. Pertinent to note here that PW-4 admitted he having submitted the said application for such purpose.

14. On 13.03.1995, almost parallel to the conduct of the autopsy on formal request (Ex. PW-7/I) made to the Head of department of forensic medicine, Maulana Azad Medical College (to the mortuary whereof the dead body had been shifted), the SDM recorded the

statements of relatives on both sides. We may presently focus only on the statements of Ramji Lal (Ex. PW-7/C), Raj Kumar (Ex.PW-7/D) and Somati (Ex.PW-7/B), the father, brother and mother respectively of the deceased. This would be, of course, in addition to the statement (Ex.PW-7/E) of Vishamber Dayal (DW-1).

15. The SDM (PW-7) proved having recorded the abovementioned statements of the four persons and on that basis concluded his proceedings vide report Ex.PW-7/A) on 13.03.1995. In the said statements, the parents and the brother of the deceased had stated that she (the deceased) was suffering from some mentally disturbed state and on that account she had been under treatment of a doctor (Dr.R.K.Jain of Agra). Ramji Lal (PW-4), particularly stated that he had himself seen Har Pyari behaving as an insane person after the fact of her disturbed mental state had been brought to his notice by his other son Panna Lal (PW-2). All the said persons, including PW-4 and PW-5, confirmed that they had no cause of complaint against the husband or other relatives of the deceased woman and that there had been no demand for dowry at any stage. It is not that Ramji Lal (PW-4) did not have any grievance against the matrimonial family of his daughter (the deceased). He told the SDM in his statement (Ex.PW-7/C) that he had been arranging the medical treatment of Har Pyari on the request of her matrimonial family, who had assured that they would bear the expenses but this assurance had not been abided by as no payment was made. Thus, the grievance made was on account of non-payment of medical expenses on treatment of Har Pyari.

16. Against the above backdrop, the SDM vide his proceedings (Ex.PW-7/A) closed his inquiry, and rightly so, as there were no allegations made of any offence being involved.

17. On 24.04.1995, Ramji Lal (PW-4) again appeared before the SDM (PW-7) and made a fresh statement (Ex.PW-4/B) now alleging that, about 2-3 months after the marriage, Har Pyari had told him that she was being harassed for dowry in the matrimonial home. He stated that all the five appellants would harass her and she had been sent back after the quarrels from the matrimonial home 10-15 times. He stated that once or twice even he had to bring her back. He stated that though he tried to reason out with her *Jeth* (the fourth appellant) but no one listened. He stated that the mother-in-law (the third appellant, since deceased) used to pick up quarrel and taunt the deceased over insufficient dowry. He also added that some days before the incident the matrimonial relatives and the husband had come and taken away Har Pyari assuring that there would be no further quarrel. He stated that he and his family had not lodged any complaint with the police as they did not want any further trouble. He told the SDM that he suspected that his daughter had been killed by the husband and his relatives. He added that he had not earlier stated these facts because he had been threatened by the first, second and fourth appellant that he would meet the same fate as of his daughter. He also stated that the allegations made by him would be confirmed by four other persons, namely, Kunwarpal, Yad Ram, Pooran Chand and Shiv Lal.

18. On this fresh statement (Ex.PW-4/B) being made on 24.04.1995, the SDM by his proceedings (Ex.PW-7/L), recorded on 24.04.1995,

directed a case to be registered. Thus, the SHO made his endorsement (Ex.PW-9/A) and got the FIR registered.

19. It is pertinent to note that in the statement (Ex.PW4/B), on which the FIR was registered, Ramji Lal (PW-4) did not state that he had already made a statement before the SDM on 13.03.1995. He only explained the reasons why he had not given such statement earlier. The four persons referred by him to be in a position to confirm his word (Kunwarpal, Yad Ram, Pooran Chand and Shiv Lal) were not presented as witnesses at any stage. Even their description, relation or role was not delineated in any manner.

20. PW-4 appearing at the trial testified on the lines of his version of 24.04.1995. His son Raj Kumar (PW-5) also deposed in similar breath. Their word is sought to be supported by Panna Lal (PW-2). The latter (PW-2) had not been examined during the inquest proceedings. Both Ramji Lal (PW-4) and Raj Kumar (PW-5), were confronted with their earlier versions in the statements made before SDM on 13.03.1995. Raj Kumar admitted that the document (Ex.PW-7/D) bears his signatures but he denied having made such statement. He would not explain as to how his signature appears on the said document if he had not appeared to make a statement before the SDM. Ramji Lal (PW-4) denied having made the statement (Ex.PW-7/C) or the said document to be bearing his signatures.

21. Noticeably, Ramji Lal (PW-4) started putting thumb impression on the proceedings relating to the case after 24.04.1995 though his statement Ex.PW-7/C before the SDM and application for autopsy (Ex.PW-4/A) were duly signed by him. Indeed, the evidence of the

SDM (PW-7) in such regard cannot be disbelieved. He is a senior public servant who had no personal stake involved. He, thus, would not go about preparing false record. The stand taken by Ramji Lal (PW-4) and Raj Kumar (PW-5) disowning their respective statements (Ex.PW7/C and Ex.PW7/D) is, thus, not truthful or honest.

22. It also needs to be mentioned that PW-5 was uttering falsehood when he stated that the information about the burn injuries, and death, was received through Panna Lal who was residing in Delhi during those days. His brother Pannal Lal (PW-2) would not say so. Rather, his evidence shows that he was also living in native village in District Mathura with the rest of the family at the relevant time and had learnt the news there only.

23. It is clear from the court depositions of the father and two brothers of the deceased woman (quoted earlier) that they were talking in general terms, avoiding specifics. PW-4 spoke of the deceased having been “ousted” from the matrimonial home 8-10 times. PW-2 and PW-5, on the other hand, would say she had been turned out 10-15 times. The way PW-4 and PW-5 speak about the demands of scooter, T.V. and gold chain (to which PW-5 adds the demand of cash of ₹20,000/-), it seems to be indicated that same were conveyed to the father and brother respectively for “rehabilitation” of the deceased. It is not clarified as and when these demands were made or by which of the five appellants. This omission is significant as in the statement (Ex.PW-4/B) made before the SDM on 24.04.1995, PW-4 had not spoken about the deceased having been turned out of the matrimonial

home followed by demands of costly gifts as a pre-condition for her return.

24. PW-5 stated that the deceased was constantly harassed and beaten up by all the accused persons for not bringing sufficient dowry. PW-2 spoke about regular quarrels and harassment in such context and then would say all the accused persons would also beat the deceased and added that on one occasion the husband (the first appellant) had even slapped the deceased in the matrimonial home, in the presence of her father (PW-4). PW-4, on the other hand, would not allege physical assault. He only talked in vague and general terms that his daughter was not treated well and had been turned out of the matrimonial home on several occasions.

25. The allegations made by PW-2, PW-4 and PW-5 at the trial came to be raised six weeks after the unnatural death. It is admitted that no complaints about the harassment, illegal demands for dowry, forcible ouster from the matrimonial home or physical assaults were made a subject of any complaint, meeting with elders or family members. It was not so stated at the time of death either. PW-4 while lodging the FIR on 24.04.1995 had claimed that this was not done so that the deceased was not troubled further. This explanation does not stand to reason. It is not even confirmed by PW-4 or for that matter by his sons (PW-2 and PW-5) in their court depositions. PW-4 was critical of Har Pyari's in-laws and husband when he had raised the grouse of non-payment of medical expenses. PW-4 was therefore open and candid. He did not appear to be under pressure or threat.

26. It is against the above backdrop that the statements made by PW-4 and PW-5 during the inquest proceedings on 13.03.1995 assume significance. It does appear that both these witnesses spoke about the disturbed mental state of the deceased on account of she having consumed *Bhaang* on some occasion prior to her marriage. We are unable to accept this story of consumption of *Bhaang* on one occasion resulting in insanity or mental illness. The fact remains that whatever be the cause of such condition, both PW-4 and PW-5 were categorical in admitting before the SDM on 13.03.1995 that the deceased was suffering from disturbed state of mind to the extent that she had to be taken for medical treatment by a doctor in Agra. The fact that this disturbed mental state was her history even prior to the marriage shows the possibility that the said problem was not make-belief and probably may have been concealed from the matrimonial family. The statements (Ex.PW-7/C and Ex.PW-7/D) of PW-4 and PW-5 respectively on 13.03.1995 before the SDM contained admissions that the disturbed mental state of Har Pyari had continued to persist even after the marriage and her conduct in such disturbed mental state had been seen by them with their own eyes during her stay in the matrimonial home. The said statements also contained an admission that it was against this backdrop that Har Pyari was brought back by them from the matrimonial home on the request of matrimonial family so that medical treatment could be arranged at Agra.

27. We are conscious that no medical record of treatment of Har Pyari for disturbed mental state has been brought to light. But, for this omission, the appellants' side cannot be blamed. Since the above-noted statements of the father and brother of the deceased before the

SDM on 13.03.1995 clearly showed that it was that side of the family which had organized the medical treatment at Agra, the record of medical treatment would be in their custody and control. If the said position was indeed false, the prosecution was obliged to offer affirmative and clear evidence to show that the earlier statement was indeed a false pretext and made under coercion.

28. While changing the stand on 24.04.1995 lodging the FIR through his statement Ex.PW-4/B, PW-4 had sought to explain that he had not earlier revealed the case of ill treatment of the deceased by the matrimonial family on account of threats extended to him by the appellants' side and the police. In the court, PW-4 was conspicuously silent about the threats having been extended to him on or about 13.03.1995. He rather chose to take the easier course of not speaking about his earlier statement. When confronted, during cross-examination, with the earlier statement, he chose the plea of denial. The fact that the denial of PW-4 about the earlier statement is not truthful is shown by the fact that he even denied his signatures on the said statement (appearing at point PW-4/DA). As noted earlier, after 24.04.1995, PW-4 started avoiding putting his signatures. Instead, he tried to show that he is totally illiterate person who can only put his thumb impression. As mentioned earlier, this was a stand exposed to be false by his own application (Ex. PW-4/A), duly signed on 13.03.1995, for post-mortem examination of the dead body.

29. On the forgoing facts, and in the circumstances, we find it difficult to believe, or act upon, the statements of PW-2, PW-4 and PW-5 with regard to their allegations concerning cruelty for dowry

meted out to the deceased in the matrimonial home. The admissions of PW-4 and PW-5 in their respective earlier statements before the SDM on 13.03.1995 that there had never been any demand of dowry or any harassment meted out to the deceased and that she had been in a disturbed mental state for prolonged period cannot be wished away. These admissions show the allegations made in the FIR and the evidence of the abovementioned three witnesses (PW-2, PW-4 and PW-5) at the trial in poor light. Therefore, in our view, the evidence of the three abovementioned witnesses (PW-2, PW-4 and PW-5) does not inspire confidence and it is not safe to draw conclusions on such basis.

30. In the result, the appeal is allowed. The impugned judgment and order on sentence are set aside. The appellants are acquitted. They had earlier been released on bail pending adjudication on the appeal. Their bail bonds are discharged.

R. K. GAUBA
(JUDGE)

SANJIV KHANNA
(JUDGE)

NOVEMBER 19, 2015
mr