

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

% *Judgment reserved on :04.8.2015*
Judgment delivered on :13.8.2015

+ CRL.A. 209/2013

SUNIL Appellant

Through Mr.K.Kaushik, Advocate.

versus

STATE GOVT. NCT OF DELHI Respondent

Through Mr.O.P.Saxena, APP.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal has been directed against the impugned judgment and order of sentence dated 27.11.20012 and 10.01.2013 respectively wherein the appellant Sunil (husband) had been convicted under Sections 498A/304B of the IPC. For his conviction under Section 498A of the IPC he had been sentenced to undergo RI for a period of 3 years and to pay a fine of Rs.4000/-, in default of payment of fine to undergo SI for 3 months; for his conviction under Section 304 B of the IPC he

had been sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.8000/- in default to undergo SI for a period of 6 months.

2 The version of the prosecution is that the deceased Sandesh was married to the appellant Sunil on 06.5.2006 as per Hindu rites. After her marriage, her father-in-law, mother-in-law and the appellant (husband) started harassing her for dowry. In September, 2008, the victim was left outside her parent's house. She filed a complaint under Section 498A of the IPC. In December, 2008 the appellant made a demand of Rs.50,000/- and the same was paid to him. He opened a shop. On 21.5.2009 (3 days prior to the incident) the deceased was visited by her brother. She showed injury marks on her body which was caused to her by her in-laws because of dowry demands. On 24.5.2009 the unfortunate incident of the victim having succumbed to her death by taking poison had been informed to the parents of the victim. FIR was registered.

3 In the course of the investigation the prosecution examined 20 witnesses of whom, brother of the deceased, Sushil Kumar was examined as PW-1. Father of the victim, Kamal Singh was examined as PW-8. Her foofa, Vinay Pal Singh, was examined as PW-7. Her 'mausa', Brijesh, was examined as PW-4. These were the four persons

who were examined from the family of the victim. The post mortem of the victim had revealed that she died because of poisoning. The post mortem report is Ex.PW-5/A. The cause of death was by aluminum phosphide poisoning.

4 On the basis of the aforementioned evidence collected by the prosecution the accused was convicted and sentenced as aforementioned. The charge sheet had been filed against the in-laws (mother-in-law and father-in-law) of the victim as well, however, they both stood acquitted. The Trial Judge did not find any evidence against them.

5 Arguments have been addressed by learned counsel for the appellant. The main thrust of the arguments of the learned counsel for the appellant is that even presuming that a sum of Rs.50,000/- had been paid by the victim's family to the appellant which was for the purpose of opening of a shop; this purpose would not be a dowry demand within the meaning of "dowry" as enshrined under Section 304 B of the IPC. In the absence of a dowry demand having been proved by the prosecution the conviction of the appellant suffers from an infirmity. There is also no proximity between the date of the so-called alleged demand which as per the prosecution was made in December, 2008 and

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the victim having succumbed to her death on 24.5.2009 (6 months later); the distance in time also does not establish the ingredients of Section 304 B of the IPC. Attention has been drawn to a compromise which had been arrived at between the parties pursuant to a complaint which was lodged by the deceased. This compromise is dated 21.7.2008. Submission being that even in this compromise deed there is no mention at all that the victim had suffered any cruelty qua dowry demands raised upon her either by her husband or her in-laws. The versions of the witnesses of the prosecution also suffer from inherent infirmities. The appellant is entitled to the benefit of doubt and a consequent acquittal. To support these arguments reliance has been placed upon a judgment of a Co-ordinate Bench of this Court reported as 2010 [2] JCC 972 Hans Raj Sharma & Ors. Vs. State Govt. of NCT of Delhi ; submission being that a demand of money to purchase a shop is not a dowry demand within the meaning of Section 304 B of the IPC. Reliance has also been placed upon a judgment of the Supreme Court reported as 2010 [3] JCC 1852 Durga Prasad & Anr. Vs. State of M.P. to substantiate a submission that to make out the ingredients of Section 304 B of the IPC the cruelty and harassment suffered by the victim must be in connection

with the demand of dowry; which is not so in the present case. For the same proposition reliance has been placed upon another judgment of the Supreme Court reported as (2010) 4 SCC (Cri) 27 Tarsem Singh Vs. State of Punjab. Submission being that the essential ingredients of Section 304B of the IPC have not been fulfilled and there being nothing indicative of the fact that the cruelty was meted out to the victim “soon before” her death, benefit of doubt must accrue in favour of the appellant.

6 Arguments have been countered. It is pointed out that on no count does the impugned judgment call for any interference. Reliance has been placed upon a judgment of the Apex Court reported as AIR 2011 SC 1098 Bachni Devi and Anr. Vs. State of Haryana through Secretary, Home Department to substantiate the argument that the definition of “dowry” as contained in Section 2 of the Dowry Prohibition Act, 1961 includes three stages and the last stage is an unending period which may be at any time after the marriage.

7 Arguments have been heard. Record has been perused.

8 This is admittedly a case of circumstantial evidence. Under Section 304B of the IPC there are certain essential ingredients which are

required to be fulfilled by the prosecution; only then conviction can follow under the said provision of law. The following ingredients have to be proved:

- i. Death must have been caused in unnatural circumstance; it must be away from normal.
- ii. Death must have occurred within seven years of marriage.
- iii. Soon before the death the victim must have been subject to cruelty and harassed by her husband, or any relative of her husband
- iv. This cruelty or harassment must be in connection with the demand of dowry.

9 There is no dispute to the proposition that in the instant case the first two ingredients stand fulfilled. The victim and the appellant had been married on 06.5.2006. The incident had occurred on 24.5.2009 i.e. within less than seven years of her marriage. As per the post mortem report the victim had died an unnatural death. She had died in her matrimonial home after consuming poison.

10 It is next two ingredients which have to be answered by this Court

i.e. as to whether “soon before her death” the victim was subjected to cruelty or harassment by the appellant and this cruelty and harassment must be in connection with demand of dowry.

11 The definition of dowry contained in Section 2 of the Dowry Prohibition Act, 1961 reads as follows:

*“2. **Definition of ‘dowry’.**-In this act, ‘dowry’ means any property or valuable security given or agreed to be given either directly or indirectly-*

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II.-The expression ‘valuable security’ has the same meaning as in Sec. 30 of the Indian Penal Code (45 of 1860).”

12 The Apex Court in the judgment of Bachni Devi (supra) had an occasion to consider the definition of “dowry” and how it is to be understood in the context of Section 304B of the IPC. In this context the Apex Court had held as under:

“Thus, there are three occasions related to dowry. One is before

the marriage, second is at the time of marriage and the third “at any time” after the marriage. The third occasion may appear to be unending period. But the crucial words are “in connection with the marriage of the said parties”. As was observed in the said case “suicidal death” of a married woman within seven years of her marriage is covered by the expression “death of a woman is caused.... or occurs otherwise than under normal circumstances” as expressed in Section 304B IPC.”

13 On this anvil the testimony of the family members of the victim shall now be scrutinized.

14 PW-1 was the brother of the victim. He had deposed that on 06.5.2009 his sister was married to the appellant Sunil. She was residing in her matrimonial home. After her marriage her father-in-law, mother-in-law and husband used to harass her for dowry. A Panchayat was also held. The accused persons gave an assurance that they would no longer trouble or torture her. In 2008 the deceased had been left at their house. His sister had lodged an FIR in December, 2008. The appellant had demanded a sum of Rs.50,000/- which was paid to him which was for opening a shop. Thereafter the matter was settled and there was peace but this was short lived and again her husband and in-laws started giving beatings to his sister. In his cross-examination he

has not deterred from his stand. Nothing has also been highlighted in the cross-examination of PW-1.

15 PW-8 was the father of the victim. He had also deposed that after the marriage his daughter was harassed by the accused and his parents for bringing insufficient dowry. They used to beat her. In 2008, appellant Sunil brought her daughter back to his house and left there. An FIR was lodged. In December, 2008 a Panchayat was called by the accused person. He along with his daughter and relatives went there. In the Panchayat it was decided that the accused persons would keep the victim happily. A sum of Rs.50,000/- was paid by PW-8 to the appellant for opening a shop. Thereafter his daughter was sent back with the accused persons. Nothing has been highlighted in the cross-examination of this witness either.

16 PW-4 was the uncle of the victim. He had also deposed on the same lines. He had deposed that in December, 2008 a Panchayat was constituted and relatives of both the sides also attended the Panchayat. In the Panchayat accused Sunil demanded Rs.50,000/- for opening a shop. It was decided that PW-8 shall send his daughter back with the appellant and thereafter the appellant brought the deceased back to her

matrimonial home in Delhi. Nothing has been highlighted in the cross-examination of this witness either.

17 PW-7 was another uncle of the victim. He had stated that the accused used to harass the deceased for bringing insufficient dowry. In December, 2008 the appellant arranged a Panchayat. He called relatives and respective persons of the locality. PW-7 had also attended the Panchayat. The appellant Sunil along with his parents was also present there. The victim was also told that Rs.50,000/- was paid by her father for opening a shop the amount was given in the hands of the appellant and thereafter in the presence of Panchayat, the deceased was sent with the appellant Sunil. Later on, PW-7 learnt that her niece had been killed.

18 The vehement submission of the learned counsel for the appellant being that these versions of PW-1, PW-4, PW-7 and PW-8 only show that a sum of Rs.50,000/- had been paid by PW-8 to the appellant which was for the purpose of opening a shop. This does not only relate to a dowry demand. In the absence of this he is entitled to an acquittal. This in fact is the highlight of the argument which have been addressed before this Court.

19 This Court is not in agreement with this submission of the learned counsel for the appellant. The definition of dowry has been noted supra. The Apex Court noted that the word “dowry” has to be understood in the context of the social legislation which has been engrafted by amending the IPC and incorporating Section 304 B of the IPC. Section 304 B of the IPC was inserted w.e.f. 19.11.1986 by the Dowry Prohibition (Amendment) Act, 1986, the substantive offence relating to “dowry death” was thereafter inserted. This was a piece of social legislation making provisions of the IPC more stringent as “dowry deaths” continued to be increasing and the earlier Act (un-amended) was inadequate to deal with this problem.

20 This Court is of the considered opinion that if any demand is made for a property or a valuable security directly or indirectly and it has nexus with the marriage such a demand would constitute a demand of dowry. The cause or reason for the demand would be immaterial. As rightly pointed out by learned APP the relation/connection which the appellant had with the family of the victim was through the victim; being the fact that he had married the victim and that is why he had developed a relationship with the family of the victim. The demand of

Rs.50,000/- from her father (PW-8) which was honoured was a coercive and pressure demand made by the appellant in connection with the fact that he had married PW-8's daughter and in this context the Panchayat was assembled in December, 2008 and only after Rs.50,000/- was paid to the appellant he had agreed to take back the deceased. This amount of Rs. 50,000/- was accordingly paid over by PW-8 only to buy peace for his daughter. This amount was thereafter used by the accused for opening a shop. The reason for this demand is not material. It is not material as to for what purpose this amount of Rs.50,000/- was utilized. The judgment relied upon by the learned counsel for the appellant of Hans Raj (supra) is wholly inapplicable. In that case reliance by this Court upon the judgment of the Apex Court in (2007) 9 SCC 721 Appasaheb and Anr. Vs. State of Maharashtra has been distinguished by the Supreme Court in the subsequent judgment of the Bachni Devi (supra). In the judgment of Bachni Devi the Apex Court had noted that the observations made in Appasaheb (supra) were peculiar to the facts of that case and cannot be said to be laying down a wholesome proposition that a valuable security on account of some business/financial requirement having acquired cannot be termed as a

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demand of dowry.

21 The post mortem of the victim shows that she had died because of consuming poison. This pinion on the cause of death had been given after the viscera sample of the victim was sent for examination, it had shown cause of death as consumption of aluminium phosphide poisoning which was contained in her viscera. She had died an unnatural death. She had died within less than seven years of her marriage.

22 The submission of the learned counsel for the appellant that the compromise deed dated 21.7.2008 arrived at between the parties pursuant to which the victim had been taken back to her matrimonial home by the appellant shows that there was no dowry demand raised upon the victim is also an argument noted to be rejected.

23 Admittedly, this compromise was arrived at between the parties on 21.7.2008 pursuant to a complaint of cruelty lodged by the victim under Section 498A of the IPC. Section 498A of the IPC relates to cruelty. The testimony of the family members of the victim have already been scrutinized. All of them have categorically deposed that right from the inception of marriage the victim had been tortured by her

husband and in-laws. There were consistent dowry demands made upon her. She was married to the accused on 06.5.2006. The complaint was lodged by her under Section 498A of the IPC. Pursuant thereto a compromise dated 21.7.2008 was arrived between the parties. In September, 2008 she was again left back at her parent's home. This has categorically come in the version of PW-1 and PW-8. In December, 2008 a Panchayat was held which was attended by the family members of both the parties. In this Panchayat it had been agreed that the appellant would take back his wife on a sum of Rs.50,000/- which had been paid to him. The amount was paid in his hands as is clear from the version of the witnesses of the prosecution. The victim had only then been taken back to the matrimonial home; i.e. after the demand of Rs.50,000/- was met. The appellant had agreed to take back his wife only after this amount was paid to him. PW-1 and PW-8 have further deposed that even after having paid this amount the dowry demands continued. As per the versions of PW-1, 3 days prior to the date of the incident i.e on 21.5.2009 when he had gone to visit his sister, she showed him injury marks on her body which had been caused upon her due to the beatings given to her for bringing less dowry. This is his

categorical version on oath. PW-1 promised to send her father to take his sister back as the accused persons had told him to take her back. 3 days later he was informed that his sister had been killed.

24 What could be more cruel than such situation where the victim was time and again shifting from her matrimonial home to her paternal home and vice-a-versa. In spite of a lavish marriage the family of the victim still remained unsatisfied. In December, 2008 a sum of Rs.50,000/- was paid to the appellant. He opened a shop. But again the victim was harassed. On 21.5.2009 PW-1 noted injury marks on his sister's body which he had seen with his own eyes. The appellant and his family asked PW-1 to take his sister back. He promised to return with his father. In this intervening period i.e. of 3 days the psychological, emotional and physical trauma suffered by the victim must have been unfathomable; this was probably the wholesome reason why the victim had taken her own life. It was this extreme harassment which she was suffering that she decided to end her life. It was in connection of the demands continuously raised upon the victim by the appellant. This had led to her unnatural death. She had died by consuming poison.

25 In this background by no stretch of imagination it cannot be said that the demand raised by the appellant on the victim of Rs.50,000/- and was not a dowry demand. All the ingredients of Section 304 B of the IPC have been fulfilled. The presumption contained in Section 113 of the Indian Evidence Act also comes to the aid of the prosecution. Once a prima facie case is established by the prosecution, the onus shifts upon the accused to dislodge this presumption. The accused has failed to do so.

26 The impugned judgment in this background calls for no interference. The sentence imposed upon the appellant also calls for no interference. Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

AUGUST 13, 2015

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