

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

Judgment reserved on: 13.04.2015

% **Judgment delivered on: 02.07.2015**

+ **Crl.A. 852/2008**

SONU KUMAR & ORS. Appellant
Through: Mr. S.K. Duggal, Advocate.

versus

THE STATE OF DELHI Respondent
Through: Mr. Lovkesh Sawhney, Advocate.

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

J U D G M E N T

VIPIN SANGHI, J.

1. This appeal is directed against the judgment dated 15.09.2008, in SC No. 73/2006, arising out of F.I.R. No. 885/05, passed by learned Additional Sessions Judge, Delhi, convicting the Appellants for the offence under Section 498A of Indian Penal Code, 1860 ('IPC'), and the order on sentence dated 20.09.2008 whereby – for the offence under Section 498A, IPC, the appellants Sonu Kumar (hereinafter referred to as 'Appellant No.1'), Ashok Kumar (hereinafter referred to as 'Appellant No.2') and Suraj (hereinafter referred to as 'Appellant No.3') were sentenced to undergo Rigorous Imprisonment ('RI') for a period of two and a half years and to pay a fine of Rs. 2000/- and in default of payment of fine, to undergo Simple Imprisonment ('SI') for period of four months.

2. The facts taken note of in the impugned judgment are that on 27.12.2005 a report was lodged with the police vide DD No. 50A. Consequently, SI Johnny Anto (PW-12) along with constable Hoshiyar Singh went to the spot at H. No. B-83 Shiv Puri II, Dinpur, Najafgarh, Delhi where they found deceased Seema, wife of Sonu (appellant no.1) lying dead. Police came to know that elder brother of the husband of the deceased Seema, namely Ashok Kumar, appellant no.2 saw the dead body of the deceased Seema tied with the rope and fan and then he raised an alarm and tried to open the room, but the door was closed from inside. In the meantime, neighbour Sukhdev (PW-6) also came there. Ashok and Sukhdev – by breaking the kundi, opened the door and un-roped the dead body and put it on the floor. The police also noticed one ligature mark on the neck of deceased Seema. Crime Team was informed, who took the photographs. Since the marriage of the deceased (Seema) and Appellant No.1 was solemnized on 16.6.2002, and Seema died within 7 years of marriage on 27.12.2005, the matter was brought to the notice of SDM (PW-1). On completion of investigation, the challan was filed against the accused persons.

3. Charges were framed against the accused for offences punishable under Section 498A read with Section 34 and under Section 304B read with Section 34 of the IPC. All the accused pleaded ‘not guilty’ and claimed for trial.

4. The prosecution examined thirteen witnesses in support of its case. They were: PW-1, Sh.V.K.Malhotra (SDM, Najafgarh); PW-2, ASI Shri Sri

Nath (Duty Officer); PW-3, Inspector Ajit Singh; PW4, Hardeep Singh; PW-5, Ct. Shri Ajmer Singh; PW-6, Sh. Sukhdev S/o Bagga Singh (Neighbour); PW-7, Sh. Chunni Lal (father of the deceased); PW-8, Channo Devi w/o Chunni Lal (mother of deceased); PW-9, Dr. Deepak Mathur; PW-10, Sh. Itwari Lal s/o Sh. Chunni Lal (brother of deceased); PW-11 HC Nihal Singh; PW-12 SI Johnny Anto, and; PW-13 Inspector Kailash Chander (Investigating Officer). The statement of the appellants was recorded under Section 313, Cr.P.C. They claimed to be innocent and stated that they were falsely implicated in this case. They further stated that deceased Seema was suffering from TB due to which she was not able to bear any child. This was the reason why she committed suicide. Appellants examined one Sh. Bahadur Singh as DW-1 (appellant No.3 was residing with him since 1979) in support of his defence.

5. The learned trial Court on an analysis of the evidence came to the conclusion that the case against the Appellant, that they had demanded dowry, had been proved by the prosecution beyond reasonable doubt. However, from the testimonies of PW-7, PW-8 and PW-10, the prosecution had not established that the said demand was made “soon before” the death of the deceased Seema. Thus, the appellants were acquitted of the charge under Section 304B IPC. Since, according to the learned ASJ, the demand of dowry had been established, they were convicted under Section 498A read with Section 34 IPC. The relevant extract from the impugned judgment reads as follows:

“In the present case, the complainant the father of the deceased Seema, in the statement before SDM, Ex.PW1/A has not given

the date or proximate time when the demand of Rs. 30,000/- was made by accused persons. Although, he has stated as PW7 in his cross examination that this demand was made about one week prior to death of his daughter but he was confronted with the statement, Ex. PW1/A in his cross examination where there was mention of demand of cash of Rs.30,000/- by accused Sonu only on phone. PW10 Shri Itwari Lal, brother of deceased Seema has stated in the examination in chief that one week prior to the incident, he had come to Delhi and reached matrimonial home of deceased. There, accused Sonu and other persons demanded of dowry of Rs. 30,000/- from him. In the further examination in chief he stated that accused Sonu made telephone call to his father on 2-3 occasions and demanded Rs. 30,000/- cash, which they refused. In the cross examination, he was confronted with the statement, Ex.PW1/B, where there was mention of demand of Rs.30,000/- and no mention that witness had come to the matrimonial home of the deceased about one week prior to the incident. Therefore, neither father of deceased PW7 in his statement before SDM Ex. PW1/A nor the brother of deceased PW10 Itwari Lal in his statement Ex.PW1/B stated anything to show that soon before death of victim Seema there was demand of dowry made by accused persons. PW8 Chenno Devi the mother of deceased Seema though stated in her examination in chief that accused persons have demanded cash of Rs. 30,000/- from deceased about 8 days prior to the death of deceased. She was confronted with statement Ex. PW8/DA recorded by IO where there was mention of demand of Rs.30,000/- by accused Sonu on telephone.

From the above statements of these 3 witnesses PW7, PW8 and PW10 although, it is clear that there was demand of dowry of Rs.30,000/- made by the accused persons from the deceased and her parents and brother but the actual date when this demand was made or the fact that this demand of dowry of Rs.30,000/- was made soon before the un-natural death of deceased Seema is not established on record. Therefore, one of the essential ingredients of section 304B IPC that the demand of dowry should be 'soon before' the death of the deceased wife

is not proved by the prosecution beyond reasonable doubt due to the confrontation of the brother, father and mother of the deceased Seema with their previous statements in their cross examination. However, the demand of dowry of Rs.30,000/- is certainly established on record besides allegations of harassment to attract section 498A IPC notwithstanding the fact that it is not established that demand of dowry was 'soon before' the un-natural death of Seema.

In view of the above, the charge u/s 304B/34 IPC against the accused persons is not established by the prosecution beyond reasonable doubt. The accused persons are therefore, acquitted for the offence punishable u/s 304B read with Section 34 IPC by giving them the benefit of doubt. But at the same time, they are convicted for the offence punishable u/s 498 read with Section 34 IPC for which the prosecution has been able to prove its case beyond reasonable doubt."

6. Learned Counsel for the Appellants, firstly, submits that there was a delay in the recording of the F.I.R (Ex. PW2/A), as the death of the deceased took place on 27.12.2005 at 1:30 pm, but the F.I.R was recorded only in the evening of 28.12.2005. Thus, there was a delay of about 32 hours in the registration of the FIR. This delay led to allegations being concocted upon advice, only to falsely implicate the appellants.

7. He further submits that no allegation of harassment against the accused has been made by Chunni Lal, the father of the deceased (PW-7), Channo Devi, mother of the deceased (PW-8), and the brother of the deceased (PW-10). As per the statements of the father, mother and brother of the deceased, the accused persons were not happy with the dowry that the deceased got at the time of the marriage and used to demand cash from the deceased to be brought from her parents. However, no allegation of harassment was made against the accused – to say that the appellants were

harassing the deceased. In this regard, the testimonies of PW-7, PW-8 and PW-10 were read in their entirety. Reference is also made to the statement of accused Ashok Kumar recorded under Section 313 Cr PC, and in particular to question nos.5 and 6 – to submit that no allegation of harassment had been made, and the accusation of demand of dowry was generally made only against appellant no.1, Sonu and the specific allegation of demand against all the accused was that they had demanded Rs.30,000/- one week prior to the death of the deceased. The Ld. Counsel submits that mere demand of dowry does not establish harassment, and harassment has to be independently established to secure the conviction of the accused under Section 498A of the IPC. Ld. Counsel places reliance on ***Ramesh Kumar v. State (Govt. of NCT of Delhi)***, 2014 (207) DLT 438.

8. On the other hand, Ld. APP submits on the aspect of delay in registration of FIR, that the parents of the deceased were informed about the death of the deceased at 5:30 p.m. on 27.12.2005, and as the SDM was not available the statements of Chunni Lal (PW-7) and Channo Devi (PW-8) were recorded on the next day i.e. 28.12.2005. This is also supported by the statement of the SDM (PW-1). Ld. APP further submits that the SDM (PW-1), Kailash Chander, Investigating officer (PW-13), SI Johnny Anto (PW-12) and ASI Sri Nath (PW-2) have not been cross examined on the aspect of delay. There was no delay in registration of FIR after the recording of statement by the SDM (PW-1). Hence, there is no delay in the registration of the FIR.

9. Ld. APP submits that before the demise of the deceased, the marriage between the deceased and appellant No.1 lasted for less than 4 years. He

submits that demand of dowry has been established and it is *per se* harassment as per Explanation (b) to Section 498A of the IPC.

10. The Ld. APP submits that father of the deceased Chunni Lal PW-7 has affirmed in his statement recorded by the SDM (PW-1) as Ex. PW1/A. He deposed before the Court that the Appellants had demanded Rs.30,000/- cash about one week before the demise of his daughter, and on the family of the deceased expressing their inability to meet the heavy demand, they had threatened that they will have to pay the cash. Ld. APP submits that the testimony of DW-7 has also been corroborated by the mother PW-8 and brother PW-10.

11. Learned APP submits that in ***Indrajit Sureshprasad Bind & Ors. vs. State of Gujarat***, 2013 (14) SCC 678 the Supreme Court held that “mere demand of dowry without proof of ‘cruelty’ or ‘harassment’ caused to the deceased by the appellants cannot make the appellants liable for the offences under Sections 304-B, 498-A or 306 IPC.” But, in ***Rajinder Singh vs. State of Punjab***, 2015 (42) SCD 444 the three judge bench emphasized the fact that any money, property or valuable security demanded by any persons as mentioned in Section 2 of the Dowry Prohibition Act, at any time during, before or after the marriage which has reasonable connection with the death of the married woman would necessarily be in relation to the marriage unless the facts clearly and unequivocally point otherwise. The Ld. APP finally submits that the case is covered by Explanation (a) to Section 498-A, IPC.

12. I have heard learned counsels, perused the record and considered the submissions and evidence recorded in the case.

13. On the aspect of delay in registration of the FIR, I do not find any merit in the submission of Id. counsel for the Appellants, that there was a delay of 32 hours in getting the FIR registered, and the delay has not been explained. On the perusal of the evidence on record, it is observed that the police was informed of the incident on 27.12.2005 at about 9:35pm (as can be seen from the FIR Ex. PW-2/A). The report of the crime team Ex. PW-3/A also records the time of occurrence as about 9:30 pm on 27.12.2005 and the time of inspection as between 12:00 night (am) to 12:30 am on 28.12.2005. Thereafter on 28.12.2005, the statement was recorded by the SDM of PW-7 and PW-10, and subsequently the FIR was registered. As the incident was reported at about 9:05 pm on 27.12.2005, it cannot be said that there was any delay in recording of the statements before the SDM on the next day i.e. 28.12.2005. Thus, in my opinion the delay of 32 hours in registration of the FIR has been satisfactorily explained by the prosecution. In fact, there is no delay, much less such as to be fatal to the case of the prosecution.

14. Section 498-A, IPC reads as follows:

“498A - Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—
(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or

danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

15. The Supreme Court in ***State of U.P. v Santosh Kumar***, 2009 (3) ACR 3040 (SC), analysed the essential ingredients of 498A IPC. It held as follows:

“The following are the essential ingredients of Section 498A IPC:

Essentials

(i) That there was a married woman;

(ii) that such woman was subjected to cruelty;

(iii) that such cruelty consisted of any willful conduct of such nature as was likely to drive such woman - to commit suicide, or to cause grave injury or danger to her life, limb or health, whether mental or physical; harassment of such woman where such harassment was - with a view to coercing such woman or any person related to her to meet any unlawful demand for any property or valuable security, or on account of failure by such woman, or any person related to her to meet the unlawful demand in able and the woman was subjected to such cruelty by - the husband of that woman; or any relative of the husband of that woman.”

(Emphasis Supplied)

16. Further, this court in the case of **Smt. Neera Singh vs. The State (Govt. of NCT of Delhi) and Ors.**, I (2007) DMC 542; has elaborated the meaning of cruelty under Section 498A, IPC in the following manner:

“Cruelty as defined in Section 498A of the IPC must meet the following requirements:

- 1. There should be harassment of the woman.*
- 2. Harassment should be with a view to coercing her or any person related to her to meet the unlawful demand of a property or valuables security.*
- 3. The harassment may be even where on account of failure by woman or any person related to her to meet any such demand earlier made.”*

17. In **Ramesh Kumar** (Supra). In this case, the Court held that:

“In order to succeed in charge under Section 498-A IPC, the prosecution required to prove that the appellants had subjected deceased Priyanka to cruelty, as defined in the explanation to the Section. It is not every cruelty which is punishable under Section 498-A of IPC. The cruelty, as defined in the explanation to 498-A of IPC, is altogether different from the cruelty, which can be subject matter of proceedings, under the provisions of Hindu Marriage Act. The cruelty, so as to attract penal provisions, contained in Section 498-A of IPC, has necessarily to be a willful conduct which is of such a nature that it is likely to drive a woman to commit suicide or cause grievous injury or danger to her life or health. The use of the expression 'willful' in the explanation to Section 498-A of IPC indicates that the conduct attributed to the accused, in order to be culpable, needs to be deliberate, aimed at causing injury to the health of the woman or bringing misery to her. If the accused knows or is reasonable expected to know that his conduct is likely to cause injury to the life, limb or health of the aggrieved woman or if his conduct is of such a nature, that causing injury to the life,

limb or health can be a natural consequence for the woman, who is recipient of such a conduct, it will attract criminal liability on the part of the husband or his relative, as the case may be. Everyone is presumed to intend the natural consequences of his act and such a presumption must necessarily be drawn even if there is no intention to cause any injury or harm to the woman. Whether the conduct in question is likely to drive the woman to cause injury to her life, limb or health, will depend upon a number of factors such as social and economic status of the parties, the level of awareness of the aggrieved woman, her temperament, state of her health, physical as well as mental and how she is likely to perceive such a behavior. If a woman is harassed with a view to coerce her or any of her relatives to meet any unlawful demand for any property or valuable security, it will also constitute cruelty, as defined in the explanation to Section 498-A of IPC. Of course, the expression 'cruelty' would take in its ambit mental cruelty as well as physical torture of the woman. If the conduct of the accused with a woman is likely to cause a reasonable apprehension in her mind that her living with the husband will be harmful and injurious to her life and safety, such a conduct would attract criminal liability, envisaged in Section 498-A of IPC.

If the woman is harassed on account of her failure or the failure of her relatives to meet an unlawful demand for property or valuable security, that also constitutes cruelty, within the meaning of Section 498-A of IPC. The expression 'harassment' has not been defined in Section 498-A of IPC, but its dictionary meaning is to subject someone to continuous vexatious attacks, questions, demands or other unpleasantness, etc. But, it is not harassment of every nature which is punishable under Section 498-A of IPC. In order to attract criminal liability, there should be torture physical or mental, by positive acts. Such acts should be aimed at persuading or compelling the woman or her relatives to meet an unlawful demand of any property or valuable security or it

should be actuated by the failure of the woman or her relative to meet such a demand.”

(Emphasis supplied)

18. In the instant case, no specific instance of harassment has been alleged by either the father of the deceased in his statement before the SDM (Ex.PW 1/A), mother of the deceased in her statement recorded under Section 161 Cr PC (Ex. PW 8/DA), or by the brother of the deceased in his statement before the SDM (Ex. PW 1/B). These statements made by these 3 witnesses primarily pertain to the demand of Rs.30,000/- allegedly made by the Appellants.

19. PW-7 in his statement recorded before the SDM, to a pointed question to the effect “After the wedding, did the in-laws of your daughter harass her (tang karte the)?”. PW-7 replied to the effect, “So far as I know they used to harass my daughter sometimes”. Apart from this general statement with regard to harassment, PW-7 did not state before the SDM as to how the deceased was harassed. The means adopted for such harassment were not disclosed. PW-8 in her statement recorded under Section 161, inter alia, stated to the effect that after her marriage when the deceased came back to her parental home after sometime, she disclosed that her husband Sonu, brother-in-law (jeth) Ashok and sister-in-law (jethni) Sooraj used to taunt her for bringing less dowry and also harassed her. She also did not elaborate on the manner in which the deceased was harassed by the accused. PW-10, Sh. Itwari Lal, the brother of the deceased also recorded his statement before the SDM and to the pointed question, namely, whether the in laws of the deceased used to harass her. PW-10 responded by stating that

after the wedding he used to go to the residence of his sister, and her in-laws used to keep demanding something or the other. He also stated that the in-laws, i.e. her mother-in-law, husband, two brothers-in-law and sisters-in-law (devar and devrani) used to taunt her that she would not bear a child, and used to harass her. However, in their respective testimonies recorded before the Court, neither PW-7, nor PW-8, nor PW-9 made any specific allegation of harassment of the deceased by the accused. After describing the dowry items given at the time of marriage, PW-7 in his examination in chief stated as follows:

“At that time the accused were happy with dowry articles given by us. However, the accused persons were not happy after the marriage. They used to demand cash from deceased to be brought from us. About one week prior to death of deceased accused persons had demanded Rs.30,000/- cash. We expressed our inability to meet this heavy demand of cash of accused persons. The accused persons threatened that we will have to pay the cash”.

20. PW-8 in her testimony, after describing the articles given in dowry at the time of marriage, inter alia, deposed as follows:

“After the marriage, deceased was not kept properly by the accused persons. Deceased had no issue and on that account, the accused also used to quarrel with her.

Accused persons had also demanded cash Rs.30,000/- from deceased about 8 days prior to the death of the deceased. We expressed our inability to meet this heavy demand of cash of accused persons”.

21. Similarly, PW-10, inter alia, deposed as follows:

“I used to visit the deceased at her matrimonial home off and on. The accused used to quarrel with deceased. I made the accused understand. I also made my deceased sister understand.

About one week prior to incident I had come to Delhi and reached at the matrimonial home of deceased. There accused Sonu and other accused persons demanded Rs.30000/- from me. I expressed my inability to meet this demand.

On return I informed my father of this demand of accused”.

22. Thus, the prosecution has not led any evidence to establish the alleged harassment of the deceased by the accused, much less harassment involving physical or mental torture by positive acts. It has not been established that any specific acts of harassment were resorted to by the accused to persuade or compel the deceased, or her relatives, to meet the unlawful demand of property or valuable security, or that the harassment was actuated by failure of the deceased, or her relatives, to meet the demand. The defence of the accused that the deceased was suffering from tuberculosis and on account of the fact that she was so suffering she was not able to bear a child led her to take her own life, appears to be probable. The prosecution has failed to establish that the demands made by the appellants had a reasonable connection with the death of the deceased. The facts point to the clear possibility of the deceased suffering from a disturbed mental state on account of her suffering from tuberculosis and on account of her not being able to bear a child.

23. It appears that, though, demand of dowry was made as per the statements of the father, mother and brother of the deceased, but no culpable

harassment, per se, has been established by them and thus the un-natural death of the deceased cannot be the consequence of the demand alone.

24. The cruelty arising from the demand of dowry, so as to attract penal provisions contained in Section 498-A of IPC, should necessarily be willful conduct which is of such a nature, that it is likely to drive a woman to commit suicide, or cause grievous injury or danger to her life or health. Whether the conduct of the accused is likely to drive the woman to cause injury to her life, limb or health, will depend upon a number of factors such as social and economic status of the parties, the level of awareness of the aggrieved woman, her temperament, state of her health – physical as well as mental, and how she is likely to perceive such a behavior. There is no evidence brought on record by the prosecution as to how the deceased was harassed to such an extent, that she was driven to take her own life.

25. For all the aforesaid reasons, the impugned judgment appears to be patently laconic and is hereby set aside. The appellants are entitled to the benefit of the doubt which is created on the basis of the evidence brought on record. The appeal succeeds and the appellants stand acquitted.

(VIPIN SANGHI)
JUDGE

JULY 02, 2015