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

Date of Decision: 5th March, 2015

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Crl.A. 1232/2012 & Crl.M.B.756/2014

INDERJEET SINGH

..... Appellant

Through: Mr.Kaushal Yadav, Mr.R.K.S.Yadav
and Mr.Nandlal Mishra, Advocates

versus

STATE NCT OF DELHI

..... Respondent

Through: Ms.Ritu Gauba, Additional Public
Prosecutor for the State.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this appeal is to the judgment dated 01.10.2012 passed by learned Additional Sessions Judge, South-East, Saket in Sessions Case No.318/2009 arising out of FIR No.266/09 registered at Police Station Sangam Vihar under Section 498A/304B IPC whereby the appellant was convicted for offences punishable under Section 304B as well as 498A IPC and order on sentence dated 08.10.2012 vide which he was sentenced to undergo rigorous imprisonment for 10 years for offence under Section 304B IPC and 3 years Rigorous Imprisonment and a fine of Rs.10,000/- for offence under Section 498A IPC in default, to undergo six months simple imprisonment. Both sentences were ordered to run concurrently. The appellant was granted benefit of Section 428 Cr.P.C. The gravamen of the prosecution case is as under:

2. On 03.07.2009 on receipt of an information in police station Sangam Vihar from police control room about a lady having died by hanging in Gali No.3, D-Block, Near Sangam Vihar Sani Mandir, DD No.14-A Ex.PW8/A was recorded. The same was assigned to PW14 ASI Pritam Singh who alongwith PW10 constable Rajender Singh reached the house. One lady by the name of Smt.Pinki was found hanging on a ceiling fan. Interrogation revealed that Pinki has died within four years of her marriage. Information was given to PW16 Executive Magistrate Sh Alok Sharma. Executive Magistrate recorded statement of mother of the deceased PW7 Smt.Asha Devi wherein she stated *inter alia* that her daughter Pinki got married to Inderjeet alias Rinku on 15.02.2006. Dowry was given as per the demands made by Inderjeet and his family members. They also promised to make payments later. For 2-3 months there was no complaint. Thereafter, the victim was ousted from her matrimonial home by her mother-in-law after giving beatings. On their persuasion, in-laws of Pinki took her back. Inderjeet took her to house no. D-3/145, Sangam Vihar. She was informed by the neighbours that Pinki was beaten by accused Inderjeet and his father Udai Veer Singh for 3-4 days. His sister and brother-in-law were also involved in the beating. According to her, the victim died due to demand of Rs.50,000/- and a vehicle. She prayed for action against them. On the recommendation of Executive Magistrate, FIR in question was registered for offences punishable under Section 498A/304B/34 IPC. After completion of investigation, chargesheet was filed against the accused.

3. Accused pleaded not guilty to the charge and claimed trial. In order to substantiate its case, prosecution in all examined 16 witnesses. Accused pleaded his innocence and examined one witness DW-1 Bhawar Singh. Vide

impugned judgment and order on sentence, the learned Additional Sessions Judge convicted the appellant and sentenced, as mentioned above.

4. Feeling aggrieved, present appeal has been preferred. Appearing in support of the appeal, learned counsel for the appellant contended that the learned Additional Sessions Judge erred in convicting the appellant on the basis of evidence on record. It was submitted that in the absence of any evidence to prove the charges under Section 304B and 498A IPC, the learned Trial Court had erred in merely relying on the presumption available under Section 304B regarding the death of a woman by any burns or bodily injury or otherwise than under normal circumstances, within seven years of her marriage, in coming to a conclusion that there would be a natural inference in such circumstance under Section 113B of the Evidence Act, 1872 that the accused had caused the death of Pinki by torturing her physically and mentally so as to compel the deceased to commit suicide.

5. Learned counsel further submitted that the learned Trial Court overlooked the fact that in order to prove the case of dowry death, it would have to be shown, in addition to the fact that the death took place otherwise than in the normal circumstances within seven years of marriage, “soon before her death” the wife was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. It was further submitted that the provisions of Section 113A of the Evidence Act were not applicable in this case since no case for abatement of suicide by the husband or any of the husband’s relatives had been alleged. On the other hand, the case sought to be made out is one under Section 113 B relating to presumption as to dowry death. In order to arrive at the presumption of dowry death, it would have to be shown by the

prosecution that soon before her death, such woman had been subjected to cruelty or harassment for, or in connection with, any demand for dowry, which would lead to a presumption that such person caused the dowry death. In the instant case, prosecution had not established that prior to the death of victim Pinki she had been either subjected to cruelty or harassment for, or in connection with any demand for dowry. It was pointed out that the only evidence on which reliance has been placed by the learned Trial Court for convicting the appellant was the evidence of PW-1 Rinki-sister; PW-3 Santosh Kumar-Mausa; PW-7 Asha Devi-mother, PW-12 Vimal Singh Tomar-brother in law and PW-13 Indal Singh-brother of deceased. They all are close relatives of the deceased and their statements are full of contradiction and omissions which was fatal to the prosecution case. In any case, there was practically no evidence to show that soon before her death, the deceased was subjected to any cruelty or harassment for, or in connection with, the demands for dowry. There was also no finding in this regard. In the absence of proving the essential ingredients of Section 304B, no presumption under Section 113B Evidence Act could have been drawn against the appellant. Under the circumstances, it was urged that the judgment and order of the Trial Court deserves to be set aside. *Reliance was placed on Durga Prasad and Another vs. State of Madhya Pradesh (2010) 9 SCC 73; Subhash vs. State of Haryana (2011) 2 SCC 715; and Mustafa Shahadal Shaikh vs. The state of Maharashtra (2012) 11 SCC 397.*

6. Opposing the submissions made by learned counsel for the appellant, learned Public Prosecutor for the State submitted that it is a case of dowry death of extreme brutality as death has taken place within four years of marriage and deceased was pregnant at the time of death. There are specific

and grave allegations of dowry demand in the form of Rs.50,000/- and a motorcycle by the accused. Testimony of complainant PW-7 Smt.Asha Devi is cogent, credible and creditworthy and is duly corroborated by PW-1, PW-3, PW-12 and PW-13. Even the defence counsel during arguments conceded that demand was made at the time of marriage though the prosecution case goes further that the victim was kicked out from matrimonial home and severe beatings administered one day before death. Beatings to the girl one day before death was in connection with demand of dowry. The victim killed herself or was killed by the accused at 12.45 pm i.e., midnight of 03.07.2009 when the accused was present in the house as such, a presumption under Section 106 of Evidence Act arises and the accused had not discharged the onus of proof. Minor variations in the testimony of the witnesses is inconsequential as witnesses are illiterate and rustic people. Cruelty for demand of dowry was soon before death and continued from the date of marriage till her death. As such, the impugned judgment does not suffer from any infirmity. It was further submitted that the sentence awarded to the appellant is very lenient as victim was pregnant at the time of her death. Compensation under Section 357 Cr.P.C be also awarded to the complainant who had lost her daughter.

7. Before considering the prosecution case as well as the defence pleaded, it is desirable to extract the relevant provisions of Section 304B which relates to Dowry death.

“304B Dowry death. – (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for

dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation – For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961)

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment of life”

8. The above provision was inserted by Act 43 of 1986 and came into force w.e.f 19.11.1986. There is no dispute about the applicability of the above provision since the marriage and the death occurred after 1986. In order to convict an accused for offence punishable under Section 304B of IPC, the following essentials must be satisfied:

- i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;
- ii) such death must have occurred within seven years of her marriage;
- iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband;
- iv) such cruelty or harassment must be for, or in connection with demand for dowry.

9. When the above ingredients are established by reliable and acceptable evidence, such death shall be called dowry death and such husband or his relatives shall be deemed to have caused her death. If the above-mentioned ingredients attract in view of the special provision, the court shall presume and it shall record such fact as

proved unless and until it is disproved by the accused. However, it is open to the accused to adduce such evidence for disproving such compulsory presumption as the burden is unmistakably on him to do so and he can discharge such burden by getting an answer through cross-examination of prosecution witnesses or by adducing evidence on the defence side.

10. Section 113B of the Indian Evidence Act, 1872 speaks about presumption as to dowry death which reads as under:-

“113B. Presumption as to dowry death – When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation. – For the purposes of this section, “dowry death” shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).”

11. As stated earlier, the prosecution under Section 304B of IPC cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and such was caused “soon before her death”. In view of the explanation to the said section, the word “dowry” has to be understood as defined in Section 2 of the Dowry Prohibition Act, 1961 which reads as under:-

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 a other person, to either party to the marriage or to any other person; at or before or after the marriage as consideration for the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.”*

12. To attract the provisions of Section 304B, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty or harassment “for, or in connection with the demand for dowry”. The expression “soon before her death” used in Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test. In fact, learned counsel appearing for the appellant submitted that there is no proximity for the alleged demand of dowry and harassment. With regard to the said claim, we shall advert to the same while considering the evidence led in by the prosecution. Though the language used “soon before her death”, no definite period has been enacted and the expression “soon before her death” had not been defined in both the enactments. Accordingly, the determination of the period which can come within the term “soon before her death” is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. These principles have been reiterated in *Kaliyaperumal vs. State of Tamil Nadu*, AIR 2003 SC 3828 and *Yashoda vs State of Madhya Pradesh*, (2004) 3 SCC 98, *Mustafa Shahadal Shaikh (supra)*.

13. So far as the first two ingredients of Section 304BIPC, there is no dispute that Pinki, since deceased, got married to Inderjeet on 15.02.2006 and she died on 03.07.2009 i.e., within seven years of her marriage. Death of Pinki was due to hanging and, therefore, it was “otherwise than under normal circumstances”.

14. The Crucial question is whether soon before her death Pinki was subjected to cruelty or harassment by the accused who is her husband and such cruelty or harassment was in connection with demand for dowry.

15. In this regard the material prosecution witnesses are PW-1, PW-3, PW-7, PW-12 and PW-13. PW-7 Smt.Asha Devi is the mother of the deceased and is the complainant on whose statement the police machinery was set in motion. In her statement Ex.PW-7/A made to Sh.Alok Sharma, Executive Magistrate, Smt.Asha Devi disclosed that at the time of marriage Rinku (Accused) and his family members demanded dowry. Whatever was possible was given and they were told that in future also they will fulfil their demands. There was no complaint till 2-3 months of the marriage but thereafter, mother-in-law of Pinki turned her out of the matrimonial home after administering beatings. However, she persuaded her in-laws to take her back and then the accused took her to H.No. D-3/145, Sangam Vihar. She was informed by the neighbours that for last 3-4 days Rinku and Udai Veer Singh (father-in-law) were beating her daughter. Sisters and brother-in law of Inderjeet were also involved in the quarrel. Her daughter has died due to harassment and beating given by the accused and his family members for not fulfilling the demand of Rs.50,000/- and vehicle. In her deposition before the Court she testified that after about two years of marriage of thier daughter Pinki, her husband Shivraj Singh expired on 19.04.2006. There

seems to be a typographical error regarding 'years' as it is the consistent case of prosecution that Shivraj Singh, father of the deceased, expired after two months of the marriage and even as per the date given by the witness her husband expired after two months of the marriage as marriage took place on 15.02.2006 and her husband died on 19.04.2006. After the death of her husband, her daughter had come to her house and after eight days accused Rinku, his father-in-law and brother-in-law came to her house for taking her back. At that time they demanded Rs.50,000/- and one motorcycle, however she gave Rs.5000/- to Pinki. Thereafter Pinki was not sent to her parental home by the accused and his family members on account of not meeting their demand of Rs.50,000/- and a motorcycle. In the month of February, 2007 her son Indal got married and on 22.04.2008 her younger daughter Rinki got married but on both the occasions Pinki was not sent for attending the marriages. On the eve of Raksha Bandhan in the year 2006 she sent Santosh Kumar to bring Pinki but she was not sent by her in-laws. They insisted upon their demand of Rs.50,000/- and one motorcycle. One day before the incident, her daughter had made a phone call to her and informed that her husband and his family members were beating her and causing harassment to her. Her father-in-law Udai Veer Singh was abusing her. She pacified her while giving assurance that she will meet their demand as and when it will be possible. Next day, she received a call from her brother Gajender who used to live in Sangam Vihar, New Delhi that Pinki has been hanged by her in-laws. She alongwith her relatives came to Sangam Vihar in the early hours of 04.07.2009. There she came to know that the dead body of the deceased has been sent to hospital. The dead body of deceased was handed over to her in-laws. Her statement Ex.PW-7/A was recorded by

SDM. In cross-examination she stated that when Barat came, demand of Rs.50,000/- and one motorcycle was made by the in-laws of deceased Pinki. Her husband assured that he will give the same after marriage and thereafter the marriage was solemnised peacefully. This demand was repeated to her when the accused had come to take deceased to her matrimonial home on 29.04.2006. She was confronted with her statement Ex.PW-7/A where there was no specific mention regarding the demand made before the Barat came or that her daughter was beaten due to non-fulfilment of demand. She was also confronted with other portions of her statement made before the Court with her complaint Ex.PW-7/A.

16. PW-1 Smt.Rinki is the sister of the deceased. She has also deposed that her father expired after two months of the marriage of the deceased. Her Mausaji had gone to bring her to her parental home but her in-laws did not permit her to leave the matrimonial home till the demand of Rs.50,000/- and motorcycle is met. She also deposed that Pinki was not sent to her parental home even at the time of her marriage and that of his brother. According to her, one day she met her sister when they were going to answer the call of nature Pinki told her to ask her mother to give Rs.50,000/- and a motorcycle so that thereafter she can visit her parental home. PW-3 Santosh Kumar corroborated the testimony of PW-7 and PW-1 regarding non-sending of Pinki with him on the eve of Raksha Bandhan due to non-fulfilment of demand of Rs.50,000/- and a motorcycle. To the same effect is the testimony of PW-12 Vimal Singh Tomar, brother-in-law of the deceased, PW-13 Indal Singh, brother of the deceased.

17. Certain variations has come in the testimony of these witnesses as to when the demand of Rs.50,000/- and motorcycle was made however all the

witnesses are consistent in deposing that there was demand of Rs.50,000/- and one motorcycle from the side of accused and his family members. Due to non-fulfilment of demand, the deceased was not allowed to visit her parental house so much so that she was not even sent to attend the marriage of her own brother Indal and sister Rinki. It has also come that there was no communication between the deceased and her family members for last about three years. Under the circumstances, the factum of harassment to the deceased on account of non-fulfilment of demand of dowry is proved.

18. The next question for consideration is whether “soon before her death” the deceased was subjected to any harassment for, or in connection with demand of dowry. In this regard PW-7 Smt.Asha Devi has deposed that one day before the incident her daughter made a phone call to her that her husband and his family members were beating her and causing harassment to her. She however pacified her by giving assurance that she will meet the demand when she will be capable of doing the same. She further deposed that she received a call from her brother Gajender who used to live in Sangam Vihar that Pinki has been hanged by her in-laws. However, the factum of receiving a telephone call from her daughter Pinki was not mentioned by her in her previous statement Ex.PW-7/A with which she was duly confronted. This was a very material omission in the initial statement made by the mother of the deceased before the SDM. Learned counsel for the appellant referred to the decision rendered in *Durga Prasad and Another (supra)* and *Subhash (supra)* where it was observed that if a significant omission is made in statement of a witness recorded under Section 161 Cr.P.C the same may amount to a contradiction. Reference was made to explanation to Section 162 Cr.P.C. which reads as under:-

“Explanation. – An omission to state a fact or circumstance in the statement referred to in sub-section(1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

A bare reading of this Explanation would reveal that if a significant omission is made in the statement of a witness recorded under Section 161 Cr.P.C, the same may amount to a contradiction and that whether it so amounts is a question of fact in each case.

19. The ocular evidence with regard to the events preceded the actual incident rested exclusively on the statement of aforesaid prosecution witnesses. The glaring omission made by PW-7 is a material contradiction and does not find support from any other material on record. This assumes significance from the fact that for last three years there was no communication between the deceased and her family members. No call details have been collected by the Investigating Officer to prove that any phone call was made by the deceased to her mother one day prior to the incident. Furthermore, assuming that such a call was made, the allegations were confined to the fact that deceased was being beaten by her husband and his family members who were harassing her, however, there is no averment that these beatings and harassment was on account of non-fulfilment of their demands. It is a matter of record that the deceased alongwith the accused was residing in a rented accommodation at Sangam Vihar, New Delhi. PW-11 Sh.Alok Sharma, Executive Magistrate has deposed that he visited the spot. It was a residential area which was thickly populated. He further deposed that nobody from the resident of the locality complained to him about any harassment, torture or demand of dowry when he visited the spot. To the same effect is the testimony of PW-10 Constable Rajender Singh,

PW-14 ASI Pritam Singh, PW-15 Inspector Dilip Singh who have also deposed that there was a crowd at the spot when they reached there. Nobody from the locality complained to them about any harassment, torture or demand of dowry. PW-2 Dr.Shiva Prasad who conducted post mortem on the dead body of the deceased Pinki did not find any external injuries on her person. He admitted in his cross-examination that he did not find any external injury suggestive of any scuffle etc. on the dead body. Under the circumstances, the evidence coming on record short of proving that “soon before death” the deceased was subjected to cruelty or harassment for or in connection with demand of dowry. Although the witnesses are consistent in deposing that there was demand of Rs.50,000/- and a motorcycle but complainant herself has categorically deposed that this demand was made specifically on 15.02.2006 i.e., the date of marriage and on 29.04.2006 when after the death of her husband the accused and his family members had come to take back Pinki with them. Pinki had not visited her parental house for last about three years. Except for the initial visit of Santosh Kumar on the eve of Raksha Bandhan in the year 2006 itself, there is nothing to show that thereafter any of the family members visited the deceased. Under the circumstances, there is no proximity and live link between the effect of cruelty based on dowry demand and the death. That being so, one of the most essential ingredients of Section 304B IPC has not been proved. This aspect of the matter in fact was not even gone into by learned Trial Court. In fact, the learned Trial Court went on arriving at the conclusion that due to non-fulfilment of demands the victim was not allowed to go to her parental house and this was enough to drive the woman to commit suicide or to cause injury or torture to her own life. The appellant however has been convicted

for offence under Section 304B IPC and not under Section 306 IPC. Moreover, the learned Trial Court has not even gone into whether the presumption under Section 113B of the Evidence Act is to be raised against the appellant or not. In any case, the presumption under Section 113B Evidence Act can be raised only when the prosecution succeeds in establishing the essential ingredient of Section 304B IPC. Since in the instant case the factum of cruelty or harassment to the deceased on account of dowry “soon before her death” has not been established beyond reasonable doubt as such, presumption under this Section cannot be raised against the accused.

20. In this view of the matter, the findings of the learned Trial Court convicting the appellant under Section 304B IPC cannot be sustained and is accordingly set aside.

21. Coming to Section 498A which speaks about cruelty by husband or relatives of husband, it is useful to extract the said provision:-

“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 wilful 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.”*

22. The object of inserting the above section by Act 46 of 1983 which came into force w.e.f 25.12.1983 was with a view to punish the

husband or his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The prosecution evidence, which has been already discussed, clearly prove the ingredients of cruelty and no further elaboration is required. On the other hand, I fully agree with the conclusion arrived at by the Trial Court in this regard. Accordingly, findings of the Trial Court under Section 498A IPC are affirmed.

23. Coming to the quantum of sentence, the appellant was sentenced to undergo rigorous imprisonment for a period of three years and to pay a sum of Rs.10,000/- as fine. In default of payment of fine, six months simple imprisonment was imposed. A perusal of nominal roll dated 12.05.2014 goes to show that as on 12.05.2014 the appellant has already undergone a period of 2 years 9 months and 27 days besides earning remission of 4 months and 24 days. Under the circumstances, so far as substantive sentence is concerned, the appellant has already undergone the said period. Sentence of fine and default sentence is maintained.

24. In view of the foregoing reasons, the appeal is partly allowed while setting aside the conviction of the appellant under Section 304B IPC, the conviction and order of sentence under Section 498A IPC is maintained. PW-7 Smt.Asha Devi lost her daughter who was hardly 27 years of age within three and a half years of her marriage and at that time she was 5 months pregnant, as such, as provided under Section 357 of the Code of Criminal Procedure, a sum of Rs.1 lac is awarded as compensation to her failing which to undergo simple imprisonment for a period of nine months [vide *K.A. Abbas H.S.A. vs. Sabur Joseph & Anr.* (2010) 6 SCC 23]. It is

clarified that in case of non-payment of compensation amount, the appellant will not be entitled for benefit of Section 428 Cr.P.C for default of sentence. The appeal stands disposed of accordingly. Pending application, if any, also stands disposed of.

Copy of the judgment along with the Trial Court record be sent back. Appellant be informed through the Jail Superintendent.

(SUNITA GUPTA)
JUDGE

MARCH 05, 2015
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