

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRIMINAL LEAVE PETITION No. 661/2014

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Date of decision: 7th May, 2015

STATE (G.N.C.T) of Delhi

.....APPELLANT

Through: Mr. Sanjeev Bhandari, ASC (Crl.) for
State with Insp. Mahesh Kumar, Police
Station-Chawla.

Versus

VIJAY KUMAR AND OTHER

.....RESPONDENTS

Through : Mr. S. S. Hora, Advocate.

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J.

1. By the present Leave Petition filed under Section 378 (3) of the Code of Criminal Procedure, the State seeks leave to appeal against the judgment dated 30.07.2014 passed by the learned Additional Sessions Judge, Delhi in Session Case No. 126/14, whereby the respondents (accused before the Trial Court) were acquitted of the charges punishable under Sections 498A/304B/34 of the Indian Penal Code.
2. The facts of the case, as noticed by the learned trial court, are as under:

“a) On 03.11.2007 at about 12:46 a.m., police control room received a call that in front of H. No. 1, 80 Yards plot, Sultanpuri, a lady was burnt herself (Ek aurat ne aaga laga li hai). The said information was filed up in the PCR form and was also given to the P.S. Sultan Puri which was reduced into DD No. 32B. On receipt of the said DD, SI Rajesh (first IO) along with Ct. Shashi Kumar went to the spot i.e. H. No. 6/14, 80

Yards, Friends Enclave, Sultanpuri, Delhi and came to know that one Pooja (deceased) has already been removed to Sanjay Gandhi Memorial Hospital (SGM) by one public person Sanjay.

b) SI Rajesh Kumar visited the SGM Hospital, and found Pooja (deceased) admitted in the hospital vide MLC No. 16466 with alleged history of burn while cooking, on her face, chest, abdomen and leg and she was 80% burnt. Said Pooja was referred to Surgical Department for treatment at LNJP Hospital.

c) SI Rajesh called the crime team at the spot. SI Suraj Bhan, then I/C Crime Team, N/W District visited the spot and inspected the same and thereafter he gave the report. ASI Ramesh Chander, photographer of mobile crime team took the six photographs of the spot. SI Ramesh Kumar seized a stove having some kerosene oil. He also seized a match box bearing word "AIM" and two burnt match sticks and one cream colour plastic chappal and some burnt clothes from the spot.

d) In the evening of 06.11.2007, Pooja expired in the hospital.

e) Sh. Sukhvir Singh then Executive Magistrate, Saraswati Vihar, was informed who visited the hospital on 08.11.2007 and recorded statement of Smt. Santra Devi (mother of Pooja) at LNJP hospital. He also recorded the brief statement of Mamta (sister of Pooja). Post-mortem on the body of Pooja was conducted by Dr. Kulbhushan who opined that death was due to septicemia consequent upon flame burn injuries. He also opined that all injuries were ante mortem and could be caused by flames of fire. After the post-mortem dead body was handed over to her relatives. Said Sukhvir Singh, then Executive Magistrate issued directions to the SHO P.S. Sultanpuri for registration of FIR under relevant provisions of law and consequently present FIR u/s. 498-A/304-B/34 IPC was registered.

f) As per the story of the prosecution deceased got married with accused Vijay Kumar @ Monu on 11.01.2005 and was residing with him alongwith other family members. Accused Rajbir Singh is the father-in-law, accused Smt. Azad is the mother-in-law, accused Raj Kapoor @ Sonu is the brother-in-law

(Jeth) and accused Sunny is also brother-in-law (Devar) of Pooja (deceased).

g) It is alleged that after the marriage Pooja was treated with cruelty physical as well as mental by above said accused persons for not bringing sufficient dowry and all the family members used to demand motorcycle in dowry and also used to give beatings to her. It is further alleged that on 02.11.2007, Pooja (deceased) had visited her parental house alongwith her husband accused Vijay who demanded money in lieu of the motorcycle. Smt. Santra Devi, mother of the Pooja (deceased) took Rs.20,000/- (twenty thousand) from her sister's daughter and gave it to accused Vijay for motorcycle.

h) After the completion of investigation, since there were allegation of demand of dowry soon before the death of deceased Pooja and her death was caused otherwise than normal circumstances within seven years of her marriage, therefore, all the accused persons were chargesheeted for offences u/s 498-A/304-B/34 IPC.

i) Vide order dated 11.02.2008, Ld. MM took the cognizance of the offence and subsequently, since the offence u/s 304-B was exclusively triable by the Court of sessions, therefore vide order dated 30.06.2008, case was committed to the court of sessions."

3. To bring home the guilt against the respondents, prosecution examined 21 witnesses in all. Material witnesses were PW2 Mamta, sister of the deceased, PW3 Santra Devi, mother of the deceased. In their statement recorded under Section 313 of Code of Criminal Procedure, the respondents pleaded false implication and denied their complicity in the alleged offence. After hearing the contentions of the parties and appreciating the evidence on record, the learned Trial Court, by the impugned judgment dated 10.07.2014 acquitted the respondents for the offences they have been charged.

4. Mr. Sanjeev Bhandari, Learned Additional Standing Counsel appearing for State vehemently argued that the prosecution has been successfully able to prove its case beyond any reasonable doubt as the deceased got married to respondent No. 1 on 01.11.2005 and died on 06.11.2007 i.e. within seven years of her marriage otherwise than in normal circumstances and the present case falls within the purview of Section 304 B of the Indian Penal Code; that deceased was treated with physical cruelty as well as mental cruelty by her in-laws for bringing insufficient dowry; that on 02.11.2007, one day before the incident the deceased along with respondent No.1 visited the house of her parents and respondent No.1 demanded money in lieu of motorcycle and the mother of the deceased gave Rs. 20,000/- to respondent No.1.
5. On the other hand, Mr. S. S. Hora, Advocate appearing for respondents supported the impugned judgment passed by the Trial Court and contended that appellants are innocent and have been falsely implicated in the present case as prosecution failed to tender any explanation for delay in registering the FIR as the alleged incident took place on 03.11.2007 and the deceased died on 06.11.2007 whereas the FIR was lodged on the statement of mother of deceased recorded on 08.11.2007; that there is no dying declaration or statement made by deceased against any of the appellants as she was not in a fit condition to give a statement; that prosecution has failed to bring forward any material on record to suggest any specific demand of dowry or that soon before her death the deceased was subjected to cruelty or harassment made by the appellants.

6. We have carefully considered the rival contentions and perused the evidence on record and the impugned judgment.
7. Before proceeding further, we shall discuss the term “Dowry”. Hon’ble Supreme Court has explained the same in ***S. Gopal Reddy Vs. State of Andhra Pradesh, AIR 1996 SC 2184*** that “Property or valuable security so as to constitute dowry within the meaning of the Act must, therefore, be given or demanded as consideration for marriage.” Therefore, the term ‘consideration’ assumes importance because if any article is not given as a consideration for marriage, then it would not be covered with definition of dowry. The term “Dowry” was dealt with by Supreme Court in other cases as well. In ***Appasaheb & Anr. Vs. State of Maharashtra, 2007 (1) Crimes 110 (SC)***, Hon’ble Supreme Court as held as under:

“9. In view of the aforesaid definition of the word “dowry” any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally

understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section CrI. Leave Petition No. 464/2014 Page 9 of 14 304-B IPC viz. Demand for dowry is not established the conviction of the appellants cannot be sustained."

8. To attract conviction Under Section 304B Indian Penal Code, the prosecution should adduce evidence to show that "soon before her death", the deceased was subjected to cruelty or harassment. There must always be proximate and live link between the effect of cruelty based on dowry demand and the concerned death. In the case of ***Hira Lal and Ors. v. State (Govt. of NCT) Delhi : (2003) 8 SCC 80***, in paragraph (9) it was observed as under:

"9. A conjoint reading of Section 113B of the Evidence Act and Section 304-B Indian Penal Code shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304B Indian Penal Code are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an

offence of dowry death as well as for raising a presumption Under Section 113-B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304B Indian Penal Code and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods "soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession". The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. 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."

Same principle was also expressed in ***State of A.P. v. Raj Gopal Asawa and Anr. : (2004) 4 SCC 470; Balwant Singh and Anr. v. State of Punjab : (2004) 7 SCC 724, Kaliyaperumal and Anr. v. State of Tamil Nadu : (2004) 9 SCC 157; Kamesh Panjiyar @ Kamlesh Panjiyar v. State of Bihar : (2005) 2 SCC 388; Harjit Singh v. State of Punjab : (2006) 1 SCC 463; Biswajit Haider @ Babu Haider and Ors. v. State of West Bengal : (2008) 1 SCC 202 and Narayanamurthy v. State of Karnataka and Anr. : (2008) 16 SCC 512.***

9. Further, to sustain the conviction Under Section 304B Indian Penal Code, the following essential ingredients are to be established:

- (i) The death of a woman should be caused by burns or bodily injury or otherwise than under a 'normal circumstance'.
- (ii) Such a death should have occurred within seven years of her marriage;
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry and
- (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

10 If any death is caused in connection with dowry demand, Section 113-B of the Evidence Act also comes into play. Both these Sections 304-B Indian Penal Code and Section 113-B of the Evidence Act were inserted by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113B reads as follows:

“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 It is imperative to note that both these sections set out a common point of reference for establishing guilt of the accused person under Section 304B of the Indian Penal Code, which is "the woman must

have been 'soon before her death' subjected to cruelty or harassment 'for or in connection with the demand of dowry'".

- 12 It is admitted case of the parties that the deceased was married to respondent No.1 on 11.01.2005 and died within seven years of her marriage on 06.11.2007 in an unnatural circumstances. The question therefore arises is whether the respondents made any demand for dowry subjected the deceased to cruelty or harassment for or in connection with such demands.
- 13 To answer the aforesaid question, it is necessary to examine the testimonies of material witnesses examined by the prosecution. PW2 Mamta, sister of the deceased deposed :

“xxxxxxx After the marriage, my sister used to tell me that in connection with demand of dowry, accused Smt. Azad (mother-in-law), Rajbir (father-in-law), Vijay Kumar (husband), Sonu and Sunny (both brother-in-law, Dewars) (all correctly identified) used to treat her with cruelty i.e. physical as well as mental and used to ask her to bring more dowry. Accused Vijay Kumar used to ask my sister to bring at least a motorcycle in the dowry and they all used to give beatings to my sister Pooja. My sister also used to tell me, “Aisi Zindagi se to marna hi better hai” & she cannot tolerate the cruelties being committed on her. On 15th October, 2005, my sister Pooja gave birth to a female child and thereafter, all the accused started harassing her by saying, “ek to dahej mei kuch nahi lai upar se ladki paida kar ke kharcha badha diya. On 21.05.2007, my sister again gave birth to a female child and thereafter, all the accused started harassing her by saying, ‘ek aur ladki paida kar ke kharcha badha diya aur ye kharcha Pooja ko apne ghar se lana padega’”. At the time of birth of both the daughters of my sister Pooja, my mother had given sufficient gifts to the accused persons but they were not satisfied with said gifts and used to treat my sister with cruelty.”

- 14 Another material witness Smt. Santra Devi, mother of the deceased appeared in the witness box as PW3 and deposed :

“xxxxxx After marriage my daughter started residing with her husband Vijay at his house situated at Sultan Puri. At that time parents of Vijay i.e. Sh. Rajbir Singh (father), Smt. Azad (Mother), Elder brother Raj Kapoor @ SOnu, Younger brother Sunni were residing all are present in the court today (correctly identified). I have given in the marriage all the articles like Sofa, fridge, television, ceiling fans except Motorcycle. After marriage whenever my daughter visited my house, she was complaining about the behaviour of all accused persons. She stated that she was tortured for want of more dowry. She further stated that they are demanding motorcycle in dowry. I could not meet the demand of accused persons as I was doing the work in the houses. After about 1 year my daughter blessed with a female child and on this I have given enough articles which was given in chuchak but all the accused persons were not happy and they were tortured my daughter for demand of more dowry. Accused persons were giving beatings to my daughter because I could not fulfil their demand of dowry. She was cursing by accused persons that you have brought less dowry and now you have born to a female child due to which our expenses increase further. Accused persons continued to torture my daughter and my daughter never lead a comfortable life they were not at all happy with the article I have given them.

On 21.05.2007, my daughter Pooja had given birth to another female child but thereafter also the accused persons behaviour was not changed and harassing my daughter on one pretext or another and made the life of my daughter miserable. Whenever my daughter visited our house she was complaining about the ill behaviour of accused persons and demanding more and more dowry. I pacify my daughter and console her that it happens in the house generally and send her to her matrimonial house but even thereafter they were

giving beatings to my daughter and tortured her to bring more and more dowry articles.

On 02.11.2007, my son-in-law and my daughter came to my house and my son-in-law demanded money in lieu of motorcycle and I have taken 20,000 rupee from my sister's daughter and given to my son-in-law Vijay for the motorcycle."

During her cross examination she deposed that *"No demand was made at the time of marriage. I have given dowry articles in the marriage of my own. Some jewellery articles were also given to my daughter in her marriage by her in-laws as per custom."*

- 15 In a recent judgment titled ***Vipin Jaiswal Vs. State of Andhra Pradesh : 2013 iv AD (S.C.) 275***, it has been held :

"In any case, to hold an accused guilty of both the offences under Sections 304B and 498A, Indian Penal Code, the prosecution is required to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the accused. From the evidence of the prosecution witnesses, and in particular PW1 and PW4, we find that they have made general allegations of harassment by the Appellant towards the deceased and have not brought in evidence any specific acts of cruelty or harassment by the Appellant on the deceased. On the other hand, DW1 in his evidence has stated that on 4.4.1999, the day when the incident occurred, he went to the nearby temple along with his mother (A2) and his father (A3) went to the bazar to bring ration and his wife (deceased) alone was present at the house and at about 1.00 p.m., they were informed by somebody that some smoke was coming out from their house and their house was burning. Immediately he and his mother rushed to their house and by that time there was a huge gathering at the house and the police was also present. He and his family members were arrested by the police and after one month they were released on

bail. What DW1 has further stated is relevant for the purpose of his defence and is quoted hereinbelow:

While cleaning our house we found a chit on our dressing table. The said chit was written by my wife and it is in her handwriting and it also contains her signature. Ex. D 19 is the said chit. I identified the handwriting of my wife in Ex. D19 because my wife used to write chits for purchasing of monthly provisions as such on tallying the said chit and Ex. D19 I came to know that it was written by my wife only. Immediately I took the Ex. D19 to the P.S. Mangalhat and asked them to receive but they refused to take the same.”

- 16 From the above, it is clear that to hold an accused guilty of both the offences under Sections 304B and 498A of the Indian Penal Code, the prosecution is required to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the accused.
- 17 In the present case, the evidence adduced by the prosecution, and in particular PW2 Mamta and PW3 Santra Devi, we find that they have made vague, general, unspecific and uncertain allegations of harassment by the appellants towards the deceased and have not led any evidence alleging any specific acts of cruelty or harassment by the appellants on the deceased. A close scrutiny of testimonies of PW2 Mamta and PW3 Santra Devi would go to show that the alleged demand of dowry is general in nature. There is also contradiction in their version with respect to demand of motorcycle. As per the version of PW2 Mamta, the demand of motorcycle was since the marriage of her sister (deceased) whereas PW3 Santra Devi deposed that the demand of motorcycle arose after 5-6 months of marriage.

18 In *State Vs. Suraj Mehto & Ors. 2011 (3) C.C. Cases (HC) 432*, it has been held that :

“More importantly, the prosecution has to be specific as to what kind of harassment it was, mental or physical; what was the act of cruelty in a given case has to be proved. In the present case no such specific act was alleged or proved.”

19 In *Amar Singh Vs. State of Rajasthan : 2010 (4) C.C.C. 234 (SC)*, it has been held :

“22. xxxxxx What is punishable under Section 498A or Section 304B IPC is the act of cruelty or harassment by the husband or the relative of the husband on the woman. It will be also clear from Section 113B of the Indian Evidence Act that only when it is shown that soon before her death a woman has been subjected by any 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 within the meaning of Section 304B IPC. The act of subjecting a woman to cruelty or harassment for, or in connection with, any demand for dowry by the accused, therefore, must be established by the prosecution for the Court to presume that the accused has caused the dowry death.

23. xxxxxxxx A prosecution witness who merely uses the word "harassed" or "tortured" and does not describe the exact conduct of the accused which, according to him, amounted to harassment or torture may not be believed by the Court in cases under Section 498A and 304B IPC..”

20 So far as drawing of presumption under Section 113-B of the Evidence Act by the learned trial Judge is concerned, the prosecution has failed to prove that a demand of Rs.20,000/- was made by the appellants and also failed to prove that the deceased was subjected to cruelty and harassment by the appellants for and

in connection with the demand of dowry and there is nothing on record to show that deceased was treated with cruelty or harassed with the demand for dowry and in absence of any such evidence, it is not permissible to take recourse to the legal presumption envisaged in Section 113-B of the Evidence Act and therefore, in these circumstances, the learned trial Judge was right in drawing presumption under Section 113-B of the Evidence Act.

21 Keeping in view the above principles laid down by the Hon'ble Apex Court and facts and circumstances of the case, we are of the opinion that the crucial and necessary ingredients of Sections 304-B and 498-A of the Indian Penal Code that the deceased was subjected to cruelty or harassment by the appellants soon before her death for or in connection with demand of dowry, was not established and proved by cogent and convincing evidence. It is pertinent to note that no complaint with respect to any physical as well as mental cruelty extended to deceased and demand of dowry by the appellants was ever reported to any authority by the deceased or her parents and the matter was only reported to the police on 08.11.2007 after a delay of 5 days from the date of incident which took place on 03.11.2007 and the deceased died on 06.11.2007. PW3 Santra Devi, mother of the deceased deposed in the cross examination that *"In-laws of my daughter were present in the hospital."*

22 The law with regard to the grant of leave is well settled by a catena of judgments. Leave to Appeal can be granted only where it is shown that the conclusions arrived at by the Trial Court are perverse or there is misapplication of law or any legal principle.

In *Ghurey Lal vs. State of Uttar Pradesh : (2008) 10 SCC 450*, the Hon'ble Supreme Court has laid down the following principles before granting leave to appeal against an order of acquittal:

"1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has 'very substantial and compelling reasons' for doing so.

A number of instances arise in which the appellate court would have 'very substantial and compelling reasons' to discard the trial court's decision. 'Very substantial and compelling reasons' exist when :

- i) The trial court's conclusion with regard to the facts is palpably wrong;*
- ii) The trial court's decision was based on an erroneous view of law;*
- iii) The trial court's judgment is likely to result in "grave miscarriage of justice";*
- iv) The entire approach of the trial court in dealing with the evidence was patently illegal;*
- v) The trial court's judgment was manifestly unjust and unreasonable;*
- vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.*
- vii) This list is intended to be illustrative, not exhaustive.*

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached – one that leads to acquittal, the other to conviction – the High Courts/appellate courts must rule in favour of the accused."

23 Having regard to the principles laid down by the Apex Court in the case of *Ghurey Lal (supra)*, we find that there is no sufficient ground/material for proceeding against the respondents for the offences

under Section 498A/304BA/34 of the Indian Penal Code and there is no infirmity in order dated 30.07.2014 passed by the learned Trial Court. Hence, the leave petition stands dismissed.

G. S. SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

MAY 07, 2015

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