

\$~R-10 (Part-B)

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

Date of Decision: 21st July, 2016

+ **Crl. A No.438/2000**

STATE

..... APPELLANT

Through: Ms. Aashaa Tiwari, APP

versus

VINOD KUMAR & ANR.

..... RESPONDENTS

Through: Ms. Inderjeet Sidhu, Amicus Curiae

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

GITA MITTAL, J. (ORAL)

1. By the judgment dated 09.10.1998, the learned Additional Sessions Judge, New Delhi acquitted the two respondents after trial for commission of offences, under Section 498A / 304B of the Indian Penal Code, 1860 in Sessions Case no.58/1996 which arose out of FIR no.41/1996 registered by the Police Station Vasant Kunj. Against this order, the State has filed the present appeal under Section 378 of the Cr. PC contending that the judgment of the trial court is not based on the evidence on record and that the Sessions Court had failed to appreciate that the respondents had harassed the deceased for dowry shortly before her death and that ingredients of both the offences, under Section 498A as well Section 304 B of the IPC, had been established beyond any reasonable doubt justifying the conviction of the respondents for commission of the said offence.

2. The leave to appeal under Section 378 of the Cr.P.C. was granted to the State after service of notice to the respondents. In as much as, there was no appearance on behalf of the respondents, we have appointed Ms. Inderjeet Sidhu, Amicus Curiae in the matter to appear on behalf of the respondents and assist us. She has had the benefit of the paper book as well as record of the case and has assisted this court by making submissions on behalf of the respondents opposing the appeal.

3. We have heard Ms. Aashaa Tiwari, learned APP for the State.

4. In as much as there is no material dispute with regard to the facts leading up to the incident, we briefly notice the same hereafter. One Ramphal (PW-4) was blessed with four daughters and five sons including Smt. Shakuntala (PW-1); Sunderi (PW-2) and Kusum (deceased). On 05.03.1992, Smt. Sunderi and Kusum were married to two brothers. While Sunderi (PW-2) was married to Vir Singh, the deceased Kusum was married to Vinod Kumar, respondent no.1 herein. We may note that the two brothers, Veer Singh as well as the respondent Vinod, and their wives were residing jointly with their mother Kasturi, respondent no.2 herein, in a jhuggi.

5. It is also in evidence that from their marriage, the deceased Kusum and Vinod were blessed with two sons, one aged about 3 years and the other aged about 6 or 7 months at the time of the unfortunate incident on the 19th of January, 1996.

6. So far as the incident itself is concerned, we find that the only account thereof is to be obtained in the testimony of Har Parsad, a resident in the neighbourhood of the deceased, who lived 8 to 10 jhuggis away

from the house of the respondents, who was examined as DW-1. It is in his testimony that on the fateful day i.e. 19.01.1996 at about 8.30 / 9.00 a.m., he noticed smoke coming out from the house of respondent no.1 while he was passing thereby. He proceeded towards the house accompanied by some other persons when they found that the door of the house was locked from inside and had to be pulled down whereupon it was found that Smt. Kusum was burning inside the jhuggi and breathing with difficulty. The younger son of the parties was found in burnt condition on the floor. Sh. Har Parsad testified that Kusum had died at the spot itself but the burnt child was removed to the hospital by Subhash, a neighbour, and that he also succumbed to the burn injuries.

7. We find that Har Parsad (DW-1) has categorically stated that both the respondents, that is respondent no.1 and mother-in-law of the deceased were not found present in the house when he had reached there and that Vinod Kumar (respondent no.1) had returned about half an hour of his (Har Parsad) reaching the spot whereas Kasturi, respondent no.2) reached even later.

8. Sh. Har Parsad has stated that Vinod Kumar (respondent no.1) alongwith himself, gave information about the incident to the Police Control Room which immediately reached there while local police reached within 18-20 minutes.

9. It is also in the testimony of DW-1 that he never noticed any quarrel between accused and the deceased. The witness makes a grievance that the police did not record the statement of any of the neighbours or the persons who had gathered there.

10. The record also shows that one Rajesh, cousin brother of respondent no.1 gave information about the incident to Smt. Shakuntala (PW-1), the elder sister of the deceased who also reached the spot. Her statement (Ex. PW1/A) was recorded by the police at the spot which forms the basis of the first information report registered by the police, being FIR no.41/1996 under Section 498A/304 B of the IPC.

11. The police filed a chargesheet under Section 173 of the Cr. PC against the respondents for commission of offences punishable under these very sections read with Section 34 IPC. By an order dated 13th May, 1996, the respondents were charged as follows:-

“..I, B.B. Chaudhary, Addl. Sessions Judge, New Delhi hereby charge you (1) Vinod Kumar s/o. Hargian Singh; (2) Kasturi w/o. Hargian Singh as follows :-

That Smt. Kusam was married to you accused Vinod Kumar on 05.03.1992 according to Hindu Customs in Ghaziabad and that Smt. Kusam came as allegedly wedded wife of you Vinod Kumar accused and you Smt. Kasturi mother in law and that during the period after a marriage and upto her death on 19.01.1996 you both harassed her and maltreated her and even demanded dowry and thereby you committed an offence punishable u/s. 498-A/34 IPC and within my cognizance.

Secondly, that Smt. Kusam died of burn injuries on 19.01.1996 at Jhuggi No.S-243, Sonia Gandhi Camp Village Smalga otherwise than under normal circumstances within a period of seven years of her marriage and that soon before her marriage Smt. Kusam was subjected to cruelty and harassment by you both in connection with demand of dowry as a result of which Smt. Kusam died on 19.01.1996 and thereby you both committed dowry death punishable u/s. 304-B/34 IPC and within my cognizance.

And I hereby direct that you both be tried by this court on the aforesaid charge...”

12. As the two respondents pleaded not guilty and claimed trial, the session court proceeded with the trial. The prosecution examined 12 witnesses in support of its case including several relatives of the deceased namely, sister Shakuntala (PW-1); sister Sunderi (PW-2); her father - Sh. Ramphal (PW-4); cousin brother Sh. Tarachand (PW-5); brother-in-law - who was husband of Smt. Shakuntala namely Sh. Kishori Lal (PW-6), and Sh. Ram Saran (PW-9) who was the tauji (father's elder brother) of the deceased.

13. Given the case of the prosecution against the respondents, it is to be noted that if the ingredients of the offences mentioned under Section 304 B of the Indian Penal Code are satisfied, then the presumption as mandated under Section 113 B of the Indian Evidence Act has to be drawn against the accused persons. For commission of an offence under Section 304 B of the IPC the prosecution is required to establish firstly that the death of a woman should be caused by injury or otherwise then under normal circumstances; secondly death of woman has occurred within 7 years of marriage; thirdly that the deceased had been subjected to cruelty or harassment by her husband or any relative of her husband and fourthly that such cruelty or harassment should be for or in connection with the demand of dowry before her death.

14. So far as the first two ingredients noticed above are concerned, it is undisputed that Kusum was married to Vinod Kumar (respondent no.1) on 5th March, 1992 and that she died an unnatural death by burns on the 19th

January, 1996 within seven years of her marriage. Therefore, so far as the fulfilment of the first two conditions in the present case are concerned, there is no dispute that the same are satisfied. The question which arises for consideration is the third and fourth requirements of law are satisfied, that is as to whether the deceased was subjected to cruelty or harassment by her husband or his relative soon before her death in connection with any demand of dowry?

15. We now propose to examine the evidence led by the prosecution before the trial court.

16. It is in evidence of Ramphal (PW-4) that after a short period of cohabitation of respondent no.1 and the deceased, there was strife in their relationship and that after one year of their marriage, Kusum was taken by her father Ramphal (PW-4) and her cousin brother - Tarachand (PW-5) back to her parental home in District Ghaziabad. On this occasion, Kusum lived with her parents again for about one year. Thereafter her in-laws that is Smt. Kasturi (Respondent No.2) with her husband and some other persons went to the village of Ramphal. On this occasion with the intervention of responsible persons, the matter was settled resulting in the parties recording a settlement agreement on 30th December, 1994 (Ex. PW4/B).

17. We have carefully scrutinized this document and we find that the document, which is signed by Ramphal (PW-4), Tarachand (PW-5) and some other persons including Ramsaran, Ganga Prasad, Surender and other unidentifiable persons as well as first respondent – Vinod Kumar, notes that the deceased Kusum had been harassed on several occasions and

records that in case the deceased faced any harassment, then the boy side would be held responsible for the same. The settlement does not mention any demand of dowry from the respondents and manifests that Kusum went to live in her parents' house not because of any discord arising on account of non-compliance with the dowry demand.

18. For our purposes, it is essential to note that as on 30th December, 1994, there was no grievance at all or complaint from the deceased or her family members that Kusum had been harassed for the purposes of dowry or property. In fact the entire settlement makes a general assertion of harassment without specifying the cause thereof.

19. In this regard, Smt. Sunderi (PW-2) who was very much present in the matrimonial home, being married to brother of respondent no.1, also does not mention any cause of harassment nor any dowry demand upon the deceased before the settlement deed dated 30th December, 1994. In fact, Smt. Sunderi does not mention any harassment or dowry demand from husband or in-laws (which includes the respondents) upon her at any point of time.

20. We find that the learned trial judge has noted the vague and general testimony of Smt. Shankuntala (PW-1), the other sister of the deceased, to the effect that she had been teased and beaten by two respondents on account of dowry. No specific instance is mentioned by her. No such incident has also been adverted to by Sunderi (PW-2) who was actually living in the same house. This general and non-specific allegation has, therefore, been rightly disbelieved and rejected by the learned trial judge.

It is also not supported by the documentary evidence or by the other related witnesses.

21. The only cause of the agitation to the deceased or complaint against her husband is to be found in the testimony of Kishori Lal (PW-6) who is the husband of Smt. Shakuntala, thus, closely related to her as her brother-in-law. He has deposed that he had visited Kusum regularly in intervals of three or four months. It is in Kishori Lal's testimony that upon such visits to deceased Kusum's matrimonial home, she made a grievance to him that her husband used to come late in the night and compel her to cook food in late hours. The witness claimed that Vinod Kumar was habituated to drinking and indulging in gambling and that she was unhappy with him for this reason.

22. Two important things which are required to be noted from this testimony is the fact that while other witnesses have claimed an isolated visit to the house of the deceased Kusum, however, Sh. Kishori Lal (PW-6) was a regular visitor to her house. The second important factor for our consideration is the fact that Shri Kishori Lal (PW-6) is categorical that Kusum's unhappiness with her in-laws rested in her agitation with Vinod's (respondent no.1) drinking and gambling habits and did not stem from any demand for dowry.

23. The learned trial judge has carefully scrutinized the evidence of PW-1 (Shakuntala), PW-2 (Sunderi), PW-4 (Ram Phal) and PW-5 (Tara Chand) regarding any allegation of dowry demand made by the respondents upon the deceased. The record of the case shows that that they made no such statement or allegation at all to the police when their

statements were recorded immediately after the incident in which the deceased lost her life. Such allegations against the respondents were made for the first time long after her death when these relative witnesses were appearing in the witness box in court.

24. So far as the allegation of dowry demand are concerned, the testimonies of Ramphal (PW-4) and Tara Chand (PW-5) are contradictory in material particulars with the testimony of Smt. Sunderi (PW-2) who was living in the same house.

25. The learned trial judge has very fairly divided his consideration into two phases. The first phase is pre 30th December 1994 when the settlement was recorded. The second, period is the post settlement period. The learned trial judge has carefully considered whether there was any reliable evidence of harassment of the deceased on account of dowry on the fateful day or just before that date. The learned judge notes that Sh. Ramphal (PW-4), Sh. Tara Chand (PW-5) and Sh. Kishori Lal (PW-6) have claimed to have visited the house of the respondents on 16.01.1996 where respondent no.1 met and quarreled with them, complaining about the dowry given in marriage. These witnesses allege that the respondent no.1 demanded ₹35,000/- and threatened them that in case the money was not paid, he would kill Kusum by setting her on fire.

26. Interestingly, the complainant (PW-1) Shankuntala does not state the single word about such visit of her father and relatives.

27. This instance of the demand on 16th January, 2016 has been completely disbelieved also for the reason that it finds no mention at all in the statement of any of these three witnesses which were recorded by the police under Section 161 of the Cr. PC. All these witnesses were confronted with their prior statement in the cross-examination on behalf of the respondents but they could offer no explanation. For the omission

28. Ram Phal (PW-4) in fact admitted in the witness box that he did not tell the police about any of the acts, which he had attributed to the respondents before the death of Kusum or that respondent no.1 had made demand of any money or about her harassment for the demands.

29. What renders the testimony of said prosecution witnesses difficult to believe is that apart from the deceased, Sh. Ramphal had married her sister also into the family of the respondents. Smt. Sunderi (PW-2) was thus married to Veer Singh, brother of respondent no.1. PW-2 Sunderi has no grievance or complaint against her husband or any of her in-laws that they ever demanded dowry from her or harassed her for the same.

30. PW-2 has, however, made gross improvements in her testimony in court so far as Kusum (deceased) was concerned. She has attempted to attribute physical violence to the deceased Kusum at the hands of her mother-in-law (respondent no.2) shortly before the incident of her burning.

31. The record would show that PW-2, Sunderi left her matrimonial home to reside with her family on 19th January, 1996 and there is every

possibility of her making a tutored statement in the witness box. Smt. Sunderi (PW-2) he has made no such statement to the police.

32. In any case, Sh. Har Parsad has given a categorical and graphic account of the circumstances which were in existence at the time the incident took place.

33. It is also in evidence that Ramphal (PW-4) has four daughters and five sons; earns about 400-500 per month and with great difficulty manages to feed his family. Smt. Sunderi (PW-2) and the deceased Kusum were married on the same date and their parents would have given the similar articles to the two sisters in marriage. It is unbelievable that her in-laws have no grievance for the same things as given to one sister and would make a grievance for those very articles against the other. The isolated instance of the alleged dowry demand on the 16th January, 1996 is clearly an embellishment of the prosecution case to bring the case within the purview of the presumption to be drawn against the respondents, if the conditions under section 304B of the IPC.

34. A perusal of the impugned judgment and having gone through the testimonies of the relevant material witnesses as discussed hereinabove none of the witnesses have spoken with regard to the demand of dowry or any kind of cruelty in connection therewith to the deceased prior to the date of incident i.e. 19.01.1996. Material improvements in the testimonies of the witnesses would show that the factual narration with regard to the reference to the demand of dowry in their respective testimonies is concocted which cannot be believed and has rightly been rejected by the

learned trial judge. Therefore, the statements/improvements made in the testimonies of the witnesses post 19.01.1996 incident are not sufficient to satisfy the last two ingredients of 304 part B to render the accused guilty of the offence and convict them thereunder.

35. In view of the above discussion, we find no ground at all to interfere with the finding returned by the learned Additional Sessions Judge to the effect that the prosecution had failed to prove that the deceased was subjected to harassment on account of dowry at any time or shortly before her death on the 19.01.1996. This appeal is, therefore, devoid of merit and is dismissed.

36. Ms. Inderjeet Sidhu, learned Amicus Curiae shall be paid her fees by the Delhi High Court Legal Services Committee, as per rules.

37. The bail bonds and the surety bonds submitted by and on behalf of the respondents shall stand discharged.

38. The Registry is directed to send a copy of this judgment to the respondents.

(GITA MITTAL)
JUDGE

(R.K. GAUBA)
JUDGE

July 21, 2016/yg