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

Judgment delivered on: 29th February, 2016

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CRL.A. No.599/2000

SURESH

..... Appellant

Represented by: Mr. Gurbaksh Singh and Ms. Manjeet
Kaur, Advocates.

Versus

THE STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr. Satya Narayan Vashishth,
Additional Public Prosecutor for
State.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. By way of the present appeal filed under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as 'Cr.P.C.'), appellant seeks directions to set aside the order dated 11.09.2000, whereby the learned Trial Court held him guilty under Section 498-A of the Indian Penal Code, 1860 (hereinafter to be referred as 'IPC') and the order on sentence dated 12.09.2000, whereby the appellant was sentenced for the period already undergone in the judicial custody, i.e., 22 months and to pay a fine of Rs.4,000/-. In default of payment of fine, the appellant was directed to undergo simple imprisonment for a period of six months.

2. Brief facts of the case are that on 15.12.1995, Investigating Officer SI Jai Kishore (PW10), posted at Police Station Mangol Puri, on receipt of DD No.22A alongwith Constable Sita Ram (PW8) went to the place of incident, i.e., M-316, Mangol Puri. There it was revealed that Neelam, who sustained burn injuries, had been removed to DDU Hospital by PCR Van. On reaching the first floor of the house, he noticed kerosene oil and water on the floor of the room, therefore, leaving behind PW8 at the spot, PW10 went to DDU Hospital and obtained MLC Ex.PW9/A of Neelam. On coming to know that Neelam was referred to RML Hospital, he went to the said Hospital, where he learnt that Neelam had died. In the meantime, SHO Rajinder Prasad reached there. Parents of deceased Neelam were called. Statement Ex.PW3/A of Smt. Savitri (PW3), mother of deceased Neelam, was recorded by SI Jai Kishore, on which he made his endorsement Ex.PW10/A and sent the rukka to Police Station for registration of the case through Constable Karan Singh. The Investigating Officer recorded the statements of the witnesses, returned back at the spot, i.e., Mangolpuri, got photographed the place, seized kerosene oil P-1, match box P-2 and the burnt clothes after sealing and prepared the site plan Ex. PW10/B. Accused persons were arrested individually. After completion of investigation, challan was sent for trial alleging that deceased Neelam d/o Jawahar Sahai was married to appellant Suresh S/o Mahender Sahai and after the marriage, the appellant and other co-accused were taunting the deceased for less dowry and demanding Rs.50,000/- and a plot in dowry. To this effect, a complaint was made in Crime Against Woman Cell, however, the matter was compromised and deceased was sent to her matrimonial house. After sometime, the deceased had been again subjected to harassment by the

appellant-husband and her parents-in-law. Appellant, i.e., husband of the deceased, also kept one lady named Shanta as his Keep and because of which the deceased committed suicide on 15.12.1995. Accordingly, the appellant alongwith other co-accused was charged for the offences punishable under Section 498-A/34 IPC and under Section 306/34 IPC, to which they pleaded not guilty and claimed trial.

3. In support of its case, the prosecution had examined ten witnesses.

4. Savitri Devi (PW3) is mother of the deceased on whose complaint FIR in question Ex. PW3/A was lodged. She deposed that her daughter Neelam was married to appellant about 9 ½ years back. Whenever her daughter used to come to her house, she always complained about her mother-in-law and husband, i.e., appellant that they used to taunt her for bringing less dowry and demand Rs.50,000/- and a plot of 50 yards. Since they were unable to fulfill their demands, a complaint was made in Crime Against Women Cell, where the appellant and other co-accused promised not to harass her daughter. On their assurance, she was sent back to her in-laws' house. Thereafter, the deceased lived peacefully for about one month but the appellant and his parents again started torturing and beating her. PW3 also stated that two days prior to the death of her daughter, she was given beatings by the appellant and other co-accused and left her in their house at midnight. Though, they decided not to send back their daughter, however, appellant and his parents again came and took their daughter stating that they will keep her at Mangolpuri alongwith appellant. She also stated that appellant Suresh had illicit relation with a lady named Shanta and he kept her in his house as Keep. Parents-in-law of the deceased used to

visit the house of appellant after every 2/3 days and all of them used to beat her daughter.

5. The witness PW3 further stated that on 15.12.1995, she received an information that her daughter got admitted in RML Hospital after burn. She went to the hospital and found her dead-body. She stated that her daughter was burnt by the accused persons. She proved her statement as Ex.PW3/A. The witness stated that in the year 1991, her husband had gone to take her daughter from her in-laws' house, where accused persons demanded money and other articles from him. Three months prior to her death her husband was informed that her daughter was unwell. Her husband went there but he was pushed from staircase and was not allowed to meet deceased Neelam, thus, he came back. She also stated that during the period from her marriage till her death, her daughter usually remained with her because accused persons used to beat her and torture her.

6. In the cross-examination, PW-3 deposed that even at the time of engagement an amount of Rs.10,000/- was demanded from the boy side, which was not objected to. She admitted that no complaint was lodged anywhere in any Police Station or to Pradhan with regard to demand made within a span of one year of the marriage. The witness categorically stated that when second time her daughter went to Mangolpuri, in-laws' of her daughter, started living in Loha Mandi. Her daughter came third time to live with her and lived for two years and thereafter her daughter went her own to her husband's house in Mangolpuri and lived there for about one month and again she came back to her house and stayed there continuously. Before death, the deceased went to her husband's house about 11 days prior

and admitted that most of the time, the deceased remained with her. She denied the suggestion that her daughter was not liking her husband/appellant and so she committed suicide. Her husband was working as a Gardener. She has three daughters and a son and belonged to poor family. She denied the suggestion that no demand was ever made by the accused persons. She denied the suggestion that no plot or Rs.50,000/- was ever demanded.

7. Jawahar Sahai (PW5) is the father of the deceased who corroborated the statement of PW3. Bal Kishan (PW4) is the neighbour of PW3 and PW5. He stated that he knew PW5 for the last 30 years as both were working together. PW4 corroborates the version of the parents of the deceased and submitted that after her marriage, deceased Neelam used to visit their house also and used to tell his wife that her husband and her parents-in-law were not happy and were in habit of beating her for want of dowry and her husband had also having illicit relation with some lady. Appellant Suresh used to torture her for the said reason and used to demand Rs.50,000/- and also one plot. The witness claimed that he went number of times with PW5 to the house of the appellant to pursue them not to torture Neelam. He also stated that a report was made to the Crime Against Women Cell, Nanakpura. Matter was compromised as the appellant and other co-accused assured that they would not repeat the activity of torturing the deceased.

8. The learned Trial Court on the basis of the material brought on record acquitted the appellant and other co-accused for the offence punishable under Section 306 IPC holding that the prosecution had not been able to establish its case against them. Also acquitted co-accused Mahender Sahai

and Chander Kalan for the offence punishable under Section 498-A IPC holding that the prosecution failed to establish its case against them, however, held that prosecution has established and proved the offence punishable under Section 498-A IPC against the appellant. Accordingly, the learned Trial Court vide judgment dated 11.09.2000 held the appellant guilty and convicted him for the offence punishable under Section 498-A IPC and vide order on sentence dated 12.09.2000 sentenced him for the period already undergone and to pay a fine of Rs.4,000/-. In default of payment of fine, he was sentenced to undergo SI for six months.

9. Being aggrieved, the appellant preferred the instant appeal.

10. Learned counsel appearing on behalf of the appellant submitted that the impugned judgment and order is illegal and against the facts and circumstances of the case as there is not an iota of evidence on record to connect the appellant with the crime.

11. Learned counsel submitted that the learned Trial Court failed to appreciate that there was no evidence of any kind except some bald statements on the part of the parents of the deceased to conclude and held that appellant had some relation with Ms.Shanta. Further submitted, if that has been the moot point for holding the appellant guilty for the offence punishable under Section 498-A IPC, then in that event the prosecution would have proved this point beyond reasonable doubt.

12. Learned counsel further submitted that the learned Trial Court has not considered the certificate placed on record with regard to mental health of the deceased and also failed to appreciate that though the deceased was

married to the appellant about 9 ½ years back, yet there was no issue out of the said wedlock. The deceased had pre-mature delivery twice during the said wedlock, which could have also been the reason for disturbance of the mental health of the deceased.

13. Learned counsel further submitted that the learned Trial Court failed to appreciate that when no ingredient of any kind with regard to offence punishable under Section 306 IPC could be made out, how the ingredient for the offence punishable under Section 498-A IPC would be established against appellant.

14. In support of his submissions, the learned counsel relied upon the cases of *Arvind Singh Vs. State of Bihar, AIR 2001 SC 2124*, *Bhairon Singh Vs. State of M.P. 2009 [3] JCC 2114* and *Budh Ram @ Pappu & Ors. Vs. State 2010 [3] JCC 2343*.

15. On the other hand, learned Additional Public Prosecutor appearing on behalf of the State while supporting the order of conviction and sentence by the learned Trial Court, submitted that it is true that other co-accused, i.e., parents-in-law of the deceased were acquitted by the learned Trial Court as prosecution could not prove its case against them. However, the prosecution has been able to establish the offence punishable under Section 498-A IPC against the appellant beyond all reasonable doubt and the conviction and sentence recorded by the learned Trial Court do not call for any interference by this Court.

16. To support its contentions, the learned Additional Public Prosecutor relied upon the judgment passed by this Court in CrI. A. No.223/2003, titled

as '*Bhateri Devi & Anr. Vs. State of Delhi*' on 19.07.2013.

17. I have heard the learned counsel for the parties.

18. From the above discussion, the sole moot question which arises for consideration before this Court is whether provisions of Section 498-A IPC are attracted against the appellant or not?

19. For reference, Section 498-A IPC is reproduced as under:-

“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.”

20. In the case of *Girdhar Shankar Tawade Vs. State of Maharashtra, (2002) 5 SCC 177*, examining the scope of 498A IPC, the Supreme Court observed as under:-

“The basic purport of the statutory provision is to avoid “cruelty” which stands defined by attributing a specific

statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word “cruelty” as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of “cruelty” in terms of Section 498-A.”

21. In the case of **Gurnaib Singh Vs. State of Punjab, (2013) 7 SCC 108**, while analyzing the aforesaid provision, it has been opined by the Supreme Court that Clause (a) of the Explanation to Section 498A IPC defines cruelty to mean “any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide”. Clause (b) of the Explanation pertains to unlawful demand and Clause (a) can take in its ambit ‘mental cruelty’.

22. In the case of **V.Bhagat Vs. Mrs.D.Bhagat, AIR 1994 SC 710**, the Supreme Court observed as follows:-

"17. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such

conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be Determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."

23. The basic ingredients of Section 498A IPC are cruelty and harassment. In the instant case, in fact, there was no demand of dowry as has rightly been held by the learned Trial Court that the allegation of demanding Rs.50,000/- and a plot could not be proved against the appellant and other co-accused, thus, the case in hand does not fall under clause (b) of the explanation.

24. From the aforesaid dictums, it is quite clear that the first limb of Section 498A IPC, which refers to cruelty, has nothing to do with demand of dowry. The elements of cruelty so far as clause (a) is concerned, can be classified as follows:

- (i) any 'willful' conduct which is of such a nature as is likely to drive the woman to commit suicide; or
- (ii) any 'willful' conduct which is likely to cause grave injury to the woman; or
- (iii) any 'willful' act which is likely to cause danger to life, limb or health, whether physical or mental of the woman.

25. On a careful scrutiny of the findings of the learned Trial Court, it is noticed that the Court below has found that cruelty, as alleged by the prosecution under Section 498A IPC was established as a result of which the deceased committed suicide. It is quite clear from the findings and evidence on record that there was no demand of dowry. The learned Trial Court has proceeded on the base that there was 'cruelty' as per the first limb of Section 498A IPC.

26. Thus, the singular issue that requires to be scrutinized is whether there was such cruelty by the appellant that could have driven the deceased to commit suicide.

27. Admittedly, the term 'cruelty' is a mixed question of law and fact. The Hindu Marriage Act, 1955, has been enacted based on social, economic and political changes in India. Of course, the initiation of marriage takes a pivotal place and has a key role to play in the society and cruelty may be of different types like, physical or mental, intentional or unintentional but it changes from time to time, place to place and person to person based on status, human cultural values, educational standards and finally on social economic conditions.

28. In ***S. Hanumantha Rao Vs. S. Ramani***, AIR 1999 SC 1318, the Supreme Court considered the meaning of cruelty in the context of the provisions under Section 13 of the Hindu Marriage Act, 1955 and observed that:-

"mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it

severs the bond between the wife and husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. In other words, the party who has committed wrong is not expected to live with the other party."

29. In ***Mohd. Hoshan Vs. State of A.P.; (2002) 7 SCC 414***, the Supreme Court while dealing with the similar issue held that mental or physical torture should be "continuously" practiced by the accused on the wife and observed as under:-

"Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impart of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not."

30. In ***Girdhar Shankar Tawade Vs. State of Maharashtra, AIR 2002 SC 2078***, the Supreme Court held that 'cruelty' has to be understood having a specific statutory meaning provided in Section 498A IPC and there should be a case of continuous state of affairs of torture by one to another.

31. However, 'cruelty' for the purpose of Section 498A IPC is to be established in the context of Section 498A IPC as it may be different from other statutory provisions. It is to be determined / inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty

continuously/persistently or at least in close proximity of time of lodging the complaint.

32. I am not oblivious of the fact that in a criminal trial the degree of proof is stricter than what is required in the civil proceedings. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498A IPC and Section 113A of Indian Evidence Act. Although, the Court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged. It should be borne in mind that there is no absolute standard of proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubt must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. Lord Denning in *Eater Vs. Bater (1950) 2 All ER 458 at p.459* has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject matter.

33. The instant case requires to be examined taking into consideration the aforesaid settled legal provisions. Undoubtedly, Savitri Devi (PW3) mother of the deceased categorically stated that a complaint was made against the appellant in the Crime Against Women Cell as the deceased was being ill-

treated, however, on the assurance of the appellant and his parents, deceased was sent back to her in-laws house. Though thereafter, the deceased remained peacefully but only for one month as appellant again started torturing and given beatings to deceased Neelam. PW3 specifically deposed that three months prior to death of her daughter, her husband was informed that her daughter was unwell. Though her husband went there but he was pushed from staircase and was not allowed to meet Neelam, thus, he came back. PW3 was also categorical in narrating that two days prior to the death of her daughter, she was beaten up and left in their house at midnight. However, on the assurance of the appellant and his parents that they will keep the deceased at Mangolpuri alongwith appellant, she was again sent back. She also stated that appellant Suresh had illicit relation with a lady named Shanta and he kept her in his house as Keep. Though it is admitted by PW3 that during the period from her marriage till her death, her daughter usually remained with her, but they used to send her back on the assurances of the appellant and his parents that they will keep her happily. This version of the complainant (PW3) finds corroboration from the depositions of PW4 and PW5. Moreover, while relying upon the testimonies of PW3, 4 and 5, the learned Trial Court also held that the prosecution had been able to establish that appellant Suresh was keeping one lady Shanta as his Keep and this willful conduct of the appellant forced the deceased to commit suicide.

34. Additionally, during the subsistence of the marriage, the appellant started living with the other woman that itself was a cruelty towards the deceased and mental torture was of such magnitude, which derived her to commit suicide. Thus, the deceased had been subjected to cruelty

continuously by the appellant, which is evident from the facts discussed above.

35. Accordingly, keeping in view the law discussed above and the facts and circumstances of the case, it is established that the appellant subjected the deceased to physical and mental torture and agony; thus the offence under Section 498A IPC has rightly been found proved against the appellant by the learned Trial Court. Therefore, I am not inclined to interfere with the impugned judgment dated 11.09.2000 and order on sentence dated 12.09.2000 passed by the learned Trial Court.

36. The appeal is dismissed accordingly.

37. TCR be sent back.

FEBRUARY 29, 2016

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**SURESH KAIT
(JUDGE)**