

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

% *Judgment Reserved on : May 13, 2016*
Judgment Delivered on : May 17, 2016

+ **CRL.A.937/2001**

PARBHATI DEVI & ORS.Appellants
Represented by: Mr.Harsh Prabhakar, Advocate
with Mr.Anirudh Tanwar,
Advocate

versus

STATERespondent
Represented by: Mr.Varun Goswami, APP
Insp.Manoj Kumar, PS Dabri

CRL.A.36/2002

GULAB DEVIAppellant
Represented by: Mr.S.N.Gupta, Advocate

versus

STATERespondent
Represented by: Mr.Varun Goswami, APP
Insp.Manoj Kumar, PS Dabri

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. As per the impugned judgment dated October 31, 2001, passed in Sessions Case No.52/96, the learned Additional Sessions Judge New Delhi has held the three accused : Gulab Devi, Parbhathi Devi and Hira Lal

guilty for having committed an offence punishable under Section 498A/34 IPC. Accused Gulab Devi has also been held guilty for having committed an offence punishable under Section 302 IPC.

2. In terms of the order on sentence dated November 26, 2001, accused Parbhati Devi and Hira Lal have been sentenced to undergo rigorous imprisonment for a period of two years for the offence punishable under Section 498 A IPC. Fine of ₹5,000/- each has also been imposed; in default of which the two would be liable to undergo further rigorous imprisonment for three months. Accused Gulab Devi has been sentenced to undergo imprisonment for life for the offence punishable under Section 302 IPC. Fine in sum of ₹100/- has also been imposed, in default of which the accused has been directed to be liable to undergo rigorous imprisonment for two days. For the offence punishable under Section 498A IPC, accused Gulab Devi has been sentenced to undergo rigorous imprisonment for a period of two years. Fine in sum of ₹4,900/- has also been imposed; in default of which she is liable to undergo further rigorous imprisonment for three months.

3. According to the case projected by the prosecution, Smt. Sheela Devi (hereinafter referred as the 'deceased') was married to the appellant : Hira Lal on May 28, 1991. Incidentally, on the same day Asha PW-5, who was the younger sister of the deceased was also married to Madan, brother of Hira Lal. Unfortunately, as fate would ordain, none of the sisters attained marital bliss and were cursed to suffer acrimony in their matrimonial home. Appellants : Parbhati Devi (mother-in-law of the deceased) and Gulab Devi (*jethani*/sister-in-law of the deceased) would demand dowry at regular intervals and taunt the deceased. The husband : Hira Lal, often quarreled with the deceased, although as evidence would establish he would not demand dowry. The deceased would also remain

perturbed on account of the fact that her younger sister Asha was ill treated by her husband : Madan and in view of such attending circumstances she was compelled to return to her parental home.

4. On the afternoon of November 05, 1992 the deceased suffered burn injuries in a separate portion of her matrimonial house located at House No. RZ-I-25, Mahavir Enclave-Delhi, where she resided with her husband Hira Lal. She was immediately rushed to Deen Dayal Upadhyay Hospital by Hira Lal where she was attended by Dr.Anjana (not examined during Trial) at around 2:30 PM and consequently MLC Ex.PW-11/1 was prepared. It was observed that the patient was conscious, coherent and well oriented. The patient had sustained 100% burns that were superficial. The doctor recorded the history that the patient had suffered burns while cooking.

5. At 2:40 PM, D.D.No.16A, dated November 05, 1992 (Mark A) was recorded at P.S.Dabri on the basis of telephonic intimation given by Ct.Suresh Kumar; Duty Constable deputed at Deen Dayal Upadhyay Hospital (not examined during Trial). It was informed that one Sheela Devi W/o Hira Lal R/o RZ-G-25 Mahavir Enclave, Palam Road-Delhi was admitted in the hospital by her husband in a burnt condition owing to the injuries suffered due to stove. Investigation of D.D.No.16A was assigned to SI Sudesh Ranga PW-16; who proceeded to Deen Dayal Upadhyay Hospital along with Ct.Surinder Singh PW-6.

6. In the meanwhile, the deceased was referred to Dr.Ram Manohar Lohia Hospital where she was shifted by Hira Lal and Gulab Devi. Medical records of Dr.Ram Manohar Lohia Hospital indicate that at the time of admission the deceased was conscious, cooperative and well oriented. History of having suffered burns while cooking was recorded.

7. SI Sudesh Ranga and Ct.Surinder Singh reached Dr.Ram Manohar Lohia Hospital after having obtained a copy of the MLC of the deceased from Deen Dayal Upadhyay Hospital. They sought opinion from the doctor on duty with regard to the fitness of the patient to make a statement. However, by this time i.e. 5:00 PM, the patient was declared unfit for statement by Dr.Rakesh Sharma PW-14 and an endorsement Ex.PW-14/1 to the said effect was recorded on the MLC Ex.PW-11/1 at point A.

8. SI Sudesh Ranga and Ct.Surinder Singh visited the spot of occurrence. Crime Team was summoned and photographs were taken. The Crime Team Report Ex.PW-12/1 was proved by Inspector Rajbir PW-12; who was the In-charge of the Crime Team that visited the spot. He deposed that the photographer and a finger-print expert accompanied him. The photographs were proved by the investigating officer-SI Sudesh Ranga as Ex.PW-16/1-6.

9. The family members of the deceased were apprised of the incident by the police personnel late at night. Upon receiving this information they also reached Dr.Ram Manohar Lohia Hospital and are stated to have interacted with their injured daughter.

10. The next day, on November 06, 1992 at 12:25 PM, Dr.Dulal Krishan Soren PW-18 declared the patient fit for statement. An endorsement Ex.PW-7/1 to the said effect was made upon the MLC Ex.PW-11/1. In furtherance thereof, statement Ex.PW-7/2 of the deceased was recorded by H.C.Gaur PW-7 Sub Divisional Magistrate, New Delhi. It was stated therein by the deceased that on November 05, 1992 she was cooking food on a kerosene stove. Earlier during the day, she had an altercation with her jethani Gulab Devi. While she was cooking food, Gulab Devi came and poured kerosene oil upon her and ran

away. She clarified in the statement that she did not see if Gulab Devi had lit a match stick and from what vessel kerosene oil was poured over her. She further stated that her mother-in-law Parbhathi Devi and jethani Gulab Devi used to repeatedly demand dowry and taunt her. She also said that her husband used to quarrel with her but did not demand dowry nor taunted her.

11. At 1:30 PM the Sub Divisional Magistrate made an endorsement Ex.PW-7/3 to the effect that a case be registered against the appellants under the appropriate provisions of law. Upon receipt of *tehrir* Ex.PW-16/7, FIR No.411/92 dated November 06, 1992 was registered at P.S.Dabri under Section 306/498A IPC at 4:30 PM.

12. We may pause to merely highlight that the investigating agency committed an obvious error by initially invoking Section 306 IPC, inasmuch as the injured was alive at the said point of time and had in fact clearly indicted Gulab Devi in her statement before the Sub Divisional Magistrate. Thus, *ex-facie* there was no material to warrant the applicability of Section 306 IPC. On the contrary offence punishable under Section 307 IPC ought to have been registered against Gulab Devi.

13. Be that as it may, seizure of various articles was effected from the spot of occurrence by the investigating agency. Significantly, a kerosene stove Ex.P-1 was taken into possession vide Seizure Memo Ex.PW-10/1. It was recorded in the memo itself that the burner of the said stove was found to be in a bent condition.

14. On November 07, 1992 all the accused were arrested from Dr.Ram Manohar Lohia Hospital.

15. Smt.Sheela Devi succumbed to her injuries on November 08, 1992 at Dr.Ram Manohar Lohia Hospital and was declared dead at 3:25 PM. Therefore Section 302 IPC was added in the FIR.

16. On November 09, 1992 at 2:30 PM, statement Ex.PW-1/A of the father of deceased, namely, Pratap PW-1 was recorded by H.C.Gaur, Sub Divisional Magistrate, New Delhi in which he stated that the deceased was repeatedly harassed for dowry by Parbhati Devi and Gulab Devi. He clarified that Hira Lal never tormented his daughter for bringing insufficient dowry, however, he had given beatings to her on some occasions and would abuse her. Pratap further stated that his daughter had informed him in the hospital that Gulab Devi threw kerosene oil on her when she was cooking, in consequence of which she suffered the burn injuries. Curiously, he also stated that either the three accused had burnt his daughter or she committed suicide owing to the harassment suffered by her at their hands. Similar allegations were comprised in the statement Ex.PW-1/F of Pratap that was recorded by SI Sudesh Ranga PW-16 in terms of Section 161 Cr.P.C.

17. Autopsy was conducted on November 10, 1992 at Civil Hospital, Delhi and Post-Mortem report Ex.PW-9/1 was prepared by Dr.L.K.Baruah PW-9. The cause of death was opined to be shock and toxemia resulting from 100% burn injuries. The degree of burns was found to vary from second to third degree. The scalp hair on forehead and also on both the temporal regions were found to be partly burnt and sized. On local examination, no other injury was observed except burns.

18. Three letters dated August 25, 1992 Ex.PW-1/E, August 31, 1992 Ex.PW-1/D and September 23, 1992 Ex.PW-1/C written by the deceased during her life time to her father : Pratap were seized by SI Sudesh Ranga vide Seizure Memo Ex.PW-1/B, that bears no date. We may however highlight that whilst being examined in terms of Section 313 Cr.P.C, the appellant : Hira Lal; who is the husband of the deceased and thus could be expected to have been acquainted with the handwriting of his wife,

candidly admitted that the said letters were in the handwriting of the deceased. We may also note that the authorship of the said letters was not disputed during cross-examination of the relevant witnesses.

19. The letters throw deep insights into the marital life of the deceased and the miseries enwombing her. We find extensive reference to the fact that Madan, husband of her sister Asha, was a source of perpetual nuisance. The deceased repeatedly goaded her father not to send Asha back to the said house for some time. It was also stated therein that her *jethani* : Gulab Devi, insulted her on one occasion and that Madan would misbehave with her at the instigation of his mother : Parbhati Devi. She informed her father that the behavior of her husband : Hira Lal had improved considerably and he had reformed. She stated that he would intervene and prevent his relatives from misbehaving with her. However, in one letter there is reference to the fact that her husband : Hira Lal had avowed to never visit the house of his father-in-law i.e. Pratap.

20. The case property was sent to forensic laboratory for analysis. On January 04, 1993 a sealed cloth parcel containing a metallic stove with side kerosene oil tank was received by CFSL-Lodhi Road. It was recorded that the washer of air pressure pump was found missing and the burner was in a bent condition. The CFSL Report dated June 24, 1994 Ex.PW-16/12 reveals that the said metallic stove was not in working condition, however, when fitted with air pump washer, it was in a position to function.

21. The prosecution examined eighteen witnesses in support of charges. Upon being questioned by the Court in terms of Section 313 Cr.P.C, the accused pleaded false implication. They explained that the deceased caught fire when she was inside her room and since the room was bolted from inside, it had to be broken open with the help of Rajesh

PW-1. The accused examined one witness in their defence, namely, Rajesh; who was a resident of the locality. Rajesh deposed that on the day of incident at around 1:30 PM he was passing in front of the house of the accused and he heard a lady screaming- '*bachaao bachaao*'. Smoke was coming from inside the house. Gulab Devi also raised an alarm. She asked him to extend help and break open the door of the room. The door was broken open and the deceased emerged in flames. Gulab Devi and other women folk extinguished the flames with the help of a gunny bag and that the police had recorded his statement but had not summoned him as a witness.

22. The learned Trial Judge has returned a finding of guilt by accepting the dying declaration Ex.PW-7/2 of the deceased that was recorded by H.C.Gaur, the Sub Divisional Magistrate, New Delhi on November 06, 1992 after duly obtaining the opinion of fitness from the concerned doctor. Further, the letters authored by the deceased during her life time Ex.PW-1/C, Ex.PW-1/D and Ex.PW-1/E, in conjunction with the testimonies of Pratap : father of the deceased, Smt.Mohri : mother of the deceased and Asha : sister of the deceased, have been relied upon to arrive at the conclusion that the deceased was subjected to cruelty by the accused.

23. We have bestowed anxious consideration to the rival submissions advanced at the bar. Shri Harsh Prabhakar, Advocate appointed as *Amicus Curiae* in terms of our Order dated May 04, 2016 to assist the Court on behalf of appellants : Parbhati Devi and Hira Lal, also ably canvassed submissions *qua* the case of appellant : Gulab Devi, though she was represented by a counsel.

24. We first proceed to tender our findings on the aspect whether the prosecution has led cogent evidence to establish that the deceased was

subjected to cruelty by the appellants so as to warrant conviction for the charge under Section 498A/34 IPC.

25. Upon careful scrutiny of the evidence emerging during trial we have no hesitation in concluding that the deceased was subjected to 'cruelty' as envisaged under Section 498A IPC at hands of the appellants.

26. Even though Pratap, the father of the deceased, has made marked improvements in his deposition before the Court on the aspect of the demand of dowry by his son-in-law, however, that does not blur the weight of residual evidence emerging in form of the letters Ex.PW-1/C, Ex.PW-1/D and Ex.PW-1/E authored by the deceased in her life time. As highlighted by us earlier, the letters throw deep insights into the marital life of the deceased and the miseries enwombing her. Significantly, the authorship of the said letters has not been disputed. The letters were penned by the deceased to her father prior to the present incident and there is no palpable reason for her to paint a false picture before him. The deceased stated that her *jethani* :Gulab Devi once remarked that if she would come across her father on the way she would insult him in a manner that he would not forget it during his life. The deceased also narrated her tale of woe by highlighting the misbehavior by her brother-in-law : Madan at the instance/instigation of Parbhati Devi. She expressed her anguish that her husband : Hira Lal had avowed not to visit the house of his father-in-law. However, in her letter authored subsequently she expressed relief that her husband had reformed and would intervene to prevent his relatives from misbehaving with her. The role played by each appellant can be discerned from the perusal of the said letters and it lends valuable corroboration on the aspect of 'cruelty' to the statement Ex.PW-7/2 of the deceased made before the Sub Divisional Magistrate, New Delhi. In the said statement the deceased states that her mother-in-law

:Parabhati Devi and *jethani* : Gulab Devi repeatedly harassed her for dowry whereas her husband : Hira Lal quarreled with her. The deceased does not indiscriminately implicate every member of her in-law's family and she objectively admits that her husband never raised dowry demand or taunted her for bringing insufficient dowry. The deceased states that she is tormented with the behavior of the appellants.

27. The fact that the previous instances of harassment were not reported to the police does not substantially erode the credibility of such assertions made later in point of time as in our societal milieu there is a tendency to save the marriage even at the cost of suffering atrocities passively in the hope that better sense would prevail upon the in-law's some day.

28. We thus find no merit in the appeals to this extent and endorse the view adopted by the Court below on the charge of Section 498A/34 IPC.

29. However, the assertion of the deceased that Gulab Devi threw kerosene oil upon her while she was cooking and was thus responsible for the incident requires careful scrutiny in light of the other evidence before us. It may be recollected at this juncture that it has been the contention of the appellants that deceased caught fire when she was inside her room and since the room was bolted from inside, it had to be broken open with the help of Rajesh.

30. Rajesh entered the witness-box as a defence witness and supported the stance of the accused. Significantly, the investigating officer SI Sudesh Ranga PW-16 has admitted in cross-examination that when he reached the spot of occurrence he interrogated six-seven neighbours including Rajesh. He further admitted that Rajesh had informed him that at the time of incident the door was bolted from inside and had to be broken open. He stated that he did not record the statement of the said

persons from locality including Rajesh in terms of Section 161 Cr.P.C. Thus, it is evident that the explanation tendered by the accused cannot be lightly dubbed as an after-thought and was in fact admittedly projected before the investigating agency by independent persons of the locality within few hours of the incident itself.

31. In this connection, the learned *Amicus* has drawn our attention to the photographs Ex.PW-16/1 to Ex.PW-16/6 of the scene of crime that were taken by the Crime Team on the day of incident itself. A careful perusal of the said photographs reveals that the door of the room wherein the incident took place is broken from the frame. The said circumstance strongly probablises the explanation tendered by the accused.

32. Further, the report dated June 24, 1994 of the CFSL with regard to the kerosene stove Ex.P-1 also needs to be given a meaningful reading. It is recorded in the report that the washer of air pressure pump was found missing and the burner was in a bent condition. The Seizure-Memo Ex.PW-10/11 prepared by the investigating agency also records the observation that the burner was in a bent condition. It was opined by the experts that the said metallic stove was not in working condition, however, when fitted with air pump washer, it was in a position to function. The condition of the said stove i.e. the burner being bent and washer of the air pressure pump being missing coupled with the fact that it was not found to be in working order in the condition it was seized, lends possibility to the conclusion that an accident may have occurred in the room in consequence of which it was rendered dis-functional and the deceased suffered injuries.

33. It is rather unfortunate that the learned Trial Judge has not adverted its consideration to these material contours of the case which, when

weighed in the golden scales of justice, are capable of vindicating the innocence of the accused.

34. It would be apposite to notice that the history of the patient recorded in the earliest contemporaneous documents such as the MLC Ex.PW-11/1 at Deen Dayal Upadhyay Hospital and the treatment documents prepared at Dr.Ram Manohar Lohia Hospital indicates that burns were suffered while cooking. If the attendant narrated such history falsely, the injured would have rebutted the same since she was found conscious, coherent and well-oriented by the doctors examining her at the said point of time. That she was influenced at that time not to so contradict is belied from the trinity of circumstances noted by us : the door of the room in which she was burnt had to be broken into, the FSL Report probablises the damage to the stove as a result of an accident and no container recovered from the scene of the crime in which there was kerosene.

35. It is the admitted case of the prosecution that the family of the deceased was intimated about the incident by the police on the intervening night of November 05-06, 1992 and they reached Dr.Ram Manohar Lohia Hospital. The father of the deceased : Pratap has categorically deposed that he had conversation with his injured daughter at the hospital. Therefore, it is imminently possible that the deceased was tutored before her statement Ex.PW-7/2 was recorded by H.C.Gaur, Sub Divisional Magistrate, New Delhi on November 06, 1992 at 12:25 PM onwards.

36. It also assumes significance that Gulab Devi was present with the deceased at the time of admission in Dr.Ram Manohar Lohia Hospital as evidenced by her signatures on the authorization form contained in the treatment documents Ex.PW-15/1. If she would have been responsible for

the incident there would be an instinctive tendency to abscond. We find the converse in the present case. As a matter of fact all the accused persons were arrested from Dr.Ram Manohar Lohia Hospital on November 07, 1992. We may however express a note of caution, that there can be no universal rule/straight jacket formula in drawing inferences from such subsequent conduct of the accused as it varies from every individual and is seldom dispositive of the matter, though relevant in terms of Section 8 of the Indian Evidence Act, 1872.

37. The circumstance that the family members of the deceased were not informed about the incident by the accused is too feeble in isolation to lead to an irresistible conclusion of foul-play at the hands of Gulab Devi, especially when evidence before us strongly probablises that an accident occurred at the *locus in quo*.

38. In view of the discussion comprised in the preceding paragraphs we are of the considered view that Gulab Devi is entitled to a benefit of doubt and is entitled to be acquitted for the offence punishable under Section 302 IPC.

39. For the offence punishable under Section 498A/34 IPC we have already held all the appellants to be guilty and their respective appeals to the said extent are liable to be dismissed. However, we are inclined to modify the sentence awarded by the learned Trial Judge. The appeals preferred by the appellants have been pending since fifteen years. The appellants have no criminal antecedents other than the present case. The appellant : Parbhati Devi is a lady aged more than eighty years as of date and has undergone approximately 11 months in custody. Appellant : Gulab Devi is aged more than fifty years and has undergone approximately two years four months in custody. Appellant : Hira Lal is also aged around fifty years and has undergone incarceration for

approximately four months. We may notice that the deceased in her letters addressed to her father categorically stated that Hira Lal had reformed considerably and would intervene to protect her from being harassed by his relatives. The deceased also stated in her statement recorded before the Sub-Divisional Magistrate that Hira Lal never raised demands for dowry. In view of the circumstances delineated above, we feel that it would be expedient and in the interest of justice to sentence the appellants to the period already undergone by them in custody for the offence punishable under Section 498A/34 IPC.

40. Appellants are on bail. Bail bonds and surety bonds are discharged.

41. TCR be returned.

42. Copy of this decision be sent to the Superintendent Central Jail Tihar for updating of the jail record.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

MAY 17, 2016
mamta