

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. No.763/2000**

Date of Decision : December 15th, 2016

RAJESH & ORS. PETITIONERS
Through Mr.M.L. Yadav, Adv.
versus

STATE RESPONDENT
Through Mr.Sudershan Joon, APP for the
State.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J

1. Aggrieved by the judgment of conviction dated 21.11.2000 convicting the appellants, namely, Rajesh, Ganesh and Shiv Lata finding them guilty under Sections 498-A/304B IPC and order on sentence dated 22.11.2000 vide which the appellants were sentenced to undergo seven years rigorous imprisonment for the offence under Section 304B IPC and also to undergo three years rigorous imprisonment with fine of Rs.25,000/- each for the offence under Section 498A IPC, in default of payment of fine they are ordered to further undergo simple imprisonment for six months, the present appeal has been preferred..

2. The factual matrix emerges from the record is that on

20.03.1997 at about 10.55 a.m., an information regarding the burning of a woman from a gas cylinder burst was received in the police station and the same was assigned to ASI Suresh Ram who went to the spot. At the spot, it was revealed that the injured was taken to hospital by PCR Van. On an inspection of the spot, the room was found to be washed. A small gas cylinder with burner was seized from the spot. In the hospital, MLC of the injured was collected on which the doctor declared the injured unfit for statement. On the same day at about 12.05 a.m., the injured was declared dead. SDM of the area was informed who conducted inquest proceedings and recorded the statements of the relatives of the deceased.

3. In his statement, the complainant, namely, Roshan Singh, father of the deceased stated that his daughter Sarita was married to Rajesh Chowhan on 12.12.1996 and in the marriage he had given dowry as per his capacity. After few days of marriage, appellant Rajesh came to his house and demanded a scooter. The complainant showed his inability to meet the said demand. On this, appellant Ganesh (brother-in-law) got annoyed and stated that he would not visit there again. Thereafter, Sarita was refused to be sent to her parental house. When Sarita and her husband visited the house of the complainant, Sarita told the complainant that her

mother-in-law Shiv Lata had demanded a sum of Rs.40,000/-. On 20.03.1997, the complainant was informed that his daughter had been burnt and was admitted in a hospital.

4. On the basis of statement of the complainant Roshan Singh, FIR of the instant case was registered. Post mortem on the dead body of deceased was conducted in which the doctor observed that total burn injuries were 98% of the total body surface and cause of death was due to burn shock consequent upon burn injuries. All the accused persons/appellant were arrested and after completion of investigation, charge sheet was filed in the Court.

5. Charge under Sections 498A/304B IPC was framed against all the appellants to which they pleaded not guilty. The prosecution had examined as many as eleven witnesses namely PW1 Smt.Krishna, PW2 Smt. Shyamwati, PW3 Roshan Singh, PW4 Laxmi, PW5 SI Vipnesh, PW6 Sh.N.P.S. Saran, PW7 Lady Ct.Sunita, PW8 ASI Suresh, PW9 Dr.Robinson, PW10 SI Surender Malik and PW11 Dr.S.B. Singh. The statements of the accused persons were recorded under Section 313 of the Cr.P.C.

6. The appellants were held guilty by the learned Additional Sessions Judge vide judgment of conviction dated 21.11.2000 and passed the order on sentence on 22.11.2000.

GROUND OF CHALLENGE

(a) The dying declaration recorded by the doctor in the MLC Ex.PW9/A of the deceased stated the death of the deceased to be an accidental death and not a dowry death and that subsequently, it was given the colour of dowry death by the parents of the deceased.

(b) The preliminary inquiry made by ASI Suresh Ram (PW8), revealed that the deceased received accidental burn but the trial court has not relied upon the same.

(c) On the same set of evidence, co-accused Mukesh has been acquitted and it is a settled law that witnesses disbelieved qua one accused, cannot be believed against the other accused persons. The trial court has given the benefit of doubt to the prosecution instead of giving it to the accused.

(d) Delay in lodging the FIR and peculiar facts after the death of deceased resulted in embellishment which is clear from the dying declaration recorded by the doctor.

(e) There is nothing on record to assume that dowry was ever demanded or it was agreed to be given. The allegations if any are vague and general as no time, date and manner of maltreatment has been mentioned in the FIR.

7. Per contra, arguments advanced by learned Additional Public Prosecutor for the State is that the appellants have been

rightly held guilty under Sections 498A/304B IPC by the trial court. The parents as well as other relatives of the deceased have duly supported the case of prosecution that the deceased was subject to cruelty and harassment on account of demand of dowry by the appellants. There is sufficient evidence against the appellants to hold them guilty for the offences of harassment on account of demand of dowry and of dowry death.

8. Arguments advanced by the counsel for the appellants as well as learned APP for the State were heard.

(I) In her testimony, PW1 Smt.Krishna, the sister-in-law of the deceased stated that on 21.03.1997, she was present in her house at about 10 a.m. Deceased Sarita was boiling water for taking bath.

(II) PW2 Smt. Shyamwati, mother of the deceased, had deposed that Sarita was married to Rajesh Singh Chowhan on 12.12.1996 and there was no demand of dowry at the time of marriage. After four days of marriage, in-laws of her deceased daughter told that a scooter was not given in the marriage and demanded a scooter. The deceased was harassed for not bringing scooter in the marriage. On 20.12.1996, accused Rajesh and Ganesh came to her house and told that they were insulted as scooter was not given and demanded a scooter. On 31.12.1996, deceased told that her mother-in-law was harassing her and asked her to bring a scooter

and Rs.40,000/- in cash. In January 1997, deceased informed that she was harassed for bringing insufficient dowry. On 23.02.1997, all the accused asked them to arrange a scooter and Rs.40,000/- in cash. The deceased was harassed thereafter also on account of demand of dowry. Statement of PW2 has been corroborated PW3 Roshan Singh, father of the deceased who had made almost similar statement as that of PW2.

(III) Further PW4 Laxmi, cousin of the deceased had corroborated the statements of PW2 and PW3. She stated that after few days of marriage of Sarita, her father told that accused Rajesh was annoyed and was demanding a scooter in dowry. Sarita told that her mother-in-law was demanding Rs.40,000/- and her husband Rajesh was harassing and threatening to kill with a knife.

(IV) PW5 SI Vipnesh had stated that accused Dinesh and Mukesh were formally arrested by him and he prepared the charge sheet after completion of investigation.

(V) Further corroboration is by PW6 Sh. H.P.S. Saran, the then SDM, Civil Lines who had stated that on 20.03.1997, on receipt of an information, he went to JPN Hospital and found that Sarita was declared unfit for statement. Sarita died on the same night. On 21.03.1997, he conducted inquest proceedings and recorded statement of Roshan Singh, father of the deceased and thereafter

directed the police to register the FIR.

(VI) Further corroboration is by PW9 Dr.Robinson who proved the MLC of deceased as Ex.PW9/A and had identified the writing of Dr.Sangita who had prepared the MLC. PW11 Dr.S.B. Singh had conducted post-mortem on the dead body of the deceased and proved his report as Ex.PW11/A.

(VII) Further PW7 Lady Ct. Sunit had stated that on 21.03.1997 as a duty officer, she recorded the FIR of the instant case. PW8 ASI Suresh Ram and PW10 SI Surender Malik had conducted investigation of the case and had deposed about the proceedings conducted by them.

9. PW2 and PW3 are the parents of the deceased. They have specifically stated their deceased daughter was harassed and meted with cruelty by the appellants on account of demand of dowry. In their testimony, they have given the dates which duly proves that the deceased was harassed by the appellants for or on account of demand of dowry. They have stated specifically that after four days of marriage, in-laws of her deceased daughter told that a scooter was not given in the marriage and her in-laws demanded a scooter. On 20.12.1996, accused Rajesh and Ganesh came to their house and demanded a scooter. On 31.12.1996, deceased told that her mother-in-law was harassing her and asked her to bring a

scooter and Rs.40,000/- in cash. In January 1997, deceased informed that she was harassed for bringing insufficient dowry. On 23.02.1997, all the accused persons again demanded a scooter and Rs.40,000/- in cash.

10. PW4 Laxmi, cousin of the deceased has also corroborated that deceased told that accused Rajesh was annoyed and was demanding a scooter in dowry. PW4 also deposed that deceased told that her mother-in-law was demanding Rs.40,000/- and her husband Rajesh was harassing and threatening to kill with a knife.

11. From the testimony of parents (PW2 & PW3) and cousin (PW4) of the deceased, it was duly established beyond reasonable doubt that the appellants had harassed the meted the deceased with cruelty on account of demand of dowry.

12. Thus, the conviction of appellants under Section 498A IPC needs to be upheld.

13. The appellants, apart from treating the deceased with cruelty on account of demand of dowry, have also been convicted for commission of dowry death.

14. In the case of *Devi Lal vs. State of Rajasthan* AIR 2008 SC 332, *Hon'ble Supreme Court has observed that the ingredients of provisions of section 304 B IPC are (1) that the death of the woman was caused by any burns or bodily injury or in some*

circumstances which were not normal; (2) such death occurs within 7 years from the date of her marriage ; (3) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband; (4) such cruelty or harassment should be for or in connection with the demand of dowry ; and (5) it is established that such cruelty and harassment was made soon before her death. It was further observed that before an accused is

found guilty for commission of an offence, the Court must arrive at a finding that the ingredients thereof have been established. It was held that statement of a witness for the said purpose must be read in its entirety. It is not necessary for a witness to make a statement in consonance with the wording of the section of a statute. What is needed is to find out whether the evidences brought on record satisfy the ingredients thereof.

15. Necessary ingredients of dowry death as provided under Section 304B of IPC are :

(i) Deceased was the subject matter of cruelty on account of dowry and culminates into guilt of accused under Section 498A IPC;

(ii) The death should have taken place due to bodily injuries other than normal circumstances; and

(iii) Such death was the subject matter of cruelty soon before

death.

16. To constitute an offence under Section 304B IPC of dowry death, the presumption under Section 113B of the Evidence Act cannot be raised against an accused until independently the offence under Section 498A IPC is proved by leading evidence to the specific allegation with regard to time and date of such demand and cruelty and furthermore establishing the proximity live link between the effect of cruelty based on dowry demand and the death of the victim.

17. In the present case, there is sufficient evidence to establish that the deceased was subjected to cruelty on account of dowry and the appellants are guilty for the offence punishable under Section 498A IPC.

18. It has vehemently been argued by the learned counsel for the appellants that the ingredients of dowry death have not been established in the instant case as the deceased died due to accidental burns. In this regard, attention is drawn to the MLC Ex.PW9/A of the deceased in which she made her last statement to the doctor that she sustained burns while she was cooking food.

19. It is apparent from the record that prosecution witness HC Bhopal Singh was not examined by the prosecution at its witness. Record reveals that the statement of HC Bhopal Singh was

recorded under Section 161 Cr.P.C. on 24.03.1997. In his statement, HC Bhopal Singh had stated that on 20.03.1997, he was posted as Incharge of PCR Van and on receipt of call, he reached the spot and removed Sarita to JPN Hospital. He specifically stated that on the way to hospital, Sarita informed that she got burns all of a sudden while she was cooking food on gas cylinder.

20. Statement of incharge of PCR Van HC Bhopal Singh recorded under Section 161 Cr.P.C. makes it abundantly clear that the deceased herself informed to him that she sustained burns while she was cooking food on the gas cylinder.

21. MLC Ex.PW9/A of the deceased was prepared by Dr.Sangeeta Sharma. MLC Ex.PW9/A shows that the doctor had specifically recorded that as per the alleged history as said by the patient herself that “***she sustained burns due to sudden blast of gas cylinder while she was cooking food***”. The alleged history of the patient was recorded by the doctor as given by the patient herself. It has also been recorded by the doctor in the MLC that “***smell of kerosene absent***”.

22. It was argued by the learned APP for the State that there is cutting and overwriting on the MLC Ex.PW9/A to the effect that initially the doctor wrote that the smell of kerosene was present but subsequently the same was changed to “smell of kerosene absent”

which creates doubt about the defence of the appellants that it was an accidental death.

23. There is no force in the above contention raised by the learned Prosecutor for the reasons that the history of sustaining burn due to sudden blast of gas cylinder was given by the deceased herself to the doctor. So far interpolation/cutting/over-writing on MLC Ex.PW9/A of the deceased is concerned, doctor who has written "*Smell of Kerosene absent*" signed near the cutting/over writing to authenticate the said over writing. There is no reason to believe that the said over writing was done under any influence or pressure as it is not the case of the either party.

24. It is further important to note that statement under Section 161 Cr.P.C. of Dr.Sangeeta Sharma was recorded by the Investigating Officer on 24.03.1997 in which she specifically stated that she examined the patient Sarita on 20.03.1997 and prepared her MLC. She specifically stated that the patient herself stated that she sustained burns due to sudden blast of gas cylinder while she was cooking food. The doctor also stated in her statement that smell of kerosene was absent. There is no cutting or over writing in the said statement, which makes the history given by the deceased as true that she sustained burns due to blast of gas cylinder.

25. The MLC Ex.PW9/A prepared by Dr. Sangeeta Sharma and her statement recorded under Section 161 Cr.P.C. makes it clear that the death of the deceased was an accidental death and it cannot be termed as dowry death.

26. Smt. Krishna (PW1) had also deposed that on 21.03.1997 deceased Sarita, her sister-in-law was boiling water for taking bath. Pallu of the deceased caught fire accidentally. People from the locality informed the police who came to their house and took Sarita to hospital. She had proved her statement given to the police as Ex.PW1/A.

27. A joint reading of the statements of Dr.Sangeeta Sharma and of HC Bhopal Singh, incharge of the PCR Van recorded under Section 161 Cr.P.C. duly proves that the deceased herself stated to them that she sustained burns at the time of cooking food on the gas cylinder. A reading of statements of these witnesses coupled with the testimony of prosecution witness Smt.Krishna (PW1) leaves no doubt that the deceased died in an accident of suddenly catching fire from the gas cylinder. The appellants had no role to play in such an accident. The evidence adduced does not establish the live link between the effect of cruelty based on dowry demand and the death of the victim and in the present case said evidence does not fulfil the ingredients of Section 304B IPC.

As a result, the appellants are entitled to be acquitted for the offence under Section 304B IPC and the judgment of conviction and order on sentence is set aside.

28. However, the conviction and sentence of the appellants under Section 304B IPC is set aside.

29. Keeping in view the discussion made above, the conviction and sentence awarded to the appellants under Section 498A IPC is upheld.

30. In the case in hand, the appellants have been convicted and sentenced to undergo rigorous imprisonment for three years with a fine of Rs.25,000/- each for the offence punishable under Section 498A IPC. In default of payment of fine, they have been ordered to further undergo simple imprisonment for six months.

31. As per nominal roll of the appellant Rajesh, he already remained incarcerated for 4 years 2 months and 18 days as on 16.11.2004, whereas as per nominal roll of the appellant Shiv Lata, she remained incarcerated for 4 years 7 months and 24 days as on 24.05.2005. As per nominal roll of the appellant Ganesh, he remained incarcerated for 3 years, 2 months and 13 days as on 05.02.2004.

32. Since the appellants Rajesh and Shiv Lata already remained incarcerated for the period of their conviction under Section 498A

IPC, they are directed to be released forthwith, if not required in any other case. So far appellant Ganesh is concerned, he is directed to deposit the fine within 15 days, failing which to surrender before the trial court concerned to serve the sentence in lieu of payment of fine.

33. The appeal is disposed of accordingly.

(P.S.TEJI)
JUDGE

DECEMBER 15, 2016
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