

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

Judgment Reserved on: July 19th, 2016

% *Judgment Delivered on: August 17, 2016*

+ **CRL.A.817/2011**

SHIV CHARAN & ANR.

..... Appellants

Represented by: Mr.Chetan Lokur, Advocate.

versus

STATE

..... Respondent

Represented by: Ashok K. Garg, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By the present appeal, the appellants Shiv Charan and Kuldeep challenged the impugned judgment dated 30th March, 2011 convicting them for the offences punishable under Sections 304B/498A read with Section 34 IPC in FIR No. 337/2009 registered at PS Dabri and the order on sentence dated 31st March, 2011 directing them to undergo rigorous imprisonment for a period of ten years for the offence punishable under Section 304B IPC and rigorous imprisonment for a period of three years and to pay a fine of ₹5,000/-; in default to undergo simple imprisonment for a period of six months for the offence punishable under Section 498A IPC. Since appellant No.1 Shiv Charan has passed away, the appeal qua him stands abated and this Court is now concerned with the appeal qua appellant No. 2 Kuldeep only.

2. Briefly the prosecution case is that on 12th November, 2009, two DD

entries were received. DD No. 13A received at 9:01 A.M. stated that a lady has committed suicide by burning herself at RZ-70, Gali No.8 and DD No. 14A received at 9:04 A.M. stated that a person was murdered at Durgapur, Gali No. 8, near Mark Land Colony Public School, Namirpur. The said DD entries were assigned to SI Suresh Chand, PW-14 who along with Ct Sanjay PW-13 went to the spot and found dead body of a lady in burnt condition in the kitchen. On inquiry he came to know that Machla Devi, the deceased was married three-four years ago to Kuldeep. PW-14 telephonically informed the Executive Magistrate about the incident. Crime Team was called at the spot and inspection was carried out. Photographs of the spot were taken. During inspection, one white colour plastic jar with kerosene oil smell was found between the legs of the dead body. Some burnt clothes of yellow and blue colour from which smell of kerosene was coming, one red colour lid of plastic jar, match box and broken bangles were also found. Dead body was sent to Mortuary, DDU Hospital and the parents of the deceased were informed. On 13th November, 2009 the parents of the deceased came to the police station and thereafter, PW-14 along with them reached the hospital where the Executive Magistrate recorded the statements of deceased's father Munna, PW-1 and brother Beer Singh PW-3.

3. Munna in his statement before PW-8 Sh. Krishan Kumar, Executive Magistrate stated that he married his daughter to Kuldeep on May, 2006. On 12th November, 2009 around 8:00 A.M., one Om Prakash, who arranged the marriage of his daughter, informed that the deceased had died of burning. He suspected that his daughter was killed by Kuldeep. He further stated that after the marriage, his daughter was harassed and beaten for dowry. Four days before the death, the deceased telephonically informed him that

Kuldeep used to beat her and make demand for computer. He also suspected that the deceased had not committed suicide but she was burnt and killed/murdered. He suspected that the parents of Kuldeep could also be involved because they also used to harass her for dowry. On the basis of the statement of Munna, FIR No. 337/2009 was registered under Sections 498A/304B IPC.

4. Learned Counsel for the appellant contends that the allegations made in connection with cruelty and harassment are generic in nature. Furthermore, the ingredients of Section 304B have not been proved to be fulfilled. Munna deposed that the deceased had called four days prior to her death and told him about the harassment by the appellants with regard to dowry demands, however, PW-2 Smt. Maharani stated that the deceased had called her one day prior to her death and told her about the harassment whereas PW-3 Beer Singh was silent about it. Thus there is material contradiction in the statements of the witnesses with regard to the allegation of harassment for demand of dowry soon before the death. It was further contended that PW-5 Smt. Geeta Devi, who was residing at the same address, was the only independent witness and in her statement recorded by the Executive Magistrate, she stated that she did not hear any arguments between the deceased and Kuldeep.

5. Learned Trial Court has wrongly relied upon the version of the family members of the deceased who were residing thousand miles away from the deceased. First Information Report is not substantive piece of evidence and one cannot be convicted on the basis of the FIR. Since no complaint was lodged with the police during the lifetime of the deceased about the dowry demand and harassment, therefore, the allegations made after her death are

false. Prosecution has failed to prove that the deceased was subjected to cruelty or harassment soon before her death in connection with any demand of dowry.

6. Learned APP for the State on the other hand contends that on the basis of the testimony of the family members of the deceased it is established beyond reasonable doubt that soon before the death the deceased was harassed for demand of dowry. The contradiction in the testimony of the witnesses as to whether the deceased called up four days prior to the death or one day prior to the death is immaterial and does not go to the root of the matter. Hence the appeal be dismissed.

7. Munna, father of the deceased who was examined as PW-1 deposed in sync with his statement made before the Executive Magistrate. He further stated that soon after the marriage, the accused persons made demands for computer, cash, TV, refrigerator from him as dowry and used to threaten him to leave the deceased in case their demands were not met. During his cross examination, he stated that at the time of occurrence, Shiv Charan was not in Delhi. He denied the suggestion that on 9th November, 2009, the deceased was caught in an objectionable position with one Vinod, who was a tenant in the same premises where the deceased was living and due to the fear that the matter would be brought to the notice of the family members and relatives, the deceased took the drastic step of ending her life.

8. PW-2 Maharani, mother of the deceased corroborated the version of PW-1 Munna. She also stated that one day prior to the death of the deceased, the deceased called her and told that Kuldeep used to harass her. PW-3 Beer Singh, brother of the deceased and PW-4 Mukesh Chand, cousin of the deceased also corroborated the testimony of PW-1.

9. Dr. B.N. Mishra who was examined as PW-11 conducted the post mortem on the dead body of Machla (deceased). He noticed deep to superficial thermal burn (100%) present all over the body and degloving of skin at both palm with multiple blister formation containing serous fluid present at both limbs (upper and lower limbs) and over trunk area. The line of redness (vital sign) seen at the lower limbs and back part of the body. According to PW-11 findings were suggestive of ante mortem burns. No other ante mortem injury except burn injury was found on the body of the deceased. No specific smell of kerosene emitted from the body. The cause of death was opined to be shock caused by 100% thermal burns. Time since death was about 30-32 hours.

10. As noted above the deceased was married to the appellant No.2 in May, 2006 and she died on 12th November, 2009. While levelling allegations Munna, the father of the deceased stated that there were demands of computer, cash, TV and refrigerator and his daughter used to be threatened to be thrown out of the house. No specific time, date, month or year has been given when demand was made and for which item. Similar is the testimony of the mother and brother of the deceased. All three witnesses have not stated at what point of time, after the marriage, demands were raised. Further with regard to the specific demand soon before death as per Munna, a phone call was received from the deceased four days prior to the incident whereas as per his wife one day prior to the death and the brother of the deceased is silent on this aspect. Thus there are material contradiction as to when the telephone call was received from the deceased with regard to the demand of dowry and harassment soon before the death. As per the FSL report exhibited as Ex. PW-14/D, on chemical and GC examination, residue

of petrol, diesel and kerosene could not be detected in exhibits '1' (burnt cloth piece), exhibit '2' (empty plastic spray bottle) and exhibit '3' (pieces of glass bangles and two match boxes having burnt and unburnt match sticks).

11. The Supreme Court in the decision reported as 2013 (7) SCC 108 Gurnaib Singh vs. State of Punjab held:

17. Keeping in view the aforesaid principles, it is to be seen whether the deceased was driven to commit suicide because of the harassment meted out to her in connection with demand for dowry. The learned trial Judge as well as the High Court has accepted the evidence of the brother, PW 1; the father, PW 4 and PW 5, Numberdar of the village that there was demand for dowry. The learned counsel for the appellant would submit that the finding recorded on this score is not based on the material on record but founded on surmises. To test the acceptation of the said submission, we have thought it apt to scrutinise the evidence of PWs 1, 4 and 5:

17.1. PW 1, brother of the deceased, has only made a bald statement that the accused persons were not satisfied with the dowry and were asking his sister to bring a sum of Rs 50,000. Similar is the testimony of PWs 4 and 5. That apart, nothing has been stated by the witnesses. It has been deposed by the father that the deceased had written two to three letters stating about the demand for dowry but the said letters have not been brought in evidence. That apart, the brother, PW 1, in cross-examination, has refuted the same. It is also noticeable that PW 4 had not told his other daughters about the demand for dowry which is expected of a father.

17.2. Thus, on the base of such sketchy evidence, in our considered opinion, it is difficult to concur with the finding that there was demand for dowry by the accused husband

and the harassment pertained to such a demand. The conclusion on this score, we are inclined to think, is based on certain a priori notions. When such a conclusion is arrived at which is manifestly erroneous and unsupported by the evidence on record, needless to say, this Court, in exercise of power under Article 136 of the Constitution, can re-evaluate and interfere. This has been so stated in Alamelu v. State [(2011) 2 SCC 385 : (2011) 1 SCC (Cri) 688] , Heinz India (P) Ltd. v. State of U.P. [(2012) 5 SCC 443:(2012) 3 SCC (Civ) 184:(2012) 3 SCC (Cri) 198] and Vishwanath Agrawal v. Sarla Vishwanath Agrawal [(2012) 7 SCC 288 : (2012) 4 SCC (Civ) 224 : (2012) 3 SCC (Cri) 347] .

12. In view of the evidence on record as noted above, the impugned judgment of conviction and order on sentence are set aside. The appellant No.2 is acquitted of the charges for offences punishable under Section 304-B and 498A IPC. The appellant No.2 is in custody. The Superintendent, Tihar Jail will release the appellant No.2 forthwith if not required in any other case.

13. Appeal is disposed of.

14. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

15. TCR be returned.

(MUKTA GUPTA)
JUDGE

AUGUST 17, 2016
‘vn’